

Dated 21 January 2021

BABERGH DISTRICT COUNCIL

and

SUFFOLK COUNTY COUNCIL

**PLANNING OBLIGATION UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

relating to site adjacent to Mackenzie Place, Cockfield, Suffolk

Planning Reference: DC/19/04576

THIS DEED is dated 21 January

2021

PARTIES:

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (referred to respectively as the context requires as "**the District Council**" and until such time as it ceases to have an interest in the Site, "**the Owner**")

- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (referred to as "**the County Council**")

together referred to as "**the Parties**"

INTRODUCTION

- (A) The District Council is the local planning authority for the purposes of the Act for the area within which the Site is situated

- (B) The County Council is also a local planning authority for the purposes of the Act and because the District Council is also the Owner of the Site is entering into this Deed to act as an Enforcing Authority of the planning obligations contained in this Deed for as long as the District Council is also the Owner

- (C) The District Council submitted the Application for planning permission and on 06 December 2019 the Permission was granted by officers under delegated authority.

- (D) The District Council is the owner of the Site as more particularly set out in Schedule 1

- (F) The District Council and the County Council consider that the Development should have certain restrictions regulating the use of the Site imposed in the manner hereafter appearing and pursuant to section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

- (G) The District Council and the County Council are satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990 (as amended)
Affordable Housing	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with Annex 2 of the National Planning Policy Framework 2019, as amended
Affordable Housing Nomination Agreement	an agreement substantially in the form set out in the Fifth Schedule (subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and "Nomination Agreement" shall have the same meaning.
Affordable Housing Units	the 3 Dwellings to be provided on the Site pursuant to the Planning Permission to be Occupied as Affordable Housing in accordance with the Third Schedule.
Affordable Rent	the rent charged on low cost rental accommodation (as defined by Section 69 Housing and Regeneration Act 2008) with the rent charged being no more than 80% of the equivalent market rent including any service charges applicable.
Affordable Rental Unit	Means an Affordable Housing Unit which is to be let at an Affordable Rent and is let on the Registered Provider's standard form of letter in accordance with the terms of the Deed by the Registered Provider

Application	Means the application for full planning permission to develop the Site in accordance with the application plans and other materials submitted to the District Council for the Development allocated reference number DC/19/04576
Chargee	Means any mortgagee or charge of the Registered Provider who is in possession of all or any of the Affordable Housing Units or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or charge or any administrator (howsoever appointed) including a housing administrator (howsoever appointed) including a housing administrator appointed pursuant to the relevant provisions of the Housing and Planning Act 2016.
Chargee's Duty	Means the tasks and duties set out in paragraph 4 of the Third Schedule.
Choice Based Lettings Scheme	Means an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme (or such other scheme as may be agreed) relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party.
Commencement	The date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is first carried out on the Site other than (for purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition, archaeological 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, ground surveys, erection of

temporary fences, temporary display of site notices and/or advertisements and 'Commence' and 'Commenced' will be construed accordingly

Completion of
Development

Means the date that the last Dwelling is first Occupied.

Development

The Development of the Site to include the erection of 3 affordable homes on the Site being adjacent to Mackenzie Place, Cockfield, Suffolk in accordance with the Permission

Dwelling

Means a bungalow (including Affordable Housing Units) to be built on the Site as part of the Development

Enforcing Authority

Means the County Council until such time the District Council ceases to have an interest in the Site after which time it means the District Council

HE

means Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of Section 81 Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers.

Occupation

occupation of any Dwelling on the Site for the purposes permitted by the Permission and occupation would be deemed to have taken place when the District Council have evidence of occupation of any Dwelling on the Site 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 "Occupied" and "Occupy" shall be construed accordingly

Permission	The planning permission granted on 6 th December 2019 subject to conditions granted by the District Council pursuant to the Application or if the District Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development
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: <ul style="list-style-type: none"> (a) Has exercised the Right to Buy pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Dwelling. (b) Has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Dwelling; (c) Any successor in title to paragraph a-c above.
Registered Provider	means a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by HE under Chapter 3 of that Act and approved in writing by the District Council in accordance with The Second Schedule of this Deed. If another body is permitted to provide Affordable Housing by paragraph 3.1 of the Second Schedule then all references herein to a Registered Provider shall be to that body and which shall for the avoidance of doubt include the District Council itself and "the Registered Provider" shall mean the Registered Provider which provides the Affordable Housing on the Site

