

DATED 1st December 2021

EAST SUFFOLK COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

[REDACTED] (3)

HOPKINS HOMES LIMITED (4)

**Planning Obligation by Deed of Agreement under
Section 106 of the Town and Country Planning Act
1990 (as amended)**

Relating to Land at Wood Farm, Grundisburgh, Woodbridge, Suffolk

Appeal reference: APP/X3540/W/21/3280171

Birketts

Birketts LLP: Offices in Cambridge | Chelmsford | Ipswich | Norwich |

London

www.birketts.co.uk

THIS AGREEMENT IS MADE this 1st December day of

2021

BETWEEN:

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("**the Council**");
- (2) [REDACTED] of [REDACTED] ("**the Owner**");
- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("**the County Council**");
- (4) **HOPKINS HOMES LIMITED** (company registration number 02875798) whose registered office is at Melton Park House, Melton, Woodbridge, Suffolk, IP12 1TJ ("**the Developer**");

Together "the Parties"

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is the local highway authority (except for trunk roads) and the local education authority is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (C) The Owner is the freehold owner of the Site registered at the Land Registry under title number SK309019.
- (D) The Developer has an interest in the Site by way of an Option Agreement dated 19 December 2019.
- (E) The Developer submitted the Application to the Council but has now submitted the Appeal to the Planning Inspectorate.
- (F) The Site lies within the area to which the Local Plan apply.
- (G) The Council is satisfied that the planning obligations sought under the provisions of this Deed meets the tests set out in the Regulation 122 of the Community Infrastructure Regulations 2010.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. **DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

- “100% Staircaser”** means a lessee of a Shared Ownership Dwelling under a Shared Ownership Lease who has exercised their right under that lease to purchase 100% of the equity in the Shared Ownership Dwelling;
- “Act”** means The Town and Country Planning Act 1990 as amended;
- “Affordable Housing”** Housing that will be available to eligible households and as defined in Annex 2 of the National Planning Policy Framework (2019) or any amending or subsequent national planning policy that may be published by the Government whose needs are not met by the market and eligibility is determined with regard to local incomes and local house prices (unless otherwise agreed in writing with the Council);
- “Affordable Rental Units”** Affordable Housing let by a Registered Provider to Eligible Persons where the rent level is capped at 80% of the local market rent (including any service charges, where applicable) and within local housing allowance rates, or as otherwise agreed with the Council in writing;
- “Affordable Housing Units”** Means 23 (Twenty Three) Dwellings to be made available as Affordable Housing comprising of 11 Affordable Rental Units and 12 Shared Ownership Dwellings the exact number, location, tenure and mix of Affordable Housing Units as set out in the Affordable Housing Table and to be delivered in accordance with Schedule 2;
- “Affordable Housing Table”** Means the table at Schedule 3 indicating the plot numbers and tenure types of the Affordable Housing Units unless otherwise agreed in writing with the Council;
- “Appeal”** the planning appeal in respect of the Application which has been given reference APP/X3540/W/21/3280171 by the Planning Inspectorate;

“Application”	the application for full planning permission submitted to the Council and validated on 26 August 2020 for the Development and allocated reference number DC/20/3362/FUL;
“Allocation Policy”	means the policy and procedure adopted by the Council to determine the eligibility and priority for allocation of the Affordable Rental Units;
“Bus Service Contribution”	means the sum One Hundred Thousand Pounds (£100,000) RPI Indexed to be paid by the Owner to the County Council to be used towards a new bus service to serve Grundisburgh;
“Chargee”	means any 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 Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver;
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly;

“Development”	the development of the Site by the residential development of 70 dwellings, including affordable dwellings, together with public open space, roads, accesses , parking, garages, drainage and associated infrastructure;
“Dwelling”	any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission;
“Eligible Persons”	a person or persons on the housing waiting list maintained by the Council or who is otherwise approved by the Council as being in need of separate or alternative accommodation and unable to buy housing generally available on the open market;
“Homes England”	the non-departmental public body responsible for creating thriving communities and affordable homes in England and which Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body that may replace it in either function;
“Index”	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation;
“Index Linked”	the increase in any sum referred to in this Deed unless the context otherwise dictates by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 12 of this Deed;
“Local Plan	the East Suffolk Council – Suffolk Coastal Local Plan September 2020;
“Local Connection Cascade”	The local connections criteria to be applied to each and every let or sale of an Affordable Housing Unit as set out in Schedule 7;
“Local Plan”	the East Suffolk Council – Suffolk Coastal Local Plan September 2020;

“Management Company”	means a company or body who will take over responsibility for the future maintenance of the Open Space and which may include a residents association established for this purpose or a private limited company;
“Market Housing Unit”	means any Dwelling which is for general market housing for sale on the open market and which is not an Affordable Housing Unit;
“Market Value”	Means the best price at which the sale of an interest in a Dwelling would have been completed unconditionally for cash consideration on the date of valuation assuming (i) a willing seller and a willing buyer in an arm’s-length transaction (ii) any restrictions imposed on a Dwelling by this Deed (iii) there has been a reasonable period to completion within which to negotiate the sale (iv) the Dwelling has been freely exposed to the market (v) both the buyer and seller acted knowledgeably prudently and without compulsion;
“Nomination Agreements”	Means the agreement to be entered into by the Council and the Registered Provider in respect of rights for the Council to nominate Eligible Persons for the Affordable Rental Units in the form provided by the Council a draft of which is appended to this Deed at Schedule 8;
“Nominated Body”	the body responsible for the ongoing management and maintenance of the Open Space being either: a) a Management Company; b) or such other body as the Council may agree in writing;
“Occupation” and “Occupied”	means Occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy” and “Occupied” shall be construed accordingly;

“Open Space”

means the areas of open space on the Development provided by the Owner for public use and enjoyment of the residents of the Development in accordance with the Open Space Specification and to be provided in phases if so agreed in writing with the Council;

“Open Space Specification”

means the specification for the delivery of the Open Space including the specifications plans and drawings showing but not limited to the layout and design of the Open Space which may be provided in phases if the Owner so agrees with the Council including details of any proposed play area and equipment landscaping, paths and access arrangements, street furniture and fencing together with details of the proposed future management regime for the Open Space to be agreed in writing with the Council;

