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**Fifth Schedule**

**DRAFT  
DEED OF NOMINATION RIGHTS**

**BETWEEN:**

(1)

**MID SUFFOLK DISTRICT COUNCIL (2)**

Relating to

Seven affordable rented dwellings at Priory Road Fressingfield

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**DRAFT**

**THIS DEED OF NOMINATION RIGHTS**

is made the                                  day of    2024

**BETWEEN:**

- (1) **XXXXXXX** whose registered address is **XXXXXXXXXXXXXXXXXXXX**  
(‘the RP’) and
  
- (2) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 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 2021 (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 seven (7) dwellings which shall be Affordable Rent Dwellings (unless otherwise agreed by the Council as part of the Affordable Housing Scheme) and 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 and Affordable Housing Units shall be construed accordingly.

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- 1.3 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable
- 1.4 '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 and may be adjusted over time, in accordance with the Government's policy for Affordable Rents.
- 1.5 'Allocations Policy' means the policy adopted by the Council which governs households that are eligible to occupy Affordable Housing in line with the relevant statutory duties.
- 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 12.3 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

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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 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

1.11 ‘Initial Let’ means the first tenancy of such newly constructed and previously unoccupied Affordable Rent dwelling

1.12. ‘Local Connection Criteria’ means an individual who immediately before taking up occupation of an Affordable Housing Unit

1.12.1 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 1.12.2 to 1.12.4 inclusive.

1.12.2 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

1.12.3 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

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1.12.4 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 (5) years and in either case such period of former residency shall end with the Availability Date

1.13 ‘Mutual Exchange’ means the procedure by which a tenant may exchange their house with another council or housing association tenant

1.14 ‘Nomination List’ means the Gateway to Homechoice Shortlist 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 ‘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

1.17 ‘Property’ means the seven dwellings at Priory Road Fressingfield Suffolk

1.18 ‘Protected Tenant’ means any Nominee who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any

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statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

- 1.19 '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.
- 1.20 '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)
- 1.21 '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
- 1.22 '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
- 1.23 'Void' means an Affordable Rent Dwelling which is vacant otherwise than as a result of the tenant having:
- 1.23.1 moved to other accommodation either by transfer or decant provided by the RP
  - 1.23.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider

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

1.24 '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**

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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 (2) 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 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 1.9 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 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

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



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**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 Providers**

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:

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- 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 or purchased 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 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.
  - 12.3.3 any 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 Rent Dwellings or any persons or bodies deriving title through such mortgagee or Chargee or Receiver PROVIDED THAT:-
    - 12.3.3.1 such Chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Rent Dwellings and shall have used reasonable endeavours over a period of three

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months from the date of the written notice to complete a disposal of the Affordable Rent 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

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

### **13. Mutual Exchanges**

The requirements of this Deed shall apply to all requests for Mutual Exchanges

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

The COMMON SEAL of )  
**MID SUFFOLK DISTRICT COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory

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EXECUTED as a Deed by )  
Affixing the Common seal of )  
 )  
in the presence of: )

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