Site	the Site described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Site Plan;
Site Plan	the plan attached to this Deed
Social Rent	low cost rental accommodation which is typically made available at rent levels that are set in accordance with the rent component of the Social Housing Regulator's tenancy standard and calculated according to a formula based on relative property values and relative local earnings.
Social Rental Unit	means a Dwelling which is subject to Social Rent.
Working Days	Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays declared from time to time in England.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or 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 Any 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 District Council and County Council the successors to its respective statutory functions.
- 2.8 The headings are for reference only and shall not affect construction.
- 2.9 Any covenant not to do an act or thing shall be deemed to include an obligation to use all reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 2.10 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party to or upon whom it is to be given or served at the address for that party given in this Deed or such other address in the United Kingdom as that party may by notice to the other parties hereto or their agent stipulate as that party's address for service of notice pursuant to this Deed or if not such address is given or stipulated at that party's last known address and any notice so given or served shall be deemed to be received and the date on which it is given or served shall be deemed to be 48 hours after posting.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Enforcing Authority
- 3.2 Covenants given by more than one party can be enforced against them individually or jointly
- 3.5 This Deed is governed by and interpreted in accordance with the law of England

4. COVENANTS

- 4.1 The District Council covenants with the County Council as Enforcing Authority so as to bind itself and its successors in title to observe and perform the obligations and stipulations contained in this Deed

5. OTHER PROVISIONS

- 5.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Site or that part of the Site in respect of which such breach occurs (unless the breach occurred before he disposed of his interest)
- 5.2 The Owner confirms that it is the owner of the Site with full power to enter into this Deed and that there is no person or body whose consent is necessary to make this Deed binding on all interests in the Site
- 5.3 The obligations contained in the Third Schedule shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Dwellings subject to the provisions contained therein but the covenants, restrictions and requirements contained in this Deed shall not otherwise be enforceable against:
- 5.3.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the 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
 - 5.3.2 any statutory undertaker or other person who acquires any part of the Site or the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications highways or any other services in connection with the Development of the Site.
 - 5.3.3 persons having an interest in the Site by way of an easement
- 5.4 On completion of this Deed the Owner will pay the County Council's reasonable legal costs in connection with this Deed

- 5.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 save for successors in title
- 5.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions provided it can be deleted without leaving the remainder of the agreement or clause devoid of meaning
- 5.7 No waiver, express or implied, by the Enforcing Authority constitutes a continuing waiver, nor prevents the Enforcing Authority from enforcing any of the provisions in this Deed
- 5.8 This Deed shall be registerable as a local land charge by the District Council

6. DISPUTES

- 6.1 If any dispute is not resolved between the Parties, any of the Parties may refer it for determination by a single expert (the "Expert"). The Expert will be appointed by agreement between the Parties or in default of agreement, by the President for the time being of the Royal Institution of Chartered Surveyors and the Expert's decision shall be final and binding.
- 6.2 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

8. NOTIFICATIONS

- 8.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written

communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 8.2

8.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows: -

The District Council/the Owner/Enforcing Authority	The Chief Planning Officer (or a duly appointed successor) Babergh District Council, Endeavour House, 8 Russell Road, Ipswich IP1 2BX
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The County Council/Enforcing Authority	The Director of Growth, Highways and Infrastructure (or a duly appointed successor) Endeavour House, 8 Russell Road, Ipswich IP1 2BX
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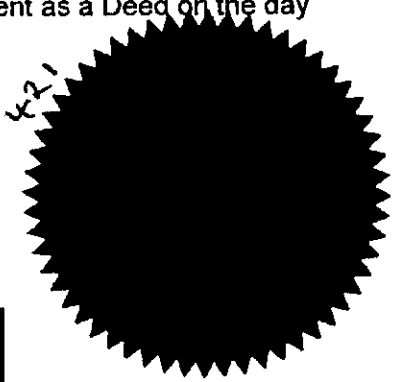
8.3 Any notice or other written communication to be given by the District Council shall be deemed to be valid and effective if on its face it is signed on behalf of the District Council by a duly authorised officer of the District Council