“Open Space Transfer”

A transfer of the Open Space to be approved in writing by the Council and which inter alia shall contain the following provisions:

- (a) The Owner shall transfer the fee simple estate free from encumbrances save those set out in the title;
- (b) All easements and rights necessary in relation to access for the benefit of the Open Space;
- (c) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;
- (d) Restrictive covenants by the Management Company (if relevant);

- (e) Not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space;
- (f) Not to use or permit the Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development;

“Plan” the plan attached to this Deed;

“Planning Inspectorate” means the executive agency sponsored by the Ministry of Housing, Communities and Local Government entitled to exercise the powers conferred by the Act;

“Planning Permission” the planning permission subject to conditions to be granted by the Secretary of State pursuant to the Appeal;

“Practical Completion” means the completion of a Dwelling to a standard which is wind and watertight and fit for habitation in terms of heating, plumbing, electrics and sanitation and "Practically Complete" shall be construed accordingly;

“Protected Person” means any person who:

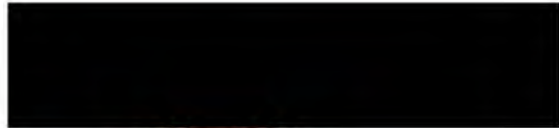
a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;



Notes:
 Do not scale from this drawing to ascertain dimensions.
 Copyright for all designs and drawings shall remain with Hopkins Homes Ltd. in accordance with the Copyright act.

Rev.	Date	Details



PLANNING

Project: Park Road, Grundisburgh	Project no: GRU5 Dwg no: 001
Drawing: Site Location Plan	Scale: 1:1250 @ A3 Rev: *
Plot Numbers:	Drawn by: LS Date: 29-08-20

c) a 100% Staircaser;

d) any successor in title to a chargee or mortgagee of the persons named in a) - c) above;

e) any mortgagee of a Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions within that Shared Ownership Lease;

“Public Right of Way Contribution”

means the sum Nine Thousand Pounds (£9,000) Index Linked to be paid by the Owner to the County Council to be used towards the costs of improving FP20 which may include any physical works and any legal fees, administrative costs, professional fees, officer time and all other expenses associated with any necessary legal processes to add to, realign or widen FP20 by an appropriate agreement or order as part of such improvement;

“Reasonable Consideration”

means offer prices from Registered Providers which give the Owner a reasonable consideration having regard to current market conditions in the disposal of Affordable Housing of a similar type and location by Registered Providers on a grant free basis via Section 106 Agreements;

“Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Contribution”

means a financial contribution of £321.22 (three hundred and twenty one pounds and twenty two pence) per Dwelling to be paid by the Owner to the Council towards the cost of mitigating the impact of additional visitors upon European Protected Sites as a result of the Development pursuant to the Habitat Regulations Assessment Recreational Disturbance Avoidance and Mitigation Strategy for Ipswich Borough, Babergh District, Mid Suffolk District and East Suffolk Council – Technical Report dated 23 May 2019;

“Registered Provider” or “RP”	<p>For the purposes of this Deed means either: -</p> <p>a body registered as a social landlord pursuant to the provisions of the Housing Act 1996 or a housing association within the meaning of the Housing Associations Act 1985; or</p> <p>any person or body or entity which is registered as a provider or social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008; or</p> <p>any body, organisation or company which is registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord;</p> <p>to be approved in writing by the Council;</p>
“RPI Index”	<p>the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties;</p>
“RPI Indexed”	<p>The increase in any sum referred to in this Deed as RPI Indexed by an amount equivalent to the increase in the RPI Index to be calculated in accordance with clause 12 of this Deed;</p>
“Qualifying Persons”	<p>Means a person or persons unable to buy housing generally available on the open market and whose household income is below £80,000 (or such other amount agreed in writing with the Council in accordance with government policy);</p>
“Secondary School Transport Contribution”	<p>means the sum Seventy Two Thousand Three Hundred Pounds (£72,300) RPI Indexed to be paid by the Owner to the County Council for the purpose of secondary school transportation;</p>

“Secondary Education Contribution”	means the sum £299,148 (two hundred and ninety nine thousand one hundred and forty eight pounds) Index Linked to be paid by the Owner to the County Council to be used towards the new secondary school at Brightwell Lakes;
“Secretary of State”	means the Secretary of State for Levelling Up, Housing, Communities or any other minister or authority for time being entitled to exercise powers under section s78 and 79 of the Act;
“Shared Ownership Dwelling”	those Dwellings purchased on a Shared Ownership Lease;
“Shared Ownership Lease”	<p>A lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:</p> <ul style="list-style-type: none"> - not more than 75% and not less than 10% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider; - power to the purchaser to increase their ownership up to 100%; - an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England;
“Site”	means the land shown edged red on the Plan and described in Schedule 1 against which this Deed may be enforced;
“Working Days”	means any day Monday to Friday inclusive except bank or public holidays in England.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Deed;
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner;
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise;
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it;
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successor in title to its statutory functions;
- 2.7 The headings are for reference only and shall not affect construction.

3. LEGAL BASIS

- 3.1 This agreement is a Deed made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers;
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council or the County Council as appropriate against the Owner;
- 3.3 If any of the provisions of this Deed or the covenants set out in the Schedules hereto are found by the Secretary of State (or by the Inspector appointed by the Planning Inspectorate for the purposes of determining the Appeal) not to comply with regulation 122 of the Community Infrastructure Levy Regulations 2010 they shall be cancelled and of no effect, but such cancellation shall not affect the validity or enforceability of the remaining parts of this Deed.

4. **CONDITIONALITY**

4.1 The planning obligations contained in this Deed are conditional upon the :

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development;

save for clauses 8.1, 8.2 and 13 and 14 which shall come into effect immediately upon the completion of this Deed.

5. **THE OWNER'S AND DEVELOPER'S COVENANTS**

5.1 The Owner covenants with the Council as set out in Schedule 2 and 3 of this Deed;

5.2 The Owner covenants with the County Council as set out in Schedule 4 of this Deed;

5.3 The Developer covenants with the Council and the County Council to comply with its covenants at Clause 8.1 and clause 8.2;

5.4 The Developer agrees to be bound by the terms of this Deed on becoming an owner of the Site as a successor in title to the Owner but otherwise shall have no liability under this Deed save for its obligations at clause 8.1- 8.3 (inclusive).

