

DATED 30th May

2024

(1) TENDRING DISTRICT COUNCIL

-and-

(2) HOPKINS HOMES LIMITED

-and-

(3) EASTLIGHT COMMUNITY HOMES LIMITED

-and-

(4) HSBC UK BANK PLC

-and-

(5) ESSEX COUNTY COUNCIL

DEED OF VARIATION

under Section 106A of the Town and Country Planning Act 1990

relating to

land to the west side of Heath Road, Mistley, Manningtree



Ref: ARK/915007

CONTENTS

Clause		Page no.
1	TERMS DEFINED IN THE S106 DEED	2
2	STATUTORY PROVISION	2
3	VARIATION	3
4	COSTS	4
5	GOVERNING LAW.....	5
6	JURISDICTION ERROR! BOOKMARK NOT DEFINED.	

THIS DEED OF VARIATION is dated

30th May

2024

PARTIES

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE ("the **District Council**"); and
- (2) **HOPKINS HOMES LIMITED** (company registration number 02875798) whose registered office is at Melton Park House, Scott Lane, Melton, Woodbridge, Suffolk, IP12 1TJ ("the **First Owner**"); and
- (3) **EASTLIGHT COMMUNITY HOMES LIMITED** (registered under the Cooperative and Community Benefit Societies Act 2014 with registration number 30124R) whose registered office is at Eastlight House Charter Way Braintree Essex CM77 8FG ("the **Second Owner**"); and
- (4) **HSBC UK BANK PLC** (Co. Reg. No. 9928412) of 1 Centenary Square, Birmingham, B1 1HQ ("the **Bank**"); and
- (5) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1QH ("the **County Council**")

Together known as "the Parties"

BACKGROUND

- (A) The District Council and the County Council are the local planning authority for the purposes of the Town and Country Planning Act 1990 (as amended) ("the Act") for the area within which the Site is situated and by whom the obligations contained in this Deed are enforceable
- (B) The County Council is also a local planning authority for the purpose of the Act for the area in which the Site is situated and is also the local education authority for school age education for the area in which the Site is situated
- (C) The First Owner is the freehold owner of the part of the Site which is registered with HM Land Registry under title number EX919488 and EX955177 free from any encumbrances that would prevent the First Owner from entering into this Deed
- (D) The Second Owner has a beneficial interest in the freehold of part of the Site by a transfer dated 31 March 2023 from the First Owner out of title number EX919488 which is in the process of being registered with HM Land Registry and has been allocated title number AA56510 free from any encumbrances that would prevent the Second Owner from entering into this Deed
- (E) The Bank has the benefit of a registered charge against title number EX919488 dated 28 May 2021 and against title number EX955177 dated 12 May 2017

- (F) On 30 January 2020 (1) Jackie Ann Dorrington-Ward and Karen Jean Rose and Peter James Rose (2) Hopkins Homes Limited (3) Welbeck Strategic Land II LLP and (4) HSBC UK Bank Plc entered into a Unilateral Undertaking to the District Council and the County Council made under Section 106 of the Act relating to the Site pursuant to the Planning Application ("the Original Undertaking")
- (G) On 10 March 2020 the Planning Permission was granted for the Development pursuant to the Planning Application on appeal with reference APP/P1560/W/19/3238064 subject to conditions and the Original Undertaking
- (H) An application was made for reserved matters approval under reference 20/01429/DETAIL which was approved by the District Council on 10 March 2021 ("the Reserved Matters Approval")
- (I) The Parties wish to amend the Original Undertaking as set out in this Deed with effect from the date of this Deed ("Variation Date")
- (J) The Parties to this Deed are satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development

AGREED TERMS

1 DEFINITIONS

- 1.1 In this Deed, all words phrases and expressions defined in the Original Undertaking shall have the same meaning in this Deed save where the context otherwise dictates and save for the following words and phrase which shall have the following meanings:

"Original Undertaking" means the undertaking dated 30 January 2020 given by (1) Jackie Ann Dorrington-Ward and Karen Jean Rose and Peter James Rose (2) Hopkins Homes Limited (3) Welbeck Strategic Land II LLP and (4) HSBC UK Bank Plc to the District Council and the County Council made under Section 106 of the Town and Country Planning Act 1990 and all other enabling powers relating to the Site pursuant to the Planning Application;

"Reserved Matters Approval" means the reserved matters approval under application reference 20/01429/DETAIL in respect of the Planning Permission which was approved by the District Council on 10 March 2021;

"Variation Date" means the date of this Deed;

- 1.2 The rules of interpretation set out in the Original Undertaking apply to this Deed

2 LEGAL BASIS

- 2.1 This Deed is supplemental to and varies the Original Undertaking and is made pursuant to Section 106 and 106A of the Act and the covenants and obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act enforceable by the Council and the County Council and to the extent that any obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers
- 2.2 The covenants, restrictions and obligations contained in this Deed are entered into by the First Owner and the Second Owner with the intention that they bind the interests held by the First Owner and the Second Owner in the Site and their respective successors and assigns
- 2.3 The First Owner and Second Owner warrants that they have full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Site
- 2.4 Except as varied in Clause 3 of this Deed, the Original Undertaking shall remain in full force and effect

3 BANK'S CONSENT

- 3.1 The Bank consents to the completion of this Deed and declares that its interest in the Site shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Bank's interest in the Site provided that the Bank shall not be liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Bank is in possession of all or any part of the Site. For the avoidance of doubt the Bank will have no liability once it ceases to have any legal or other interest in the Site subject to clause 7.5 of the Original Undertaking

4 VARIATION

With effect from the Variation Date, the parties agree the following amendments to the Original Undertaking:

- 4.1 In the definition of "Shared Ownership Lease" in Clause 1 of the Original Undertaking "25%" shall be deleted and replaced with:
"10%"
- 4.2 In the definition of "Affordable Rental Units" in Clause 1 of the Original Undertaking after the words *"in writing"* the following words shall be inserted:
"and the rent of these Units may be increased up to Consumer Price Index + 1% per annum or such other rate as stated in the Homes England Rent Standard as amended from time to time"

- 4.3 In the definition of "Chargee" in Clause 1 of the Original Undertaking the following words shall be deleted: *"or any persons or bodies deriving title through such mortgagee or charge or Receiver"*
- 4.4 Clause 7.6.1 shall be deleted in the Original Undertaking in its entirety and replaced with the following words: *"Individual owner-occupiers or tenants of an individual Dwelling constructed pursuant to the Planning Permission nor against their mortgagee, chargee or successor in title save for the obligations in Schedule 1 Part 1 which shall remain binding"*
- 4.5 A new Clause 7.6.3 shall be inserted after Clause 7.6.2 in the Original Agreement as follows:
- 7.6.3 *Any Registered Provider or their Chargee save for the obligations in Schedule 1 Part 1 which shall remain binding*
- 4.6 Schedule 1 Part 1 Paragraph 1.5 shall be amended in the Original Undertaking so it has the following words *"The Affordable Housing provisions in this Schedule 1 Part 1 of this Deed shall not be binding on a Chargee or any persons or bodies deriving title through such mortgagee or charge or Receiver PROVIDED THAT"*
- 4.7 In the definition of Protected Person in Clause 1 of the Original Undertaking the paragraphs c) and d) shall be deleted in their entirety and replaced with the following:
- c) *A Tenant who has been granted a Shared Ownership Lease and have staircased to 100% or any person or body deriving title from any such person or their Chargee*
- d) *any successor in title to a chargee or mortgagee of the persons named in a) -c) above*
- 5 OTHER PROVISIONS**
- 5.1 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
- 5.2 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed
- 5.3 If any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed to be affected or impaired

6 COSTS

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

7 GOVERNING LAW

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England

8 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation

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