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

EXECUTED AS A DEED by affixing
The **COMMON SEAL** of
BABERGH DISTRICT COUNCIL


In the presence of:

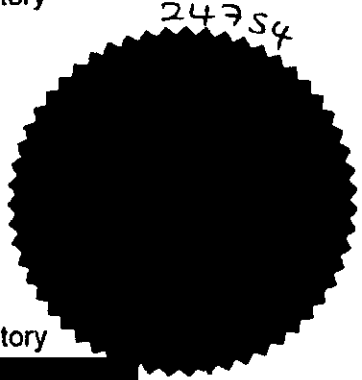

Authorised Signatory



EXECUTED AS A DEED by affixing
The **COMMON SEAL** of
SUFFOLK COUNTY COUNCIL

In the presence of:


Authorised Signatory



FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

Land being site adjacent to Mackenzie Place, Cockfield Suffolk, IP30 0HY which forms part of the Site registered at the Land Registry under freehold title number SK184207 and shown edged red for identification only on the Site Plan.

**SECOND SCHEDULE
COVENANTS FROM THE OWNER**

Part 1

AFFORDABLE HOUSING

1. Notices

1.1. The Owner shall give to the Enforcing Authority not less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling to be Occupied.

1.2. The Owner shall give to the Enforcing Authority no less than seven (7) days' written notice following:

1.2.1. the date of the first Dwelling to be Occupied or is Occupied for the first time;
and

1.2.2. the Completion of the Development.

2. Owner's obligation to construct Affordable Housing Units

2.1. Unless the District Council is the Registered Provider the Owner shall agree with the Enforcing Authority in consultation with the District Council on the identity of the Registered Provider to which the Affordable Housing Units are to be transferred the Owner may Commence the Development whilst that process is ongoing but shall not Occupy any Dwellings until the identity of the Registered provider has been agreed with the Enforcing Authority in consultation with the District Council

2.2. The Owner shall construct the Affordable Housing Units in accordance with the Permission, to a standard of construction which meets the Technical Housing Standards - Nationally Described Space Standard March 2015 and to meet Part M (4) Category 2 of the current Building Regulations (unless otherwise agreed in writing with the Enforcing Authority in consultation with the District Council)

The Development shall consist of three (3) Affordable Housing Units comprising 1 x 1 bed bungalow and 2 x 2 bed bungalow and shall be made available as Affordable or

Social Rented Housing

- 2.3. Unless the District Council is the Registered Provider the Owner shall transfer to the Registered Provider the Affordable Housing units prior to Occupation of any Dwelling and provide written notification of such to the Enforcing Authority and the District Council
- 2.4. Unless the District Council is the Registered Provider the Owner shall procure a covenant in the transfer(s) of the Affordable Housing Units that the Registered Provider(s) will enter into the Affordable Housing Nomination Agreement within one (1) month of the date of the transfer(s) to it of the Affordable Housing Units (or such other time period as is agreed in writing with the Enforcing Authority in consultation with the District Council)
- 2.5. The Owner covenants that the Affordable Housing Units shall only be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or chosen pursuant to the Nominations Agreement which confers nomination rights on the District Council unless otherwise agreed by the District Council in writing or in accordance with the Government's Help to Buy Agency requirements.
- 2.6. From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing as set out herein save that this obligation shall not be binding on:
 - 2.6.1. Any Protected Person or any mortgagee or chargee of the Protected Person exercising the mortgagee protection provision within the Shared Ownership Lease or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargee; or
 - 2.6.2. Any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty;
- 2.7. The Owner shall not Occupy or permit Occupation of any of the Affordable Housing Units for any purpose other than as Affordable Housing.