6. **THE COUNCIL'S COVENANTS**

6.1 The Council covenants with the Owner as set out in Schedule 5.

7. **THE COUNTY COUNCIL'S COVENANTS**

7.1 The County Council covenants with the Owner as set out in Schedule 6.

8. **MISCELLANEOUS**

8.1 The Developer shall pay to the Council and the County Council on completion of this Deed their reasonable legal costs incurred in the negotiation, preparation and execution of this Deed;

8.2 The Developer covenants to pay to the Council on or before completion of this Deed a sum of £1,224 (one thousand two hundred and twenty four pounds) towards the monitoring of the performance of the planning obligations that the Owner is required to observe and perform to the Council;

8.3 The Developer covenants to pay to the County Council on or before completion of this Deed a contribution of £824.00 (eight hundred and twenty-four pounds) (no VAT) towards the County Council's reasonable and proper administration costs of

monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed;

- 8.4 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999;
- 8.5 This Deed shall be registrable as a local land charge by the Council;
- 8.6 Where the agreement, approval, consent or expression of satisfaction is required by the Owner or the Developer from the Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services (or the equivalent officer of the Council fulfilling such functions and on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure;
- 8.7 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party;
- 8.8 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 8.9 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development;
- 8.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it which shall not constitute an interest for the purposes of this clause;
- 8.11 Save for the obligations contained in paragraph 1 of Schedule 2 which shall continue to be binding and enforceable against individual purchasers, owners, occupiers, lessees or their mortgagees of Affordable Housing Units subject to the provisions contained therein the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:
- 8.11.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Planning Permission or their mortgagees where (in

relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease; and

- 8.11.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site;
- 8.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed;
- 8.13 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to section 73 of the Act;
- 8.13.1 the obligations in this Deed shall in addition to binding the Site in respect of respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and
- 8.13.2 the definitions of Development Application and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any applications under section 73 of the Act and the appropriate nature and and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act;
- 8.14 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;
- 8.15 The Owner covenants from the date that this Deed takes effect to allow the Council or the County Council and its duly authorised officers or agents at all reasonable times to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.

9. **WAIVER**

- 9.1 No waiver (whether expressed or implied) by the Council, County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council, County Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. **CHANGE IN OWNERSHIP**

- 10.1 As qualified by the following sub-clause the Owner agrees with the Council and the County Council to give the Council and the County Council independently immediate written notice of any change in ownership of any of its interest in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/20/3362/FUL and giving details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan and the title number or numbers thereof. For the avoidance of doubt, the Owner shall not be obliged by this obligation to notify the Council of every plot or Dwelling disposal, but only if it disposes of the whole Site.

11. **DISPUTE PROVISIONS**

- 11.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares;
- 11.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 11.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares;

- 11.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation;
- 11.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days;
- 11.5 The provisions of this clause shall not affect the ability of the parties to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

12. **INDEX LINKING**

Any sum referred to in this Deed shall be increased by an amount equivalent to the Index or RPI Index (as the context dictates) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times C/D$ where:

A = is the sum payable under this Deed;

B = is the original sum calculated as the sum payable;

C = is the Index or RPI Index (as the context dictates) for the month 2 months before the date on which the sum is payable;

D = is the Index or RPI Index (as the context dictates) for the month 2 months before the date of this Deed.

13. **JURISDICTION**

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

14. **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

The Common Seal of **EAST**)
SUFFOLK COUNCIL)
was hereunto affixed in the)
presence of:)

[Redacted Signature]

Authorised Signatory

[Redacted Signature]

Authorised Signatory



645

The Common Seal of)
SUFFOLK COUNTY)
COUNCIL)
was hereunto affixed in the)
presence of:)

[Redacted Signature]

Authorised Signatory



65193

[Redacted Name]

presence of:

Witness signature

Witness Name

Witness Address

Witness Occupation:

[Redacted Witness Information]

Executed as a deed by)
Birketts LLP acting by)

as attorney for
**HOPKINS HOMES
LIMITED** in the presence
of:



Attorney's Signature

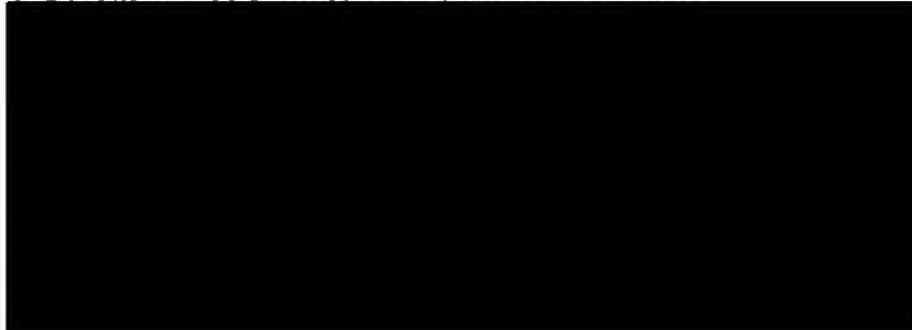
Designated Member of Birketts LLP as attorney for Hopkins Homes Limited

Witness Signature

Witness Name

Witness Address

Witness Occupation



SCHEDULE 1

DETAILS OF THE OWNER'S TITLE AND DESCRIPTION OF THE SITE

The freehold land shown edged with red on the Plan being land at Wood Farm, Grundisburgh, Woodbridge registered at the Land Registry under title number SK309019.

