

DATED

7th August

2020

EAST SUFFOLK COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

HUGH GEORGE BLOOMFIELD AND SUZANNE MARY
BLOOMFIELD (3)

HOPKINS & MOORE (DEVELOPMENTS) LIMITED (4)

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

**Relating to Land
to Land at Priory Lane, The Street , Darsham, Suffolk**

Birketts

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

www.birketts.co.uk

THIS AGREEMENT IS MADE this

7

day of August 2020

BETWEEN:

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("**the Council**");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("**the County Council**")
- (3) **HUGH GEORGE BLOOMFIELD and SUZANNE MARY BLOOMFIELD** of Priory Farm, Darsham , Saxmundham IP17 3QD ("**the Owner**")
- (4) **HOPKINS AND MOORE (DEVELOPMENTS) LIMITED** (company registration number 02162164) 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 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 SK344822 .
- (D) The Developer has an interest in the Site by way of an Option Agreement dated 18 January 2019.
- (E) The Developer has submitted the Application to the Council.
- (F) The Council has resolved to grant the Planning Permission subject to conditions and the prior entry into this Deed.
- (G) The Site lies within the area to which the Local Plan and the LDF apply.
- (H) The Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meets the test 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”	The Town and Country Planning Act 1990 as amended;
“Affordable Housing”	Subsidised housing that will be available to persons who cannot afford to buy or rent housing generally available on the open market which shall be a mix of Affordable Rental Units and Shared Ownership Dwellings in accordance with the Affordable Housing Table;
“Affordable Rental Units”	Those Affordable Housing Units to be let by a Registered Provider with an appropriate agreement with Homes England for the provision of affordable rents being controls that limit the rent to no more than 80 per cent of local market rents including any service charges that does not exceed the local housing allowance or as otherwise agreed with the Council in writing;
“Affordable Housing Units”	8 (eight) Dwellings to be provided on the Site as Affordable Housing in accordance with the Affordable Housing Table and to be delivered in accordance with Schedule 3;
“Affordable Housing Table”	The table at Schedule 4 indicating the plot numbers and tenure types of the Affordable Housing Units unless otherwise agreed in writing with the Council;
“Application”	The application for full planning permission submitted to the Council and validated on 11 April 2019 for the Development and allocated reference number DC/19/1462/FUL;

“Allocation Policy”	means the policy and procedure adopted by the Council to determine the eligibility and priority for allocation of the Affordable Rent Units;
“Chargee”	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 26 Dwellings together with associated public open space, access roads, garaging and car parking;
“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;

“Footpath Contribution”	The sum of £1,107 per Dwelling Indexed Linked to be paid by the Owner to the Council as a contribution to partially fund a safer pedestrian route to Darsham station and the amenities, services and footpath network;
“Homes England”	The non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the 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;
“Housing Market Area”	means the Darsham area in the first instance and then in order of priority (a) the surrounding parishes to Darsham and then (b) the East Suffolk administrative area but for the avoidance of doubt those Eligible Persons with a Local Connection to the Darsham area shall have priority;
“Index”	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 or decrease in any sum referred to in this Deed by an amount equivalent to the increase or decrease in the Index to be calculated in accordance with Clause 12 of this Deed;
“LDF”	The Suffolk Coastal Final Draft Local Plan; or, if adopted, The Suffolk Coastal Local Plan 2020;

“Local Connection”	<p>(a) a person who has continuously lived in the Housing Market area for the preceding 3 years; OR</p> <p>(b) Has continuously had a place of work in the Housing Market area for the preceding 3 years; OR</p> <p>(c) Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived in the Housing Market for the preceding 5 years; OR</p> <p>(d) Can demonstrate some other local connection to the Housing Market area to the satisfaction of the Council; OR</p> <p>(e) Due to a lack of suitable accommodation was forced within the preceding 3 years to move away from the Housing Market area;</p>
“Local Plan”	The Suffolk Coastal Final Draft Local Plan; or, if adopted, The Suffolk Coastal Local Plan 2020;
“Management Company”	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”	Any Dwelling which is for general market housing for sale on the open market and which is not an Affordable Housing Unit;
“Nomination Agreements”	Nomination rights granted to the Council in respect of each and every letting of an Affordable Rental Unit or each initial sale of a Shared Ownership Dwelling substantially in the form of the agreements which are appended at Schedule 8 to this Deed;
“Occupation” and “Occupied”	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”

