

DATED

5th October 2021

2021

BABERGH DISTRICT COUNCIL (1)

-and-

DELLWOOD HOMES (BURY) LIMITED (2)

-and-

ANTHONY WILLIAM CLOWES (3) & (4)

-and-

SUFFOLK COUNTY COUNCIL (5)

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

relating to land at Back Lane,
Copdock, Washbrook, Suffolk
re: DC/16/00802/FUL

This Deed is dated

5th October 2021

2020

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the District Council") and
- (2) **DELLWOOD HOMES (BURY) LIMITED** (Company Registration No. 11053041) of Langford Hall Barn, Witham Road, Langford, Maldon, Essex CM9 4ST ("the First Owner")
- (3) **ANTHONY WILLIAM CLOWES** of Fen Farm, Hollow Road, Washbrook, Ipswich, Suffolk IP8 3HE ("the Second Owner")
- (4) **ANTHONY WILLIAM CLOWES** of Fen Farm, Hollow Road, Washbrook, Ipswich, Suffolk IP8 3HE ("the Mortgagee")
- (5) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council")

Together "the Parties"

INTRODUCTION

- (A) The District Council is a local planning authority for the purposes of the Act for the area in which the Land is located
- (B) The First Owner is the freehold owner of that part of the Land which is registered at the Land Registry with Title Absolute under Title Numbers SK399231 and SK398296 and the Second Owner is the freehold owner of that part of the Land which is registered at the Land Registry with Title Absolute under Title Numbers SK373385 and SK335518
- (C) The First Owner and the Second Owner are together herein referred to as "the Owners" of the Land
- (D) The Mortgagee has a charge over that part of the Land which is within Title Number SK399231 dated 10 December 2019
- (E) The Second Owner and the Mortgagee will execute this Deed using a single execution clause in the name of Anthony William Clowes to represent the Second Owner and the Mortgagees intention, acceptance and execution of this Deed.
- (F) On 10th August 2017, Dales View Property Development Limited, Anthony William Clowes, Suffolk County Council and the District Council entered into the Original Agreement

(G) The Land is bound by the Original Agreement and it is agreed between the Parties to amend the Original Agreement as set out in The Schedule to this Deed

(H) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed

1. DEFINITIONS

1.1 In this Deed the definitions in the Original Agreement unless the context otherwise requires.

1.2 In this Deed the following expressions which have the following meanings:

“Act”	the Town and Country Planning Act 1990 (as amended)
“Original Agreement”	an agreement dated 10 th August 2017 made under Section 106 of the Act between 1) Babergh District Council; 2) Dales View Property Developments Limited, 3) Anthony William Clowes, 4) Suffolk County Council containing planning obligations and other provisions pursuant to section 106 of the Act enforceable by the District Council relating to planning application reference DC/16/00802/FUL
“Land”	the site shown edged red on the plan annexed to the Original Agreement

2. LEGAL BASIS

2.1 This Deed is supplemental to the Original Agreement and 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 District Council.

2.2 The terms and conditions of the Original Agreement shall remain in full force and effect except as varied by this Deed.

3. COMMENCEMENT

This Deed shall take effect upon the date hereof.

4. VARIATION

4.1 With effect from the date of this Deed the Parties agree to vary the Original Agreement as set out in the Schedule to this Deed.

4.2 In all other respects the contents of the Original Agreement are confirmed and agreed and shall continue to bind the Land as varied by this Deed.

5. OTHER PROVISIONS

5.1 On completion the Owner will pay the District Council's reasonable legal costs in connection with this Deed

5.2 On completion of this Deed the Owner will pay the County Council's reasonable legal costs in connection with this Deed

5.3 The Owner warrants that he has full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Land

6. MORTGAGEE CONSENT

6.1 The Mortgagee consents to this Deed so that its interest in the Land is bound by the obligations contained in this Deed together with the Original Agreement and agrees that its security over the Land takes effect subject to those provisions PROVIDED THAT the Mortgagee is not required to observe or perform the obligations in this Deed unless it takes possession of the Land.

