

## APPENDIX 1

THIS DEED OF AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2022

BETWEEN THE DISTRICT COUNCIL OF TANDRIDGE of COUNCIL OFFICES, STATION ROAD EAST, OXTED, SURREY RH8 0BT (“the Council”) of the first part and Chartwell Land & New Homes Ltd (Co Reg No 07271557) of Unit 5a Fircroft Business Centre, Fircroft Way, Edenbridge, Kent, TN8 6EN (“the Owner”) of the second part and Barclays Bank PLC (Co Reg No 01026167) whose address for service is Lending Operations, PO Box 299, Birmingham, B1 3PF (“the Mortgagee”) of the third part

### WHEREAS

- (1) THE Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended (“the Act”) for the area within which the Land hereinafter referred to is situated.
- (2) THE Owner owns the freehold interest in the land at Oldencraig, Tandridge Lane, Lingfield, Surrey RH7 6LL edged red on the plan at Annex 1 hereto and registered at HM Land Registry with title absolute under title numbers SY630426 and (amongst other land) SY851022 (the “Land”).
- (3) The Mortgagee has a legal charge over the Land following the grant of a security on 14<sup>th</sup> January 2022.
- (4) By a Deed of Agreement under Section 106 of the Act made on the 9<sup>th</sup> day of June 2020 between the Council and the Owner (the “Original Agreement”), the Owner covenanted to observe certain covenants restrictions and obligations regulating the use of the Land; and on the same day planning permission was granted under reference TA/2019/330 by the Council to develop the Land by the Owner (the “Original Permission”).
- (5) The Original Agreement was varied in support of an application given application number TA/2021/75 on 14<sup>th</sup> July 2021 (“2021 Variation”).
- (6) Planning permission TA/2021/75 has been implemented and the Council, the Owner and the Mortgagee have now agreed to the further variation of the 2021 Variation in the manner set out in this deed.

NOW THIS AGREEMENT WITNESSETH as follows:

- (1) This Agreement is made pursuant to Sections 106 and 106A of the Act.

- (2) This Agreement shall come into effect upon the date of its execution.
- (3) It is hereby agreed that the expressions “the Council” and “the Owner” and “the Mortgagee” shall include their respective successors in title and assigns and as regards the Council shall include any Local Authority successor.
- (4) The Owner hereby covenants with the Council to pay on demand the Council’s reasonable costs of and incidental to the preparation and completion of this Agreement.
- (5) This Agreement shall be registrable as a Local Land Charge.
- (6) Variation of the Original Agreement as varied by the 2021 Variation.**

The Council and the Owner and the Mortgagee agree that the Original Agreement as varied by the 2021 Variation shall be further varied as follows:

- (6.1) The Owner covenants with the Council in the terms set out in Schedule 1 with the intent that the covenants given in respect of each Discounted Market Sales Unit shall apply to and be capable of enforcement at all times against that Discounted Open Market Sales Unit only and not against any other land.
- (6.2) The Council covenants with the Owner in the terms set out in Schedule 2 with the intent that the covenants given in respect of each Discounted Market Sales Unit shall apply to and be capable of enforcement at all times against that Discounted Open Market Sales Unit only and not against any other land.
- (6.3) The Council and the Owner agree that the treatment of affordable housing in the development of the Land is set out comprehensively in this Agreement and consequently the covenants contained in Schedule 1 and Schedule 2 of the Original Agreement as varied by the 2021 Variation shall be of no further effect: and that the affordable housing obligations necessary to make the development comprised in planning permission TA/2021/75 acceptable are enforceable only against that part of the Land defined as the Affordable Housing Land and not otherwise against the Land.
- (7) The Mortgagee consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed. Save that the Mortgagee shall not be personally liable for any breach of obligation contained in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any

part of the Land in which it has an interest in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

- (8) Save as aforesaid the provisions of the Original Agreement as varied by the 2021 Variation shall continue to have effect.