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 plan 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 Permission”

The planning permission subject to conditions to be granted by the District Council pursuant to the Application as substantially set out in draft in the Schedule 2;

“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;

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;

“RAMS Contribution”	the sum of eight thousand three hundred and fifty one pounds and seventy two pence (£8,351.72) payable 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 RAMS;
“Reasonable Consideration”	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;
“Registered Provider” or “RP”	An organisation which is a Registered Provider as defined by the Housing and Regeneration Act 2008 and who has been approved by the District Council in writing;
“School Transportation Contribution”	Means a total of £52,800 Indexed Linked to be paid by the Owner to the County Council of which £33,600 shall be used for primary school transportation and £19,200 shall be used for secondary school transportation;
“Shared Dwelling”	Ownership Those Dwellings purchased on a Shared Ownership Lease;

“Shared Ownership Lease”

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:

- not more than 75% and not less than 25% 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”

The land shown edged red on the Plan and described in the First Schedule 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 or the County Council the successor or successor in title to their respective 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 Owners under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and or the County Council (as appropriate) against the Owner.

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 THE DEVELOPER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in Schedule 3 and Schedule 4;
- 5.2 The Owner covenants with the County Council as set out in Schedule 5
- 5.3 The Developer covenants with the Council to comply with its covenants at Clause 8.1

5.4 The Developer covenants with the County Council to comply with its covenants at Clause 8.2

5.5 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 and 8.2.

6. **THE COUNCIL'S COVENANTS**

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

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

7.1 The County Council covenants with the Owner as set out in Schedule 7.

8. **MISCELLANEOUS**

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

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

8.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999;

8.4 This Deed shall be registrable as a local land charge by the Council;

8.5 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 Head of Planning;

8.6 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;

8.7 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;

8.8 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;

- 8.9 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;
- 8.10 Save for the obligations contained in paragraph 1 of the Third Schedule 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:
- 8.10.1 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
- 8.10.2 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;
- 8.11 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;
- 8.12 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;
- 8.12.1 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
- 8.12.2 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;

- 8.13 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;
- 8.14 The Owner covenants from the date that this Deed takes effect to allow the Council and 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 or the County Council or 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 or 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 Councils 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/19/1462/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;
- 10.2 For the avoidance of doubt, the Owner shall not be obliged by this obligation to notify the Council and the County 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 or decreased by an amount equivalent to the Index 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 for the month 2 months before the date on which the sum is payable

D = is the Index for the month 2 months before the date of this Deed

Where C/D = is greater than 1.

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:



Authorised Signatory

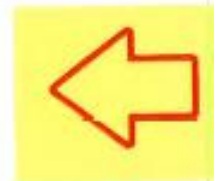
Authorised Signatory



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



Authorised Signatory

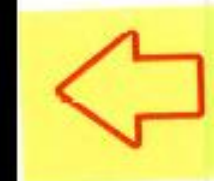
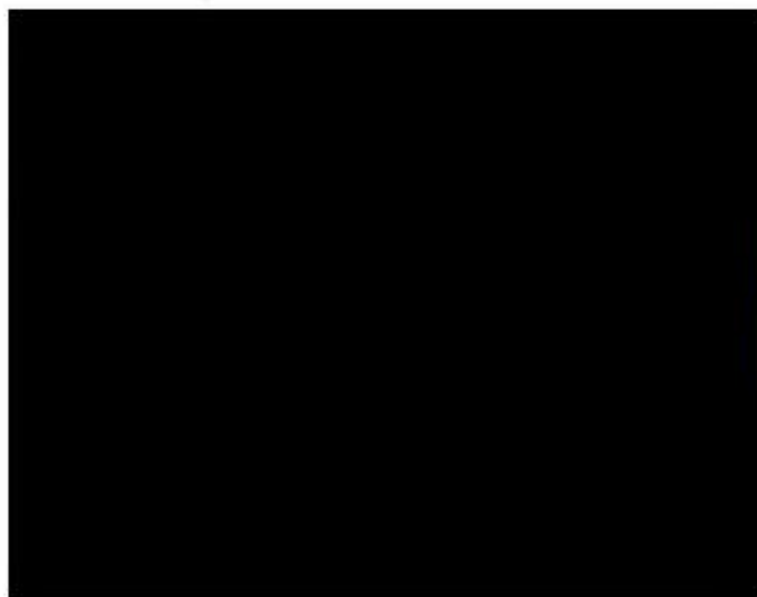