SCHEDULE 2

THE OWNER'S COVENANTS WITH THE COUNCIL

1. Affordable Housing

- 1.1 Subject to the provisions of this paragraph 1 from the date of Practical Completion of the Affordable Housing Units they shall not be used other than for the purposes of Affordable Housing in accordance with the Affordable Housing Table and thereafter let or sold to an Eligible Person in accordance with the relevant Nominations Agreement unless otherwise agreed in writing with the Council;
- 1.2 The Owner covenants not to Occupy or allow Occupation of more than 20 (twenty) Market Housing Units until 6 (six) Affordable Housing Units are Practically Complete and have been transferred to a Registered Provider;
- 1.3 The Owner covenants not to Occupy or allow Occupation of more than 40 (forty) Market Housing Units until 20 (twenty) Affordable Housing Units are Practically Complete and have been transferred to a Registered Provider;
- 1.4 The Owner covenants not to Occupy or allow Occupation of more than 50 (fifty) Market Housing Units until the remaining Affordable Housing Units are Practically Complete and have been transferred to a Registered Provider;
- 1.5 On the first and subsequent letting of an Affordable Rental Unit the Council will (unless otherwise agreed in writing) nominate eligible applicants in accordance with the Allocation Policy and Nomination Agreement (Priority will go to applicants who have a Local Connection in accordance with the Local Connections Cascade provided at Schedule 7);
- 1.6 In the event that a Registered Provider cannot be found for any of the Affordable Housing Units throughout England despite the Owner's reasonable endeavours to do so the Owner will be required to provide notification to the Council's satisfaction (the Council at all times acting reasonably) that demand from Registered Providers has not been forthcoming for Reasonable Consideration;
 - 1.6.1 If the Council is satisfied that demand from Registered Providers has not been forthcoming for Reasonable Consideration the Council will enter into written negotiations with the Owner to seek an agreed way forward that does not disadvantage the Owner whilst maximising the provision of Affordable Housing;
 - 1.6.2 if after three calendar months of handover of the Affordable Housing Units to the Registered Provider there remains any Affordable Housing Units not leased or sold and the Registered Provider can provide evidence to

the Council's satisfaction there are no prospective occupants the Registered Provider shall be free to seek written agreement of the Council to convert those Affordable Housing Units to an alternative form of Affordable Housing defined within Annexe 2 to the National Planning Policy Framework (February 2019) (or any amended or subsequent national planning policy that be published by the Government from time to time);

1.7 In the event 100% of a Shared Ownership Dwelling is purchased:

(a) the proceeds from the final sale of the Shared Ownership Dwelling are to be ringfenced by the Registered Provider for 5 years for the provision of Affordable Housing within the East Suffolk District, and should the owner of the Shared Ownership Dwelling wish to sell it he must notify the Registered Provider and allow the Registered Provider to purchase the Shared Ownership Dwelling back in the first instance at Market Value;

(b) in the event the Registered Provider purchases the Shared Ownership Dwelling in accordance with this clause at 1.7(a), the Shared Ownership Dwelling will be marketed as such subject to the terms of this Deed; and

(c) in the event the Registered Provider declines to purchase the Shared Ownership Dwelling or fails to notify the owner of the Shared Ownership Dwelling of its intention to make an offer to purchase the dwelling within twenty eight days of the notification as specified in this clause at 1.7(a) then the owner of the Shared Ownership Dwelling may sell it on the open market free from the terms of this Deed;

1.8 The Affordable Housing Units shall not be used other than for Affordable Housing save that this obligation shall not be binding on:

1.8.1 Any Protected Person or any mortgagee or charge of the Protected Person or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and charges or

1.8.2 Any Chargee provided that they have complied with the provisions in paragraph 1.9 of this schedule 2 below;

1.8.3 Any purchaser from a mortgage of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor;

1.8.4 any successor in title of paragraph 1.8.1 – 1.8.3 (inclusive);

1.9 The Affordable Housing provisions shall not be binding on a Chargee PROVIDED THAT:

- 1.9.1 such Chargee 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 three months from the date of the written notice to complete a disposal for 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 accrued principal monies, interest and costs and expenses; and
- 1.9.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely.

2. Open Space

- 2.1 The Owner covenants with the Council to submit the Open Space Specification to the Council for its written approval prior to Commencement of Development such approval not to be unreasonably withheld or delayed;
- 2.2 The Owner shall not Occupy or permit the Occupation of the Site unless the open Space Specification has been approved in writing by the Council such approval not to be unreasonably withheld or delayed;
- 2.3 The Owner shall submit to the Council for approval the Nominated Body prior to first Occupation of the Site and the Council shall respond within 14 days of receipt of the Owner's written request (such approval not unreasonably withheld);
- 2.4 The Owner covenants to lay out the Open Space within the Development in accordance with the Open Space Specification as approved by the Council. Following the laying out and landscaping of the Open Space in accordance with the Open Space Specification the Open Space shall be properly maintained and managed in accordance with the principles of good estate management and the Open Space Specification;
- 2.5 If the Nominated Body is the Management Company the Owner shall transfer the Open Space to the Management Company within 12 months of Occupation of the final Dwelling;
- 2.6 If the Nominated Body is an alternative organisation approved by the Council (and not a Management Company) the Owner shall transfer the Open Space as appropriate within 12 months following completion of the last parcel of Open Space together with payment of a commuted sum to be calculated in accordance with the rates applicable at the date of transfer such sum to be agreed prior to the transfer of the Open Space;

- 2.7 Until such time as the Open Space is transferred the Owner shall retain liability for the maintenance of the Open Space in accordance with the Open Space Specification;
- 2.8 Following completion of the Open Space it shall (in perpetuity):
 - 2.8.1 Not be used for any purpose other than for the provision of public open space for the benefit of members of the public;
 - 2.8.2 Be maintained and managed in a clean and tidy condition and free of defects and in accordance with the Open Space Specification;
 - 2.8.3 Not be built on or allowed to be built on any building on the Open Space, subject to any reasonable restrictions imposed in the interest of public safety or for the ancillary use of the Open Space.

3. RAMS Contribution

- 3.1 The Owner covenants to pay the RAMS Contribution to the Council prior to Commencement of Development;
- 3.2 The Owner covenants not to Commence the Development unless and until the RAMS Contribution has been paid to the Council.

SCHEDULE 3

AFFORDABLE HOUSING TABLE

Affordable Rental Units		
<u>TYPE</u>	<u>NUMBER</u>	<u>PLOT</u>
1 bed 2 person bungalow	2	20, 21
1 bed 2 person house	4	16,17,23,24
2 bed 4 person house	3	9,10,11
3 bed 5 person house	2	18,19
Shared Ownership Dwellings		
2 bed 4 person house	6	6,7,8,44,45,46
3 bed 5 person house	5	25,26,61,62,63
4 bed 7 person house	1	22

SCHEDULE 4

THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

1. **BUS SERVICE CONTRIBUTION**

- 1.1 The Owner covenants to pay the Bus Service Contribution to the County Council prior to the first Occupation of the first (1st) Dwelling on the Site;
- 1.2 The Owner covenants not to Occupy or permit the first Occupation of any Dwellings on the Site unless and until the Bus Service Contribution has been paid in full to the County Council.