## **Schedule 1**

In this Schedule, the following terms shall have the following meanings (and otherwise the terms set out in the Original Agreement shall apply):

**“Affordable Housing”** means housing for sale to households whose needs are not met by the market and which:-

- a. meet the needs of eligible households, who the Local Planning Authority could reasonably expect to occupy this Development having regard to the Discounted Market Sales Unit Allocation Mechanism; and
- b. include provision for ensuring the Discounted Market Sales Units remain at a discount for future eligible households;

**“Affordable Housing Land”** means the land edged blue on Plan 3 attached to the 2021 Variation and reattached on the following page for reference;

**“Chargee”** means a mortgagee or chargee of the registered proprietor of a Discounted Open Market Sales Unit (or any receiver including an administrative receiver) appointed by such mortgagee or chargee pursuant to either the Law of Property Act 1925 or appointed under security documentation or any other person appointed under any security documentation to enable such mortgagee or chargee to release its security;

**“Discounted Market Home Owner”** means a person who is the registered proprietor of a Discounted Market Sales Unit according to the Discounted Market Sales Unit Allocation Mechanism;

**“Discounted Market Sales Unit Allocation Mechanism”** means the document at Annex 1 setting out with regard to local incomes and local house prices the eligibility criteria which a Discounted Market Home Owner must satisfy in order to purchase a Discounted Open Market Sales Unit;

**“Discounted Market Sales Units”** means the four Dwellings to be provided on the Affordable Housing Land together with associated car parking spaces and gardens / amenity land as part of the Development pursuant to the Planning Permission or any one of those Dwellings as the context requires and which are to be disposed of to Discounted

Market Home Owners at not less than the Discounted Value subject to the terms of this Deed and the terms "DMS Unit" and "DMS" shall be construed accordingly;

**"Discounted Value"** means in the case of a house a price 25% less than the Open Market Value and in the case of a flat a price 30% less than the Open Market Value;

**"Disposal"** means a transfer of a Discounted Market Sales Unit and all like uses of "Disposal" shall be construed accordingly;

**"Open Market Units"** means those Dwellings which are not Discounted Market Sales Units, and all like uses of "Open Market Units" shall be construed accordingly;

**"Open Market Value"** means the price which the whole interest in a Discounted Market Sales Unit could be expected to command if sold by a willing vendor to a willing purchaser on the open market for residential purposes;

**"Responsible Officer for Housing"** means the Council's head of housing or such other person as the Council's Chief Executive may nominate in his or her place from time to time.

### **1. Affordable Housing**

- 1.1. To provide the Discounted Market Sales Units in accordance with this Deed.

### **2. Provision of Information**

- 2.1. To keep the Responsible Officer for Housing reasonably informed of key progress of negotiations to transfer the Discounted Market Sales Units prior to their First Occupation and to promptly provide the Responsible Officer for Housing with such information and supporting evidence as he or she may reasonably request.

### **3. Provisions relating to Affordable housing**

- 3.1. Not other than with the consent in writing of the Council to transfer the Discounted Market Sales Units except:
  - i. at a price reflecting the Discounted Value; and

- ii. on terms ensuring that the Discounted Market Sales Unit shall remain as a Discounted Market Sales Unit for future eligible households in perpetuity.

#### **4. Disposals of Discounted Open Market Sales Units**

- 4.1. Not other than with the consent in writing of the Council to Dispose of a Discounted Market Sales Unit except to a person meeting the eligibility criteria set out in the Discounted Market Sales Unit Allocation Mechanism.
- 4.2. Not other than with the consent in writing of the Council to Dispose of a Discounted Market Sales Unit unless the registered proprietor of that Discounted Market Sales Unit has provided the Council with not less than 10 days' written notice of their intention to Dispose of a Discounted Market Sales Unit which shall comprise:
  - 4.2.1. written notice of the agreed sale price which shall be no greater than the Discounted Value;
  - 4.2.2. a certificate signed by a member of the Royal Institute of Chartered Surveyors (RICS) attesting to the red book assessment of: (1) the Open Market Value of the Discounted Market Sales Unit (on the basis that it was an Open Market Unit); and (2) the Discounted Value of the same.
- 4.3. Not to Dispose of a Discounted Market Sales Unit unless on Disposal a restriction is entered (or subsists as the context requires) on the title register of the Discounted Open Market Sales Unit in the following form or in words to similar effect:

*“No disposition of the registered estate is to be registered without a certificate signed by Tandridge District Council that the Discounted Open Market Sales Unit provisions of the Section 106 Agreement dated [                    ] have been complied with.”*

#### **5. Chargee Clause**

- 5.1. Prior to seeking to dispose of a Discounted Open Market Sales Unit pursuant to any default under the terms of its mortgage or charge (the

“Charged Property”) the Chargee shall serve a prior written notice including evidence and written confirmation of the default (the “Chargee’s Notice”) to a Council of its intention to Dispose;

5.1.1. the Chargee shall use reasonable endeavours over a period of three months from the date of service of the Chargee’s notice on the Council to complete a Disposal of the Charged Property in such a way so as to safeguard it as a Discounted Open Market Sales Unit for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation relating to the Charged Property including all accrued principal monies and interest due and reasonable costs relating to the said security documentation;

5.1.2. if such Disposal has not completed within the three month period referred to in 5.1.1 above (or such longer period as the Chargee and the Council acting reasonably may agree) the Chargee shall be entitled to dispose of the Charged Property free from the Affordable Housing provisions contained in this Deed which provisions shall determine absolutely; and

5.1.3. all parties shall engage and cooperate with each other in good faith to safeguard the Discounted Open Market Units in accordance with the Chargee’s duty.

5.2. In the event of a default under any security referred to in paragraph 5.1 or in any other circumstances warranting the intervention of any statutory body nothing in this Deed shall prevent the transfer of the Discounted Open Market Units or any one or more of them (as the case may be) to another Discounted Market Home Owner or to the Council subject to the Discounted Open Market Units remaining bound by the provisions of this Agreement.

## **Schedule 2**

In this Schedule, the terms set out in Schedule 1 of this Agreement shall apply save to the extent that Schedule 1 is silent in which case the terms set out in the Original Agreement shall apply.

1. To issue the consent in writing necessary to enable registration of a Disposal on application by an Owner from time to time of a Discounted Market Sales Unit subject to receipt of its reasonable costs.
2. To supply an account of its reasonable costs on request and at no charge to enable an Owner from time to time to seek its consent in order to enable registration of a Disposal.



# Annex 1

## Discounted Market Sales Unit Allocation Mechanism

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### DISCOUNTED MARKET SALE – ALLOCATION MECHANISM

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#### INTERPRETATION

The following words and expressions shall mean as follows:-

Armed Services Member	Means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
Availability Notice	means written notification to the Council by the Owner of their intention to sell the property
Compliance Certificate	A certificate of compliance issued by the Council in the form that it thinks appropriate confirming that the requirements of Paragraph 7(a) and 7(b) of this Annex of this Agreement have been complied with to be issued within twenty-eight (28) days of receiving appropriate evidence.
Eligibility Criteria	means criteria which are met if <ul style="list-style-type: none"><li>(a) The purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</li><li>(b) The purchaser's annual gross income (or in the case of a joint purchase the joint purchasers' joint annual gross income) does not exceed the Income Cap and</li><li>(c) The purchaser meets the Local Connection Criteria (or in the case of a joint purchase at</li></ul>