3. Future use of Affordable Housing Units

3.1. The Owner covenants that any transfer of land on which any of the Affordable Housing Units has been constructed to a Registered Provider shall be:

- 3.1.1. with vacant possession on the first transfer;
- 3.1.2. free from any encumbrance other than existing at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);
- 3.1.3. subject to a grant by the Owner to the acquiring Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;
- 3.1.4. subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation use, maintenance and management of the Development;
- 3.1.5. subject to a covenant to enter into an Affordable Housing Nomination Agreement substantially in the form of the agreement contained in the Fifth Schedule with the District Council within three (3) months the date of the Site is transferred from the Owner to the Registered Provider;
- 3.1.6. subject to a covenant that the Registered Provider shall include a pre-emption provision in its own favour in any transfer of an Affordable Housing Unit from the said Registered Provider to the owner or tenant of an Affordable Housing Unit; and
- 3.1.7. subject to a covenant that the Registered Provider shall use all capital receipts from the sale of Affordable Housing Units only for the purpose of providing Affordable Housing.

3.2. The obligations and restrictions contained in paragraph 3 of this Third Schedule shall not bind:

- 3.2.1. a Chargee who has complied with the provisions of paragraph 4 of this Third Schedule;

3.2.2. any person or body deriving title through or from any other parties mentioned in this paragraph 3.2.

3.3. In the event the District Council is the Registered Provider the Affordable Housing Units shall only be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or chosen pursuant to the terms of the draft Nominations Agreement annexed to this Agreement or in accordance with the Government's Help to Buy Agency requirements.

4. Chargee's Duty in relation to Affordable Housing Units

4.1. Any Chargee shall prior to seeking to dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge give prior written notice to the Enforcing Authority of its intention to dispose.

4.2. If notice is given pursuant to paragraph 4.1 of this Schedule the following provisions shall apply:

4.2.1. In the event that the Enforcing Authority responds within three (3) months from receipt of a notice given pursuant to paragraph 4.1 and indicates that (a) arrangements for the transfer of any of the Affordable Housing Units can be made in such a way as to safeguard it/them as Affordable Housing Units and (b) that such a transfer would take place within six (6) months from the Enforcing Authority's response under this sub-paragraph then the Chargee shall co-operate with the Enforcing Authority and shall make reasonable arrangements and use reasonable endeavours to secure such a transfer.

4.2.2. If the Enforcing Authority responds to a notice given pursuant to paragraph 4.1 within three (3) months then the Chargee shall be entitled to dispose of any of the Affordable Housing Units free from the restrictions set out in clauses 2 and 3 of this The Third Schedule which shall cease to apply to any of the Affordable Housing Units concerned from the time the disposal completes.

4.2.3. If the Enforcing Authority has responded in accordance with paragraph 4.2.2 but cannot secure the transfer therein described within two (2) months of its response then provided the Chargee has complied with its obligations in this Schedule the Chargee shall be entitled to dispose of any of the Affordable Housing Units free of the restrictions set out in clauses 2 and 3 which shall

cease to apply to any of the Affordable Housing Units from the time the disposal completes.

- 4.3. For the avoidance of doubt the rights and obligations in paragraphs 4.1 and 4.2 shall not require a Chargee to act contrary to its duties and rights under the charge or mortgage and the Enforcing Authority must give reasonable consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage.

THIRD SCHEDULE

District Council Obligations

The District Council covenants with the County Council as follows:

1. to indemnify the County Council against all reasonable and proper costs claims and demands in connection with its obligations in this Deed as Enforcing Authority including but not limited to monitoring compliance where requested and enforcement of any obligations

Connection and is specified by the District Council as being suitable for the category of Affordable Housing Unit in respect of which the RP is in accordance with this Deed to select a person from the Nomination List to offer a Tenancy Agreement

- 1.5 'Property' means the Site adjacent to MacKenzie Place, Cockfield shown edged red on the attached plan
- 1.6 'Affordable Housing Units' means the dwellings consisting of three (3) dwellings all of which are for affordable rent.
- 1.7 'Unilateral Undertaking' means the Unilateral Undertaking (dated) relating to the Site adjacent to Mackenzie Place, Cockfield.
- 1.10 'Subsequent Nominee' means a Nominee to be offered a Tenancy Agreement pursuant to clause 3.2.3
- 1.11 'Tenancy Agreement' [means an assured tenancy agreement or other form of tenancy agreement in a form prepared by the RP and containing terms which accord with the form of tenancy agreement being used by the RP from time to time for its general lettings]
- 1.12 'Vacancy Notice' means a written notice given by the RP to the District Council [in the form of the draft annexed (or) (in a form to be agreed between the RP and the District Council within five (5) weeks from the date of this Deed)] the function of such notice being the notification to the District Council by the RP that the construction and fitting out of the Affordable Housing Unit is completed
- 1.13 'Void' means a Affordable Housing Unit which is vacant as a result of the tenant vacating but for the avoidance of doubt shall not include temporary decamps in the event the Affordable Housing Unit needs repairs or in the event of a mutual exchange
- 1.14 'Void Notice' means a written notice given by the RP to the District Council [in the form of the draft annexed (or) (in a form to be agreed between the RP and the District Council within five (5) weeks from the date of this Deed)] the function of such a notice being the notification to the District Council of a Void