2. **SECONDARY SCHOOL TRANSPORT CONTRIBUTION**

- 2.1 The Owner covenants to pay the Secondary School Transport Contribution to the County Council prior to the first Occupation of the tenth (10th) Dwelling on the Site;
- 2.2 The Owner covenants not to Occupy or permit the first Occupation of more than nine (9) Dwellings on the Site unless and until the Secondary School Transport Contribution has been paid in full to the County Council.

3. **SECONDARY EDUCATION CONTRIBUTION**

- 3.1 The Owner covenants to pay the Secondary Education Contribution to the County Council prior to the first Occupation of the tenth (10th) Dwelling on the Site;
- 3.2 The Owner covenants not to Occupy or permit the first Occupation of more than nine (9) Dwellings unless and until the Secondary Education Contribution has been paid to the County Council Public right of way contribution.

4. **PUBLIC RIGHT OF WAY CONTRIBUTION**

- 4.1 The Owner covenants to pay the Public Right of Way Contribution to the County Council prior to the first Occupation of the first (1st) Dwelling on the Site;
- 4.2 The Owner covenants not to Occupy or permit the first Occupation of any Dwellings on the Site unless and until the Public Right of Way Contribution has been paid in full to the County Council.

5. **NOTIFICATION**

- 5.1 The Owner shall serve the County Council with:
- 5.2 The Owner shall within fifteen (15) Working Days' give written notice to the County Council following:

- 5.3 Commencement of Development;
- 5.4 first Occupation of the first (1st) Dwelling;
- 5.5 first Occupation of the ninth (9th) Dwelling;
- 5.6 first Occupation of the final Dwelling.

SCHEDULE 5

COUNCIL'S COVENANTS

1. The Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. The Council shall hold any monies received under this Deed in an interest bearing account and at the end of five years from the date of receiving the payment the Council shall return to the party who made the payment all money in that account which has not been spent or committed to be spent on the intended purpose as specified in this Deed.

SCHEDULE 6

COUNTY COUNCIL COVENANTS

1. BUS SERVICE CONTRIBUTION

- 1.1 The County Council shall use the Bus Service Contribution it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed.
- 1.2 If requested to do so in writing after the expiry of ten (10) years of the from the first (1st) Occupation of the final Dwelling within a further period of one (1) year to pay to any person such amount of the Bus Service Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end provided that if for any period the Bank of England base rate is at or below 0.02% then no interest shall be payable.
- 1.3 When the Bus Service Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Developer after the expiry of ten (10) years from the first (1st) Occupation of the final Dwelling within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

2. SECONDARY SCHOOL TRANSPORT CONTRIBUTION

- 2.1 The County Council shall use the Secondary School Transport Contribution it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed;
- 2.2 If requested to do so in writing after the expiry of ten (10) years of the from the first (1st) Occupation of the final Dwelling within a further period of one (1) year to pay to any person such amount of the Secondary School Transport Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable;

- 2.3 When the Secondary School Transport Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Developer after the expiry of ten (10) years from the first (1st) Occupation of the final Dwelling within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

3. SECONDARY EDUCATION CONTRIBUTION

- 3.1 The County Council shall use the Secondary Education Contribution it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed;
- 3.2 If requested to do so in writing after the expiry of ten (10) years of the from the first (1st) Occupation of the final Dwelling within a further period of one (1) year to pay to any person such amount of the Secondary Education Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable;
- 3.3 When the Secondary School Transport Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Developer after the expiry of ten (10) years from the first (1st) Occupation of the final Dwelling within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

4. PUBLIC RIGHT OF WAY CONTRIBUTION

- 4.1 The County Council shall use the Public Right of Way Contribution It receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed;
- 4.2 If requested to do so in writing after the expiry of ten (10) years of the from the first (1st) Occupation of the final Dwelling within a further period of one (1) year to pay to any person such amount of the Public Right of Way Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED

THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable;

- 4.3 When the Public Right of Way Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Developer after the expiry of ten (10) years from the first (1st) Occupation of the final Dwelling within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

SCHEDULE 7

LOCAL CONNECTIONS CASCADE

Local Connections Cascade

1. Affordable Rental Units

- 1.1 The Affordable Rental Units are to be allocated to a person nominated by the Council in line with its Allocation Policy who is considered by them or it to be in need of such accommodation and unable to compete in the normal open market for property. Before nominating an applicant the council will be satisfied that the applicant;
- a. Has continuously lived in Grundisburgh for the preceding 5 years;
OR
 - b. Has continuously had a principal place of work in Grundisburgh for the preceding 5 years; OR
 - c. Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived in Grundisburgh for the preceding 5 years; OR
 - d. Due to a lack of suitable accommodation was forced within the preceding 5 years to move away from Grundisburgh;
- 1.2 If there are no persons who qualify under paragraph 1.1 above the Affordable Rental Unit shall be allocated to person nominated by the Council who;
- a. Has continuously lived within 15 miles of the Site for the preceding 5 years; OR
 - b. Has continuously had a principal place of work within 15 miles of the Site for the preceding 5 years; OR
 - c. Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within 15 miles of the Site for the preceding 5 years; OR
 - d. Due to a lack of suitable accommodation was forced within the preceding 5 years to move away from within 15 miles of the Site;

1.3 If there are no persons who qualify under paragraphs 1.1 and 1.21 above the Affordable Rental Unit shall be re-advertised to the district of East Suffolk and where after re-advertising there are no persons who qualify under the paragraphs above the Affordable Rental Unit shall be allocated to a person nominated by the Council who is considered by it to be in need of such accommodation and who is unable to compete in the normal open market for property in East Suffolk;

1.4. Where there is a mutual exchange the Registered Provider may let the Affordable Rental Unit to any incoming tenant who satisfies the local connection criteria at paragraphs 1.1 to 1.3 above.