	<p>least one of the joint purchasers meets the Local Connection Criteria) for the scheme OR</p> <p>(d) The purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member</p> <p>NB. Additional priority will be given to applicants who meet the criteria at a-c and are currently secure tenants of the Council and the purchase of a DMS home will allow their current property to be advertised as available to households on the housing register.</p>
First Time Buyer	Means a First Time Buyer as defined by paragraph 6 of the Schedule of 6ZA to the Finance Act 2003 (as may be amended from time to time) unless otherwise agreed in writing by the Council
Local Connection Criteria	<p>Means criteria which are set out in the S106 agreement to which this Allocation Mechanism is appended OR, where none exists the criteria which are met by a person who satisfies one or more of the below</p> <p>(i) Is ordinarily resident within [*] and has been for a continuous period of not less than 12 consecutive months prior to exchange of contracts for the DMS home; and/or</p> <p>(ii) Who has a close family association with [*] by reason of a parent or child who is ordinarily resident within [*] and/or</p> <p>(iii) Who is permanently employed or has a confirmed job offer of permanent employment within [*]</p>
Maximum Sale Price	means the maximum price that the property can be marketed for and subsequently sold for as set by the Council upon receipt of the Availability Notice and valuation report.
Income Cap	means £80,000 or other such sum as may be

	published by the Secretary of State for the purpose of eligibility for low cost home ownership products and is in force at the time of the relevant disposal
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1. The property can be sold at any time, but the Owner must notify the Council in writing of their intention to sell the affordable home. This is known as an Availability Notice and should be sent to the Council's main offices or emailed to XXXXXX along with a valuation report.
  
2. Prior to marketing a discounted market sale property, the Owner will obtain a full market valuation from an independent RICS qualified surveyor and submit it to the Council for approval. The valuation report must
  - Include the date the valuation took place
  - State that the valuer is aware that the property is a DMS unit
  - Confirm the report is valid for a minimum period of 3 months
  - Include a clause that states "Tandridge District Council can rely upon the contents of this report"
  - Include comparable evidence, including the square footage of the properties, sale price and date of sale
  
3. The valuation is to be updated as necessary to ensure that it is not more than 3 months old at the time the sale is agreed.
  
4. Upon receipt of the Availability Notice and valuation report the Maximum Sale Price of the property will be calculated by the Council based on the full market valuation as described above, less the % discount that is secured on the property in accordance with the table below:

Plot Number	Postal address	Postcode	% Discount

5. The property cannot be sold at any time for more than the confirmed Maximum Sale Price.

6. Once the Maximum Sale Price is confirmed the Owner can advertise the property using their chosen method.
7. No DMS shall be disposed of (whether on a first or subsequent sale) unless and until the Council has been provided with evidence that:
  - a) the intended purchaser meets the Eligibility Criteria and has been approved by the Council
  - b) the dwelling is being disposed of as DMS at no greater than the Maximum Sale Price
  - c) the Council has issued a Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty-eight (28) days of being provided with evidence to satisfy it that the requirements at a) and b) have been met
8. The property must be sold with the same percentage discount that was received when purchasing the property.
9. The Owner covenants to comply with any S106 agreement relating to occupancy restrictions, as well as prohibiting the property from being used as a second home, sub-let or rented out or any other use than the permanent residence of the Owner.
10. Prospective buyers must be eligible for affordable housing and satisfy the following requirements a) resident or employed in Tandridge District or have a close family member who resides in the District
11. Where the property is a Rural Exception Scheme, eligible purchasers will need to demonstrate to the Council's satisfaction that they have a connection to the Parish or adjoining Parishes in accordance with the planning approval. This is usually through a live, work or family connection.
12. Where there is more than one eligible household the Council will allocate the property according to the following priority criteria:
  - Housing need for the type and size of property available
  - Connection to the town/village or parish where the available property is located
13. The Owner will be responsible for the Council's legal costs when selling the property.

IN WITNESS whereof this Agreement has been executed in manner hereinafter appearing and delivered the day and year first before written

THE COMMON SEAL of

**THE DISTRICT COUNCIL OF TANDRIDGE**

was hereto affixed in the

presence of:-

EXECUTED AS A DEED by

**CHARTWELL LAND & NEWS HOMES LIMITED**

acting by a director

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*Director*

In the presence of:-

Signature of witness:

Name (in CAPITAL LETTERS):

Address:

[BANK ATTESTATION CLAUSE –

BARCLAYS TO DETAIL CORRECT ATTESTATION]