7. LOCAL LAND CHARGE

7.1 This Deed shall be registered as a local land charge.

**The Schedule
Variations**

1. The Parties agree to vary the Original Agreement as follows:

1.1. To delete the following definitions from the Original Agreement

- 1.1.1. HCA
- 1.1.2. Shared Ownership Lease

1.2. The following new definitions shall be inserted into the Original Agreement to replace those definitions that are being deleted and referred to in Clause 1.1 above

“HE”	Homes England or such other organisation as may from time to time be the Regulator of Social Housing or such other body with statutory force charged with regulating Registered Providers
“Shared Ownership Lease”	a long lease (over 99 years) of a dwelling granted at a premium whereby no less than Ten percent (10%) and no more than up to seventy percent (70%) on first purchase of the equitable interest in the Shared Ownership Dwelling is paid by a lessee upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates.

1.3. The following affordable housing provisions contained in Part 1 of The Third Schedule of the Original Agreement shall be deleted in their entirety:

- 1.3.1. Clause 2.2
- 1.3.2. Clause 2.3
- 1.3.3. Clause 2.4

1.3.4. Clause 2.5

- 1.4. The following new affordable housing provisions shall be inserted into Part 1 of The Third Schedule of the Original Agreement:

2.2 The First Owner covenants to procure a covenant in the transfer of the Affordable Housing Units that the Registered Provider will enter into:

2.2.1 A nomination agreement for the four Affordable Housing Units that are to be used for Affordable Rent Tenancies substantially in the form contained in Part One of the Fifth Schedule hereto

2.2.2 A nomination agreement for the remaining Affordable Housing Unit which is to be sold on a Shared Ownership Lease in the form contained in Part Two of the Fifth Schedule hereto

within one month of the date of transfer of the Affordable Housing Units to the Registered Provider.

2.3 The First Owner covenants that the Affordable Housing Units to be used as Affordable Rent Tenancies shall only be sold to persons who are nominated in accordance the deed of nomination that the Registered Provider will enter into with the District Council substantially in the form contained in Part One of the Fifth Schedule as soon as reasonably practicable following the Registered Provider's acquisition of the Affordable Housing Units

2.4 The First Owner covenants from the date of Practical Completion the Affordable Housing Units shall not be used other than as Affordable Housing as defined in this Agreement

PROVIDED THAT this obligation shall not be binding upon:

2.4.1 any Protected Tenant or

2.4.2 a person who has staircased to acquire a 100% interest in the leasehold or the freehold interest in a Shared Ownership Dwelling or

2.4.3 any mortgagee or chargee deriving title from any parties referred to in clause 2.4.1 or 2.4.2. or

2.4.4 any successors in title to any parties referred to in 2.4.1, 2.4.2 and 2.4.3

2.5 The affordable housing provisions contained in this clause 3 of Part 1 of the Third Schedule shall not be binding on a 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 or any persons or bodies deriving title through such mortgagee or chargee or Receiver
PROVIDED THAT

2.5.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing 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 Housing to another registered provider or to the District 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

2.5.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing free from the affordable housing provisions in this Agreement which provisions shall determine absolutely

1.5 The nomination agreement set out in the Fifth Schedule to the Original Agreements shall be deleted and replaced with the two forms of nomination agreements set out in the Annex to this Deed

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

The COMMON SEAL of)
BABERGH DISTRICT COUNCIL)
was affixed in the presence of:)



[Redacted Signature]
Authorised Signatory

EXECUTED by)
DELLWOOD HOMES (BURY) LIMITED)
acting by a director)
in the presence of:)...
Dire



.....
Witness Signature: x
Full Name: x
Address: x
Witness Occupation: x

SIGNED as a Deed by)

ANTHONY WILLIAM CLOWES)

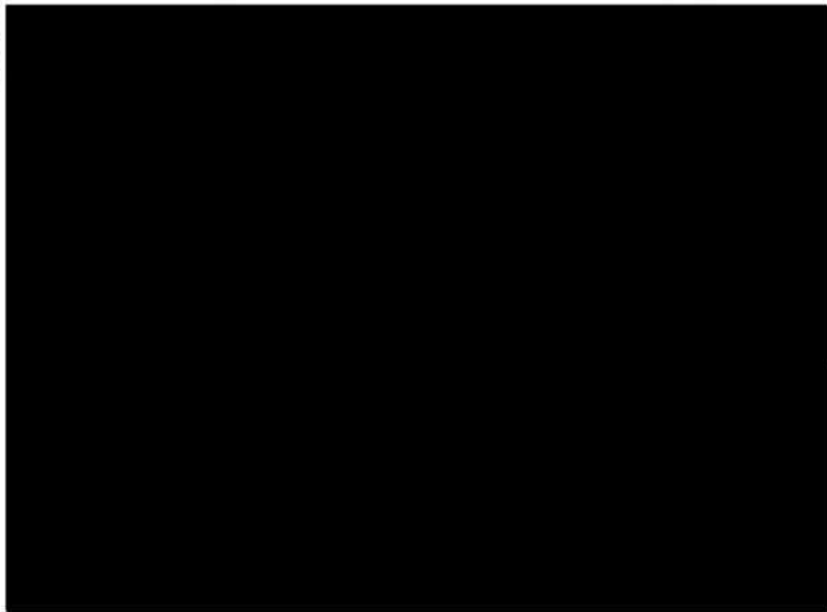
in the presence of:)

.....
Witness Signature: <

Full Name: <

Address: <

Witness Occupation: <



The COMMON SEAL of)
SUFFOLK COUNTY COUNCIL)
was affixed in the presence of:)



Authorised Signatory



Annexure

Form of nomination agreement
For Shared Ownership Dwelling

Form of nomination agreement for
Rented Dwellings

DATED

DRAFT
DEED OF
NOMINATION RIGHTS

BETWEEN

XXXXXXXXXXXXXXXXXXXXXXXXXXXX (1)

And

BABERGH DISTRICT COUNCIL (2)

Relating to

A shared ownership dwelling
at land at Back Lane Copdock, Suffolk

(planning application reference: B/16/00802/FUL)

DRAFT

THIS DEED OF NOMINATION RIGHTS

is made the

day of

2021

BETWEEN:

- (1) **XXXXXXX** whose registered address is **XXXXXXXXXXXXXXXXXXXX**
('the RP') and
- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 1 Russell Road
Ipswich Suffolk, IP1 2BX ('the Council')

1. Definitions

In this Deed:

- 1.1 'Affordable Housing' has the meaning given to it in Annex 2 of the National Planning Policy Framework published in February 2019 (as may be amended from time to time or such other national policy that may from time to time replace or update this framework) or any successor policy thereto issued by HM Government
- 1.2 'Affordable Housing Unit' means the one dwelling which shall be Affordable Housing to be provided on the Property as a Shared Ownership Dwelling and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or other subsequent scheme) and 'Affordable Housing Units' shall be construed accordingly.
- 1.3 'Chargee' means any mortgagee or chargee of the RP who is in possession or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee to realise its

security or any administrator (howsoever appointed) including a housing administrator.

1.4 'Chargee's Duties' means the tasks and duties set out in Clause 10.3 of this deed.

1.5 'Dwelling' means a dwelling (including a house flat or bungalow and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly

1.6 'Homes England' 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 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers

1.7 'Initial Purchase' means the first purchase of such newly constructed and previously unoccupied Shared Ownership Dwelling

1.8 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit

1.8.1 had his only or principal home in the district of Babergh for a continuous period of not less than two (2) years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.8.2 to 1.8.4 inclusive.

1.8.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for

a continuous period of not less than two (2) years in the district of Babergh and wishes to be near that relative or

- 1.8.3 is employed in the district of Babergh on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for two (2) years
- 1.8.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can provide satisfactory written evidence to the Council of his or her former residency in the district of Babergh for either (i) six (6) months out of the preceding twelve (12) months or (ii) three (3) years out of the preceding five (5) years and in either case such period of former residency shall end with the Availability Date
- 1.9 "Planning Permission" means the full planning permission dated 10th August 2016 and granted by the Council under reference number B/16/00802/FUL.
- 1.10 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the RP the issue of a certificate of practical completion by that other party's surveyor
- 1.11 'Property' means the land and dwellings at Back Lane Copdock Suffolk shown edged red on the plan annexed
- 1.12 'Protected Tenant' means a lessee under a Shared Ownership Lease of a particular Affordable Housing Unit

- 1.13 '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 register kept by Homes England under Chapter III of that Act and for the avoidance of doubt this could include the Council.
- 1.14 'Shared Ownership Dwelling' means an Affordable Housing Unit to be let on a Shared Ownership Lease in accordance with the terms as set out in the Capital Funding Guide the Capital Funding Guide published by Homes England and any other publication that supercedes it and 'Shared Ownership Dwellings' shall be construed accordingly
- 1.15 'Shared Ownership Lease' means a long lease (over 99 years) of a dwelling granted at a premium whereby no less than ten percent (10%) and no more than up to seventy percent (70%) on first purchase of the equitable interest in the Shared Ownership Dwelling is paid by a lessee upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates. 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 as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England.
- 1.16 'Staircasing' means the acquisition after the date of the Initial Purchase of additional tranches of equity in the Shared Ownership Dwelling as set out in the Shared Ownership Lease for that Affordable Housing Unit and as detailed in the Capital Funding Guide published by Homes England and any other publication that supercedes it.

2 Enabling Provisions

This Deed is made pursuant to the Local Government Act 1972 Section 111, Section 1 of the Localism Act 2011 as amended and all other enabling powers

3 Procedure for the Initial Sale of the Shared Ownership Dwellings

In relation to the Initial Sale of any Shared Ownership Dwelling the following provisions shall apply:

- 3.1 The RP shall give the Council not less than four (4) months' written notice of the date when the Shared Ownership Dwelling will be ready for occupation
- 3.2 The parties agree the RP will advertise the Shared Ownership Dwelling together with the Local Connection Criteria on the Help to Buy agent's website and to sell the properties to a person who has been approved by the Help to Buy agent.

4 Procedure for Re-sale of the Shared Ownership Dwellings

Where the RP retains a share in the Shared Ownership Dwelling and when the Shared Ownership Lessee contacts the RP indicating it wishes to sell its interest in the Shared Ownership Dwelling and requests a nomination for a purchaser in accordance with the Shared Ownership Lease then the RP agrees it shall seek applications from the Help to Buy Website and nominate any applicants approved by the Help to Buy Agent to the Shared Ownership Lessee in accordance with the terms of the Shared Ownership Lease

5. RP covenants

The RP covenants with the Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies

- 5.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units

5.2 To ensure that the Affordable Housing Units are sold on the basis of a Shared Ownership Lease and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider

5.3 To construct the Affordable Housing Units in accordance with Homes England requirements

6. Alteration of lists

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

7 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

8. Transfer to another Registered Provider

The RP shall use reasonable endeavours to 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 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 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
- 10.3 From the date of Practical Completion the Affordable Housing Units shall be sold in accordance with the terms of this Deed save that the obligations and restrictions contained in this Deed shall not be binding on:
 - 10.3.1 a Chargee (or any receiver (including an administrative receiver) appointed by such Chargee or any other person appointed under any security documentation to enable such 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 Dwelling or any persons or bodies deriving title through such mortgagee or Chargee or Receiver PROVIDED THAT
 - 10.3.2 such Chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing 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

Housing 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 and costs and expenses; and

10.3 3 if such disposal has not completed within the three (3) month period, the Chargee or Receiver shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely

11. Shared Ownership Dwellings - Capital Receipts from Staircasing

Capital receipts received by the RP for shares sold between 81% and 100% must be recycled and reinvested in new Affordable Housing within the District of Babergh within ten (10) years of receipt.

AS WITNESS whereof the parties have executed this instrument as a Deed hereto the day and year first above written

Signatories:

Babergh District Council

Registered Provider

DRAFT
DEED OF NOMINATION RIGHTS

is made the

day of

2021

BETWEEN:

- (1) **XXXXXXX** whose registered address is **XXXXXXXXXXXXXXXXXXXX**
(‘the RP’) and

- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 1 Russell Road
Ipswich Suffolk, IP1 2BX (‘the Council’)

Relating to

Four Affordable Rented Dwellings at Back Lane Copdock Suffolk
(planning application reference: B/16/00802/FUL)

DRAFT

THIS DEED OF NOMINATION RIGHTS

is made the

day of

2021

BETWEEN:

- (1) **XXXXXXX** whose registered address is **XXXXXXXXXXXXXXXXXXXX**
(‘the RP’) and
- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 1 Russell Road
Ipswich Suffolk, IP1 2BX (‘the Council’)

1. Definitions

In this Deed:

- 1.1 ‘Affordable Housing’ has the meaning given to it in Annex 2 of the National Planning Policy Framework published in February 2019 (as may be amended from time to time or such other national policy that may from time to time replace or update this framework) or any successor policy thereto issued by HM Government
- 1.2 ‘Affordable Housing Scheme’ means a written scheme approved by the District Council identifying the location, number of bedrooms, mix and tenure of each Affordable Housing Unit (unless otherwise agreed in writing with the District Council)
- 1.3 ‘Affordable Housing Unit’ means the four dwellings which shall be Affordable Housing to be provided on the Property as Affordable Rent Dwellings (unless otherwise agreed by the Council as part of the

Affordable Housing Scheme) which shall be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or otherwise nominated by the Council pursuant to this Deed as varied from time to time

- 1.4 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable
- 1.5 'Affordable Rent Dwelling' means an Affordable Housing Unit made available by a Registered Provider as low-cost rent accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent (inclusive of any service charges applicable) for a dwelling of comparable size in the same location.
- 1.6 'Chargee' means any mortgagee or chargee of the RP who is in possession or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or charge to realise its security or any administrator (howsoever appointed) including a housing administrator.
- 1.7 'Chargee's Duties' means the tasks and duties set out in Clause 12.4 of this deed.

- 1.8 '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 Lettings Scheme 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 Council is a party.
- 1.9 'Dwelling' means a dwelling (including a house flat or bungalow and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
- 1.10 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar system in place at the time)
- 1.11 'Homes England' means the non-departmental public body responsible for creating thriving communities and funding new affordable homes in England or such other organisation as may from time to time take on those functions
- 1.12 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Rent dwelling

1.13 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit

1.13.1 had his only or principal home in the district of Babergh for a continuous period of not less than two (2) years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.13.2 to 1.13.4 inclusive.

1.13.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than two (2) years in the district of Babergh and wishes to be near that relative or

1.13.3 is employed in the district of Babergh on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for two (2) years

1.13.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can

provide satisfactory written evidence to the Council of his or her former residency in the district of Babergh for either (i) six (6) months out of the preceding twelve (12) months or (ii) three (3) years out of the preceding five (5) years and in either case such period of former residency shall end with the Availability Date

- 1.14 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA
- 1.15 'Nominee' means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the RP as best meeting the criteria for the category of Affordable Rent Dwelling in respect of which the RP is to select a person from the Nomination List and offer a Tenancy Agreement
- 1.16 "Planning Permission" means the full planning permission dated 10th August 2016 and granted by the Council under reference number B/16/00802/FUL.
- 1.17 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the RP the issue of a certificate of practical completion by that other party's surveyor

- 1.18 'Property' means the land and dwellings at Back Lane Copdock Suffolk shown edged red on the plan annexed
- 1.19 'Protected Tenant' means any Nominee who 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
- 1.20 '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 register kept by The Regulator of Social Housing under Chapter 3 of Part 2 of the 2008 Act and approved in writing by the District Council and for the avoidance of doubt this could include the District Council
- 1.21 'Service Level Agreement' or 'SLA' means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the Registered Provider (1) and the Council (2)
- 1.22 'Tenancy Agreement' means an assured 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
- 1.23 'Vacancy Notice' means a written notice (in a form to be agreed between the RP and given by the RP to the Council within five (5)

weeks from the date of this Deed) the function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rented Dwellings will be complete

1.24 'Void' means an Affordable Rent Dwelling which is vacant otherwise than as a result of the tenant having:

1.24.1 moved to other accommodation either by transfer or decant provided by the RP

1.24.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider

1.24.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere

1.25 'Void Notice' means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the Council of a void in respect of an Affordable Rent Dwelling

2 Enabling Provisions

This Deed is made pursuant to the Local Government Act 1972 Section 111, Section 1 of the Localism Act 2011 as amended and all other enabling powers

3 Procedure

The parties agree that the Service Level Agreement procedure to which they are signatories and the Local Connection Criteria shall apply to the nomination of persons in respect of the Affordable Housing Units

4 Initial Lets

In relation to the Initial Lets of any Affordable Housing Units the following provisions shall apply:

4.1.1 The RP shall give the Council not less than four (4) months' written notice of the date when all the Affordable Housing Units will be ready for occupation

4.1.2 The RP shall serve a Vacancy Notice upon the Council in respect of an Affordable Rent Dwelling not earlier than ten (10) weeks prior to an Affordable Rent Dwelling becoming available for occupation

5. Voids

Should any Affordable Rent Dwelling become a Void after the Initial Let or the RP has reasonable cause to believe it will become a Void then the Gateway to Homechoice SLA procedure shall apply in each case

6. Supplemental provisions relating to allocating Initial Lets and Voids

6.1 Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.13 of this Deed and thereafter subject to clause 6.2 of this Deed, preference must be given to the applicant/s who have the highest housing need according to the Council's current allocations policy

6.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities or in need of level access then any such dwelling may be first offered to a person or persons with disabilities or level access needs who require such accommodation even where such person(s) have a lesser local connection under clause 1.13 of this deed than someone who does not have disabilities or level access need

7. RP covenants

The RP covenants with the Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies

- 7.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units
- 7.2 To ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider
- 7.3 To construct the Affordable Housing Units in accordance with Homes England requirements

8. Alteration of lists

- 8.1 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

9. 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

10. Transfer to other Registered Provider

The RP shall use reasonable endeavours to 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 deed mutatis mutandis with the Council and Gateway to Homechoice simultaneously on completing the transfer of the Property

11 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

12 Agreements and declarations

The parties agree:

- 12.1 Nothing in this Deed fetters or restricts the exercise by the Council of any of its powers
- 12.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33
- 12.3 From the date of Practical Completion the Affordable Housing Units shall be let in accordance with the terms of this Deed save that the obligations and restrictions contained in this Deed shall not be binding on:
 - 12.3.1 any Protected Tenant or any mortgagee or Chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and Chargees; or
 - 12.3.2 any chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duties; or
 - 12.3.3 any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them.

12.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give not less than two (2) months' prior notice to the Council of its intention to dispose and:

12.4.1 in the event that the Council responds within one (1) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee

12.4.2 if the Council does not serve its response to the notice within the said period of one (1) month contained in clause 12.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this Deed.

12.4.3 if the Council or any other person cannot within two (2) months of the date of service of its response under clause 12.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 12.4 the Chargee shall be entitled to dispose free of the restrictions set out in this deed PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

AS WITNESS whereof the parties have executed this instrument as a Deed hereto the day and year first above written

Signatories:

District Council

Registered Provider