2. **Shared Ownership Dwellings**

2.1 On advertising each and every sale of a Shared Ownership Dwelling, the Dwelling shall be marketed for sale for the first 3 months to persons who:

a. Have continuously lived within the District of East Suffolk for the preceding 5 years; OR

b. Have continuously had a principal place of work within the District of East Suffolk for the preceding 5 years; OR

c. Have parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within the District of East Suffolk for the preceding 5 years, OR

d. Due to a lack of suitable accommodation were forced within the preceding 5 years to move away from the District of East Suffolk.

2.2 If there are no purchasers who qualify under paragraph 2.1 above within 3 months of marketing the Shared Ownership it may be sold to any Qualifying Person.

SCHEDULE 8
NOMINATIONS AGREEMENT

PART 1 - NOMINATION AGREEMENT (affordable rent)

DATED

202

(name) (1)

and

EAST SUFFOLK COUNCIL (2)

NOMINATION AGREEMENT

Relating to Affordable Dwelling(s) for Rent

At

(name of scheme)

THIS NOMINATION AGREEMENT is made the day of 202

BETWEEN:

1)of registered in England by the Financial Conduct Authority under the Co-operative and Community Benefit Societies Act 2014 (Register Number) (the Association)

and

2) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, IP12 1RT ('the Council')

1. Definitions

In this Deed:

"Affordable Dwelling(s) for Rent" means Dwellings on the Development to be made available as Affordable Housing let at a monthly or weekly rental figure that does not exceed:-

(a) 80% of the local market rent inclusive of service charges; or

(b) (if lower) the local housing allowance rate; or

(c) with rent increases during the term of any individual tenancy being limited to increases in the Consumer Price Index from the date of this Nomination Agreement plus 1% or any subsequent relevant limit placed upon Registered Providers by the Regulator or Central Government;

"Affordable Housing" means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market

"Allocation Policy" means the policy and procedure that the Council has adopted to determine eligibility and priority for Affordable Dwelling(s) for Rent

"Chargee" means any mortgagee or charge 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 n or any administrator (howsoever appointed) including a housing administrator

"Choice Based Lettings" - means the process used to advertise Affordable Dwellings for Rent in the Council area or any system that replaces it.

"Development" means the []

"Effective Date" means the date that the application form is received by the Partner Organisation (PO), except in the following situations:

- i. When an applicant is moved from one band to a higher band, their new effective date will be the date that their circumstances changed or when the PO is advised of this;
- ii. Where an applicant receives priority on medical or welfare grounds, their effective date will be the date that they the application for the award is received by the PO;
- iii. Where an applicant has been accepted as homeless their effective date will be the date that they applied as homeless unless they already qualify for Band B with an earlier date;
- iv. Where a woman is pregnant and the baby will make her eligible for a larger property, her effective date for the larger property will be the date that the baby is born

"Initial Let" means the first tenancy or lease of a newly constructed and previously unoccupied Affordable Dwelling(s) for Rent in accordance with Section 199 of the Housing Act 1996 as amended by Section 315 of the Housing and Regeneration Act 2008

"Landlord(s)" means a person or persons who are required to use the Council's Choice Based Lettings process

"Nominee" or "Nominees" means a person named in the Shortlist nominated by the Council to the Registered Provider who qualify for a tenancy in accordance with the Registered Provider's letting criteria (details of which have been provided to the Council prior to the date of such nominations) to be the tenant of an Affordable Dwelling(s) for Rent.

"Partner Organisation" or "PO" means each of the eight District and Borough Councils participating in the current Choice Based Lettings scheme

"Property" means the land [] shown edged red on the plan attached hereto

“Registered Provider” or “RP” means the Association or a Registered Provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator under Chapter 3 of that Act

“Regulator” – the Regulator of Social Housing or any body that replaces its role as regulator of Registered Providers

“Shortlist” means the list of applicants (as may be updated from time to time) to be supplied by the Council in line with the Allocation Policy and procedures giving the names of person(s) who the Council considers to be eligible for this size of property and have a local connection (as determined by the Council/ or as determined in the Section 106 Agreement for the Property and who has been assessed as being in housing priority.

“Tenancy Agreement” means an introductory/probationary tenancy, assured shorthold, assured or secure tenancy agreement in a form prepared by the Registered Provider and in line with an approved policy that meets the requirements of the Regulator.

“Vacancy Notice” means a written notice given by the Registered Provider to the Council the function of such notice being the notification to the Council by the Registered Provider that the construction and fitting out of the Affordable Dwelling(s) for Rent is completed and the Affordable Dwelling(s) for Rent is ready to be advertised through Choice Based Lettings or let through any subsequent agreed letting procedure. The notice shall be in a form agreed by the parties.

“Void” means an Affordable Dwelling(s) for Rent which is vacant otherwise than as a result of the tenant having

- (a) Moved to other accommodation either by transfer or decant provided by the Registered Provider;
- (b) Moved to other accommodation under a reciprocal arrangement provided by another Registered Provider registered with The Regulator under the Housing Act 1996 or Housing and Regeneration Act 2008; or
- (c) Moved to other accommodation by reason of a mutual exchange

“Void Notice” means a written notice given by the Registered Provider to the Council the function of such notice being the notification to the Council by the Registered Provider that the Affordable Dwelling(s) for Rent is available to be advertised through Choice Based Lettings or let through any subsequent agreed letting procedure. The notice shall be in a form agreed by the parties.

2 Enabling Provisions

This Agreement is made pursuant to Section 111 of the Local Government Act 1972 Section 33 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other enabling powers

3 Procedure

The parties agree that the Registered Provider shall give the Council nomination rights for each and every Initial Let and Void and the following procedure shall apply to the nomination of persons in respect of the Affordable Dwellings(s) for Rent.