Executed by **HUGH
GEORGE BLOOMFIELD**
in the presence of:

Witness signature

Witness Name

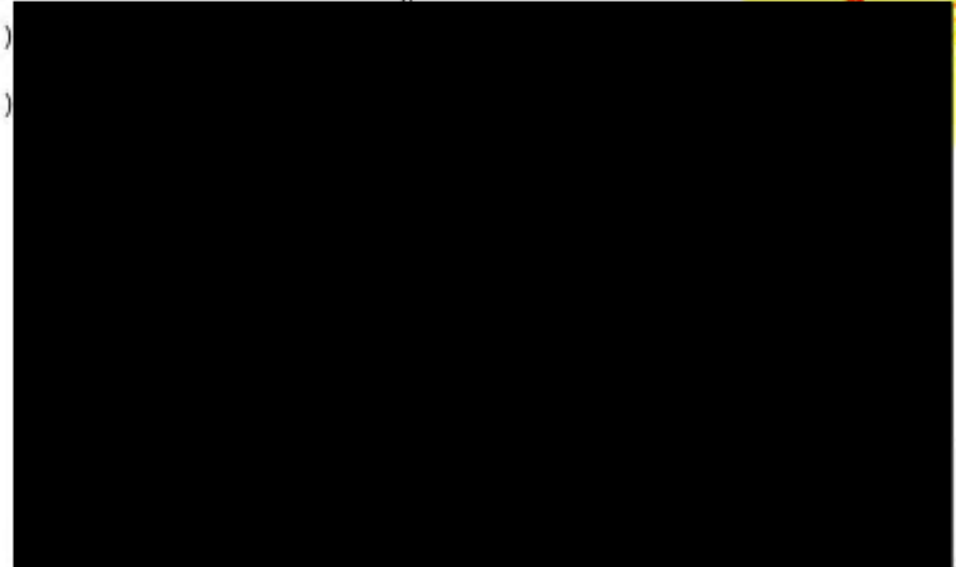
Witness Address



Witness Occupation:



Executed by **SUZANNE MARY BLOOMFIELD** in the presence of:

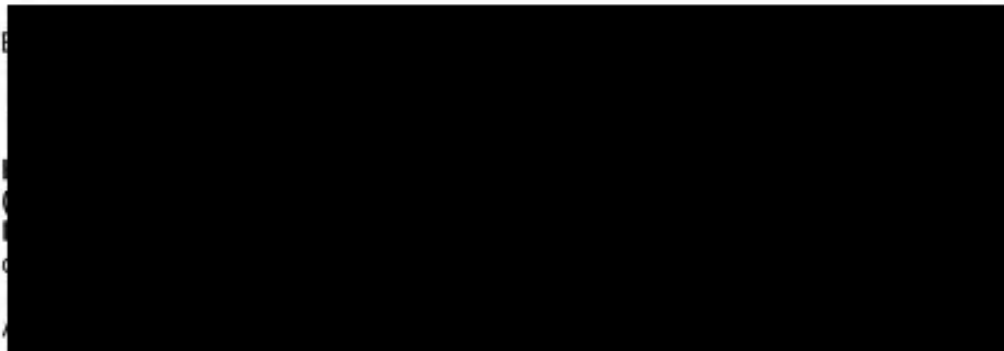


Witness signature

Witness Name

Witness Address

Witness Occupation:



Designated Member of
Birketts LLP, as attorney
for Hopkins & Moore
(Developments) L

Witness signature

Witness name:

Witness address:

Witness Occupation:

