

**THIS DEED OF NOMINATION RIGHTS** is made the \_\_\_\_\_ day of  
2019

**BETWEEN:**

- (1) [ **x** ] whose registered  
address is at [ **x** ]  
[ ]('the RP') and
- (2) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 1 Russell  
Road Ipswich Suffolk ('the Council')

**1. Definitions**

In this Deed:

- 1.1 'Affordable Housing' means subsidised housing that will be available to persons who cannot afford to rent housing generally available on the open market
- 1.2 'Affordable Housing Units' means the forty five (45) Dwellings all of which shall be Affordable Housing to be provided on the Property of which twelve (12) dwellings shall be Shared Ownership and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and thirty three (33) Dwellings shall be Rental Dwellings to be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to this deed of nomination rights as varied from time to time and Affordable Housing Units shall be construed accordingly.

- 1.3 'Affordable Rent' means housing 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
- 1.4 'Chargee' means any mortgagee or chargee of the RP or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
- 1.5 'Chargee's Duties' means the tasks and duties set out in Clause 10.4 of this deed.
- 1.6 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings system
- 1.7 "the Service Level Agreement" means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the RP and Others (1) and the Council and Others (2)
- 1.8 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit
- 1.9 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit
  - 1.9.1 had his only or principal home in the district of Mid Suffolk 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
  - 1.9.2 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 Mid Suffolk and wishes to be near that relative or
  - 1.9.3 is employed in the district of Mid Suffolk 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

- 1.9.4 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 Mid Suffolk for either (i) six (6) months out of the preceding twelve (12) months or (ii) three (3) years out of the preceding five years and in either case such period of former residency shall end with the Availability Date
- 1.10 ‘Nomination List’ means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA
- 1.11 ‘Nominee’ means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the RP is to select a person from the Nomination List and offer a Tenancy Agreement
- 1.12 ‘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
- 1.13 ‘Property’ means the land and dwellings at land adjacent Bramford Playing Fields, Bramford, The Street IP8 4DU Suffolk shown edged red on the plan annexed
- 1.14 ‘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
- 1.15 ‘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 Homes and Communities Agency under Chapter III of that Act
- 1.16 ‘Shared Ownership Dwelling’ means an Affordable Dwelling to be let on a Shared Ownership Lease in accordance with the terms as set

out in Homes England's capital funding guide or any other such guidance as shall replace it

1.17 'Shared Ownership Lease' means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby up to 75% of the Open Market Value on first purchase of the legal and equitable interest in the Affordable Dwelling is paid by the tenant 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 tenant to acquire up to 80% of the legal and equitable interest in the Affordable Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time

1.18 'Service Level Agreement' 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 and Others (1) and the District Council and Others

1.19 '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

- 1.20 '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 Housing Units will be complete
- 1.2 'Void' means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:
- 1.18.1 moved to other accommodation either by transfer or decant provided by the RP
  - 1.18.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider
  - 1.18.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere
- 1.22 '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

## **2 Enabling Provisions**

This Deed is made pursuant to the Local Government Act 1972 Section 111 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

### **3.1 Initial lets**

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

3.1.1 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

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

### **3.2 Voids**

Should any 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 the Gateway to Homechoice SLA procedure shall apply

## **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 Affordable Housing Units the Local Connection Criteria set out in clause 1.9 of this Deed and thereafter subject to clause 4.2 of this Deed preference must be given to the applicant/s who have the highest housing need according to Mid Suffolk District Council's current allocations policy

4.2 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 1.9 of this Deed than someone who does not have disabilities or level access need

4.3 Properties which are Affordable Housing Units and subject to Local Connection Criteria may be under-occupied by up to one bedroom except that two bedroom houses will not be let to a single person unless there are no other suitable applications. Where under-occupation is allowed the Local Connection Criteria will be applied to

these applicants as if they were fully occupying the Affordable Housing Units and the provisions of clause 4.1 shall apply.

**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 let on the basis of a Tenancy Agreement at an Affordable Rent or as Low Cost Home Ownership 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 the Homes and Community Agency's ("HCA") Design and Quality Standards.

**6. Alteration of lists**

- 6.1 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

**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 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 the Homes and Communities Agency 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

## **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 let 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 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
  - 10.3.2 any Chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
  - 10.3.3 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.

10.4 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:

10.4.1 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

10.4.2 if the Council does not serve its response to the notice within the said period of one (1) month contained in clause 10.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this deed.

10.4.3 if the Council or any other person cannot within two (2) months of the date of service of its response under clause 10.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 10.4 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