3.1 Initial lets

- 3.1.1 The Registered Provider shall give the Council not less than 2 months' written notice of the date when the Affordable Dwelling(s) for Rent will be ready for Occupation
- 3.1.2 The Registered Provider shall serve a Vacancy Notice on the Choice Based Lettings system detailing the date available for Occupation in respect of the Affordable Dwelling(s) for Rent at the point when it wishes the Affordable Dwelling(s) for Rent to be advertised. This will be in line with agreed advertising cycles which form part of the Allocation Policy.
- 3.1.3 The Council shall arrange for the Affordable Dwelling(s) for Rent to be advertised. Within 2 Working Days of the bidding cycle closing the Council shall serve upon the Registered Provider a Shortlist. The Nominees will be prioritised in line with their housing need and banding priority and effective date. The Council may agree to delegate the shortlisting to the Registered Provider and as required, verification of relevant applicant information.
- 3.1.4 The Shortlist to be served by the Council under clause 3.1.3 shall:
- i. Specify the appropriate category of Affordable Dwelling(s) for Rent, and
 - ii. Indicate the priority for the housing of the persons named and any other relevant information using a standard pro-forma document via a generic e-mail address to the Council's Choice Based Lettings scheme
- 3.1.5 Upon the properties being ready to let the Registered Provider shall within five (5) Working Days of the date of receipt of the Shortlist select a Nominee from the Shortlist taking into account the priority in the order given for housing indicated by the Council and shall use its reasonable endeavours to arrange a viewing of the Affordable Dwelling(s) for Rent and offer a Tenancy Agreement to such selected Nominee subject

to any final checks as agreed in line with the Council's Allocation Policy and the Registered Provider's letting criteria

- 3.1.6 If the selected Nominee fails to accept the offer of a tenancy within one (1) Working Day of receipt of the Registered Provider's offer such selected Nominee shall be deemed to have rejected the Registered Provider's offer and the Registered Provider shall select and make an offer to another Nominee by repeating the procedure set out in clause 3.1.5
- 3.1.7 If the second selected Nominee fails to enter into a Tenancy Agreement within one (1) Working Day of receipt of the Registered Provider's offer then such second selected Nominee shall be deemed to have rejected the Registered Provider's offer and the Registered Provider shall select and make an offer to a third Nominee by repeating the procedure set out in clause 3.1.5
- 3.1.8 If such third selected Nominee fails to enter into a Tenancy Agreement within one (1) Working Day of receipt of the Registered Provider's offer then the Registered Provider will request a further Shortlist from the District Council and the District Council will supply this within three (3) Working Days.
- 3.1.9 If the District Council is unable to supply any further Nominees the Registered Provider will request that the Affordable Dwelling(s) for Rent is re-advertised and the procedures set out in 3.1.3 – 3.1.8 are complied with
- 3.1.10 If following re-advertising in accordance with clause 3.1.9 and the procedure in 3.1.3- 3.1.8, no Nominee signs a Tenancy Agreement the Registered Provider shall be free to let the Affordable Dwelling(s) for Rent to any person in need of such Affordable Dwelling(s) for Rent who complies with the Registered Provider's allocations policy.

4. Voids

- 4.1 Should an Affordable Dwelling(s) for Rent become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case the procedures set out in 3.1.2 – 3.1.9 shall apply except 3.1.2 which shall refer to Void Notice rather than Vacancy Notice in addition to 4.1.1:
 - 4.1.1 The Registered Provider shall give the Council not less than 1 months written notice of the date when the Affordable Dwelling(s) for Rent will be ready for Occupation

5. Provision of information and alteration of lists

- 5.1 The Registered Provider shall give notification to the Council of the following events within (2) Working Days of their occurrence:
- i. a Nominee failing to view an Affordable Dwelling(s) for Rent when a viewing has been arranged
 - ii. a Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Nomination Agreement
 - iii. a Nominee accepting an offer of a Tenancy Agreement
 - iv. Registered Provider rejecting a Nominee in accordance with Clause 5.3
- 5.2 Arrangements for notification to the Council will be set out in the Council's approved Allocation Policy
- 5.3 The Registered Provider shall have the right to interview and make enquiries of each Nominee and by serving written notice upon the Council to that effect to reject any Nominee if in the opinion of the Registered Provider the grant of an assured tenancy to such Nominee would be in contravention of the Registered Provider's registered rules or its letting criteria. The Registered Provider is required to make decisions without influence from third parties.
- 5.4 The Council shall notify the Registered Provider in writing of any Nominee that is withdrawn from the Shortlist
- 5.5 The Registered Provider must ensure that they handle all information in line with the current Data Protection Act 1998 and future general data protection regulations and procedures and the requirements of the Councils' Allocation Policy
- 5.6 The Council and the Registered Provider agree that the nominations rights contained in this Nomination Agreement may be varied from time to time by agreement in writing by the parties

6. Notices

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served 2 Working Days after posting

7. Chargee Provisions

The provisions in this Agreement shall not be binding on a Chargee PROVIDED THAT it has first complied with the following:

- a) the Chargee shall first give notice to the Council of its intention to dispose of the Affordable Dwelling(s) for Rent 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 Dwelling(s) for Rent 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, costs and expenses; and
- b) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Dwelling(s) for Rent free from the obligations contained in this Agreement which provisions shall determine absolutely in relation to the affected Affordable Dwelling(s) for Rent

8. Transfer to other Registered Providers

- 8.1 The Registered Provider shall provide notice to the Council within five (5) Working Days of any transfer of the Affordable Dwelling(s) for Rent to another Registered Provider
- 8.2 The Registered Provider shall use its reasonable endeavours to procure that any Registered Provider to which the Affordable Dwelling(s) for Rent erected thereon are transferred otherwise than by direction of The Regulator under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council simultaneously on completing the transfer of the Property

9. Disputes

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party

10. Agreements and Declarations

- 10.1 Nothing in this Nomination Agreement fetters or restricts the exercise by the District Council of any of its powers
- 10.2 The obligations contained in this Nomination Agreement are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 section 33

12 Third Party Rights

No provisions of this Nomination Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

In witness whereof the parties have executed this Nomination Agreement on the day and year first before written

THE COMMON SEAL of

was affixed in the presence of:-

Director

Secretary

THE COMMON SEAL of EAST SUFFOLK COUNCIL

was affixed

In the presence of:-

Authorised signatory

PART 2 - NOMINATION AGREEMENT (shared ownership)

DATED

202

(name) (1)

and

EAST SUFFOLK COUNCIL (2)

NOMINATION AGREEMENT

Relating to Shared Ownership Dwellings

At

(name of scheme)

THIS NOMINATION AGREEMENT is made the day of

202

BETWEEN:-

(1)of/ registered in England by the Financial Conduct Authority under the Co-operative and Community Benefit Societies Act 2014 (Register Number) (the Association) [

(2) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, IP12 1RT ('the Council')

1. Definitions

In this Deed:-

"Affordable Housing" means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market

"Affordable Housing Unit" means xx dwellings all of which shall be Affordable Housing to be provided on the Property and which dwellings shall be sold subject to a Shared Ownership Lease to a person nominated by the Council pursuant to this deed of nomination rights .