2. ENABLING PROVISIONS

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

3. PROCEDURE

The parties agree that the following nomination procedure shall apply to the nomination of persons in respect of the Affordable Housing Units

3.1 Initial Lets

The Association hereby grants the Council Nomination rights for 100% of the initial lets and thereafter 100% for voids in relation to the Affordable Rented Dwellings. In relation to the

Initial Lets of the Affordable Housing Units the following provisions shall apply: -

3.1.1 The RP shall give the District Council not less than two (2) months written notice of the anticipated date when the Affordable Housing Units will be ready for occupation

3.1.2 The RP shall serve Vacancy Notices in respect of the Affordable Housing Units not less than one (1) month prior to such newly constructed and previously unoccupied Affordable Housing Units becoming available for occupation

3.1.3 The District Council shall within five (5) Working Days of receipt of a Vacancy Notice serve upon the RP a Nomination List for rented dwellings

3.1.4 The Nomination List to be served by the District Council under clause 3.1.3 shall:

3.1.4.1 specify the appropriate category of Affordable Housing Unit; and

3.1.4.2 indicate the priority for the housing of the persons named

3.1.5 The RP shall have the right to grant the Initial Let in respect of the Affordable Housing Units to persons of its own choosing in the event of the District Council's failure to serve the Nomination List within the period of 5 Working Days of receipt of the Vacancy Notice

3.1.6 The RP shall within ten (10) Working Days of the date of receipt of the Nomination List select a Nominee from the Nomination List taking into account the priority for housing indicated by the District Council and shall use its reasonable endeavours to arrange a viewing of the relevant Affordable Housing Unit and offer a Tenancy Agreement to such selected Nominee

3.1.7 If the selected Nominee fails to enter into a Tenancy Agreement within five (5) Working Days of receipt of the RP's offer such selected Nominee shall be deemed to have rejected the RP's offer and the RP shall select and make an offer to another Nominee by repeating the procedure set out in clause 3.1.6

3.1.8 If the second selected Nominee fails to enter into a Tenancy Agreement within five (5) Working Days of receipt of the RP's offer then such second selected Nominee shall be deemed to have rejected the RP's offer and the RP shall select and make an offer to a third Nominee by repeating the procedure set out in clause

3.1.9 If such third selected Nominee fails to enter into a Tenancy Agreement within five (5) Working Days of receipt of the RP's offer then the RP shall not be bound to make any further offers of accommodation to Nominees in respect of such vacancy of the Affordable Housing Unit but shall be entitled to let the Affordable Housing Unit to a tenant of its own choosing

3.1.10 The RP's obligations under clauses 3.1.6-3.1.8 shall cease when all of the Affordable Housing Units have been offered to Nominees in accordance with clauses 3.1.6-3.1.8

3.2 Voids

3.2.1 Should an Affordable Housing Unit become a Void after the Initial Let or the RP has

reasonable cause to believe it will become a Void then and in each case:

3.2.1.1 the RP shall serve a Void Notice in respect of the relevant vacant Affordable Housing Unit and

3.2.1.2 within 5 Working Days Of receipt of the said notice the District Council shall serve upon the RP a Nomination List which shall contain the information referred to in clause 3.1.4

3.2.2 The RP shall have the right to let the relevant vacant Affordable Housing Unit to a person of its own choosing in the event of the District Council's failure to serve the Nomination List within 5 Working Days of receipt of the Void Notice

3.2.3 Upon receipt of the Nomination List the RP shall follow the procedure set out in clauses 3.1.6-3.1.8 mutatis mutandis