"Chargee" means any 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

"Choice Based Lettings" - means the process used to advertise affordable housing properties in the District of East Suffolk or any system that replaces it.

"Help to Buy website" means the website approved by central government to advertise Shared Ownership properties or any other mechanism or system that is set up to replace it

"Housing register" means the list maintained by the Council of people who have been assessed as eligible for affordable housing (under part VI of the Housing Act 1996) or any system that replaces it

"Initial Sale" means the first sale of the newly constructed and previously unoccupied Affordable Housing Unit by the RP by way of a Shared Ownership Lease

"Practical Completion" the completion of an Affordable Housing Unit to a standard which is wind and water tight and fit for habitation in terms of heating, plumbing, electrics and sanitation

"Property" means the land [] shown edged red on the plan attached hereto

"Registered Provider" or "RP" means the Association or a Registered Provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator under Chapter 3 of that Act

"Regulator" – The Regulator of Social Housing or any body that replaces its role as regulator of Registered Providers

"S106 Agreement" means the agreement dated [] under section 106 of the Town and Country Planning Act 1990 between []

"Shared Ownership Lease" means a lease of the Affordable Housing Unit where the lessee purchases an initial share of the equity in the Affordable Housing Unit of not less than 25% and not more than 75% for a premium and rents the remainder and is entitled to acquire further shares of the equity up to 100% after a period of 2 years from the date of the Initial Sale (or at any time in the case of a Chargee)

"Shared Ownership Lessee" means the lessee for the time being of a Shared Ownership Lease

2. Enabling Provisions

This Agreement is made pursuant to Section 111 of the Local Government Act 1972 Section 33 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other enabling powers

3. Procedure

The Parties agree that the Affordable Housing Unit will be sold on a Shared Ownership Lease basis and the purchaser shall be selected in accordance with the procedure detailed in the clause 3.1 below

3.1 Initial Sales

In relation to the Initial Sales of the Affordable Housing Units the following provisions shall apply:-

- 3.1.1 The RP shall give the Council not less than two (2) months written notice of the date when all the Affordable Housing Units will be ready for Occupation
- 3.1.3 The Council shall alert applicants from the Housing Register who have expressed an interest in low cost home ownership that the units are becoming available and advise them to contact the RP or direct them to the Help to Buy website
- 3.1.4. The RP shall upload details of the Affordable Housing Units onto the Help to Buy website and advertise the Affordable Housing Units on the basis of a Shared Ownership Lease and priority will be given to applicants who have a connection to

the District. (the Council retains the right to vary the priority on a scheme by scheme basis) as set out in the S106 agreement.

- 3.1.5 the RP shall also advertise the units via the Choice Based Lettings website or other relevant systems as required by the Council at the same time as the units are advertised on the Help to Buy website
- 3.1.6 The RP shall assess all applicants for the units
- 3.1.7 The RP shall only consider applicants who have been assessed and meet the criteria for shared ownership as set out by the Regulator
- 3.1.8 The RP shall assess and verify applicants in line with any processes set out by the Regulator and retain all records that the criteria have been met and applicants have been prioritised as set out in 3.1.4 above
- 3.1.9 As part of the assessment process the RP shall require confirmation from each applicant that they are registered on the Housing Register
- 3.1.10 The RP shall provide the following information to the Council within 4 weeks of each sale:
- i. the names of all applicants for the Affordable Housing Unit;
 - ii. name(s) of the purchaser(s) and whether they were on housing register;
 - iii. names of all other applicants on the housing register, assessed as eligible and who did not purchase the unit and the reasons why;
 - iv. names of applicants on the housing register, who were assessed as ineligible and the reasons why;
 - v. the name(s) of the purchaser(s).
- 3.1.11 The RP shall provide full evidence to the Council in relation to 3.1.7 and 3.1.8 on demand
- 3.1.12 Subject to the RP fulfilling these obligations under 3.1 the council will be deemed to have approved the application and taken up its nomination rights

3.2 Resales

- 3.2.1. Where 100% of the equity in the Affordable Housing Unit has been acquired, it may be sold on the open market [remove for restricted schemes]
- 3.2.2. Where the RP retains a share in the Affordable Housing Unit the property shall be sold to a purchaser assessed as meeting the eligibility criteria as set out in 3.1.7

4. RP Covenants

The RP covenants with the Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies to ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units

5. Variation of Nomination Rights

The Council and the RP agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the parties

6. Notices

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two (2) Working Days after posting or in the case of electronic mailing the day such notice was transmitted by the party serving the notice

7. Chargee Provisions

The provisions in this Agreement shall not be binding on a Chargee PROVIDED THAT it has first complied with the following:

- a) such Chargee shall first give notice to the Council of its intention to dispose of the Affordable Dwellings 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 Dwellings 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, costs and expenses; and
- b) if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Agreement which provisions shall determine absolutely in relation to the affected Affordable Dwellings

8. Transfer to the Registered Provider

The RP shall use its reasonable endeavours to procure that any Registered Provider to which the Property and Affordable Housing Unit erected thereon are transferred otherwise than by direction of the Regulator under its statutory powers shall enter in to a similar Deed mutatis mutandis with the Council simultaneously on completing the transfer of the Property

9. Disputes

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of any agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party

10. Agreements and Declarations

The parties agree:-

- 10.1 Nothing in this Deed fetters or restricts the exercise by the Council of any of its powers
- 10.2 The obligations and covenants contained in this deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33

AS WITNESS whereof the parties have executed this instructed as a Deed hereto the date and year first above written.

THE COMMON SEAL of
was affixed in the presence of:-
Director
Secretary

THE COMMON SEAL of
EAST SUFFOLK COUNCIL
was affixed
In the presence of:-

Authorised signatory