3.2.4 Unless the Registered Provider is the Council, the RP shall not be obliged to follow the procedure set out in clauses 3.2.1 and 3.2.3 if it would result in the number of Affordable Housing Units occupied by Subsequent Nominees exceeding 75% of the Affordable Housing Units available after the initial Let

3.3 Provision of information and alteration of lists

3.3.1 The RP shall give notification to the District Council of the occurrence of the following events within five (5) Working Days of their occurrence:

3.3.1.1 a Nominee failing to view a Affordable Housing Unit when a viewing has been arranged

3.3.1.2 a Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement

3.3.1.3 a Nominee accepting an offer of a Tenancy Agreement

3.3.1.4 a person accepting an offer of a tenancy from the RP

3.3.1.5 the RP rejecting a Nominee in accordance with clause 3.3.7

3.3.2 In the event of a notice being served pursuant to clause 3.3.1 then the name of any such Nominee shall be removed from the Nomination List

3.3.3 Within five (5) Working Days of the District Council receiving notice served in accordance with clause 3.3.1 save for notice under clause 3.3.1.4 the District Council shall serve upon the RP the name and address of a Nominee to add to the Nomination List such notice to include the information set out in clause 3.1.4

3.3.4 If the District Council shall within the period mentioned in clause 3.3.3 notify the RP that the District Council then has no suitable Nominee the District Council shall advise the RP

of a suitable replacement Nominee as soon as reasonably practicable

3.3.5 The RP shall have the right to let an Affordable Housing Unit to a person of its choosing if the District Council's failure to provide a Nominee creates a Void in respect of that Affordable Housing Unit

3.3.6 On 1st January 1st April 1st July and 1st October in each year the RP shall serve the District Council with details of the letting activities of the Affordable Housing Units in a format to be agreed between the RP and the District Council

3.3.7 The RP shall have the right to interview and make enquiries of each Nominee and by serving written notice upon the District Council to that effect to reject any Nominee if in the opinion of the RP the grant of an assured tenancy to such Nominee would be in contravention of the RP's registered rules or its' letting criteria

3.3.8 The District Council shall immediately notify the RP in writing if any Nominee is withdrawn from the Nomination List

3.3.9 When calculating percentages for the purposes of this Deed percentages in excess of 0.5 shall be rounded up and percentages equal to or less than 0.5 shall be rounded down

3.3.10 The District 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

4. Supplemental provisions relating to allocating Initial Lets and Voids

4.1 Where there are two or more applicants applying to occupy one of the Rented Dwellings the Local Connection Criteria set out in clause of this Schedule 1.2.1 to 1.2.4 and subject to clause 4.2 of this Schedule preference must be given to the applicant/s who have the highest housing need according to Babergh District Council's current allocations policy

4.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities then any such Dwelling may be first offered to a person or persons with disabilities who require such accommodation even where such person(s) have a lesser Local Connection under clauses 1.12.1 to 1.12.4 of this Schedule than someone who does not have disabilities.

5. 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

5. TRANSFERS TO OTHER REGISTERED PROVIDERS

The RP shall ensure that any registered provider to which the Property and Affordable Housing Units erected thereon are transferred otherwise than by direction of Homes England under its statutory powers shall enter into a similar agreement mutatis mutandis with the District Council

6. 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

7. COSTS

The RP agrees with the District Council to pay the legal costs which the District Council incurs in preparing and entering into this deed

8. AGREEMENTS AND DECLARATIONS

The parties agree that:

- 8.1 nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers
- 8.2 the obligations contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33

9. EXCLUSION CLAUSE

The provisions of this deed shall not be binding upon or enforceable against:

- 1.1 any person exercising a statutory right to buy or acquire any affordable housing unit or their successors in title and any mortgagee of that unit
- 1.2 Any mortgagee or chargee (or any receiver appointed by such mortgagee or chargee) of an RP (provided that such mortgagee charge or receiver shall have first complied with the procedure in [paragraph 1.5] of the Third Schedule of the Unilateral Undertaking) and their successors in title

SIGNED AS A DEED BY [RP]

In the presence of:

Witness' signature:

Name

Address

Occupation

EXECUTED AS A DEED by affixing

The COMMON SEAL of

BABERGH DISTRICT COUNCIL

In the presence of:

Authorised Signatory