

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

Cheshire East Borough Council

And

The Crown Estate Commissioners

Relating to Land West of Manchester Road, Knutsford, Cheshire

Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country Planning Act 1990
relating to land West of Manchester Road, Knutsford, Cheshire

Dated

7th

May

2020

DATE 7th May 2020

PARTIES:

- (1) **CHESHIRE EAST BOROUGH COUNCIL** of Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ ("Council")
- (2) **THE CROWN ESTATE COMMISSIONERS**, 1 St James's Market, London SW1Y 4AH ("Owner ")

1 INTRODUCTION

- 1.1 The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 1.2 The Council is the highway authority for the purposes of the 1980 Act for the area in which the Site is situated.
- 1.3 The Council is the education authority for the area in which the Site is situated.
- 1.4 The freehold interest in the land edged red on Plan 1 forms part of The Crown Estate and The Crown Estate Commissioners are charged and empowered by The Crown Estate Act 1961 to enter into this Deed to bind their interest in the Site.
- 1.5 The Owner has submitted the Application to the Council and the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed, having regard to the provisions of the development plan and the planning considerations affecting the Site.
- 1.6 The Council resolved on 24th April 2019 at its meeting of its Strategic Planning Board to approve the Application and grant Planning Permission subject to the prior completion of this Deed.
- 1.7 The Parties to this Deed have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No.948 (to the extent relevant to the obligations in this Agreement) and the advice set out at paragraph 204 of the NPPF and agree that the planning obligations it contains are:
 - (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.

NOW THIS DEED WITNESSES AS FOLLOWS:

For the purposes of this Deed the following expressions shall have the following meanings

CEBC S106 Agreement

"1980 Act"	means The Highways Act 1980
"1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"Application"	means the application for outline planning permission registered by the Council on 02-Jan-2019 and allocated reference number 19/0032M
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out and "Commence Development" shall be construed accordingly.
"Commercial Units"	The units built on Site with a B1 use pursuant to the Planning Permission and reference to "Commercial Unit" shall mean any one of the units with a B1 use
"Development"	the Development of the Site as set out in the Application.
"Development Manager"	the Council's senior development management officer or any other officer to whom they delegate some or all of their functions under this Deed
"Dwellings"	The housing built on Site pursuant to the Planning Permission and reference to "Dwelling" shall mean any one of the houses
"Health Contribution"	means the sum of £60,480.00 (Sixty Thousand Four Hundred and Eighty Pounds) to be used towards additional GP provision in Knutsford
"Index"	means all Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation.
"Interest"	means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time.
"NPPF"	means the National Planning Policy Framework published in February 2019 or such policy document as supersedes or replaces it;
"Occupation" and "Occupied" and "Occupier"	means occupation for the purposes permitted by the Planning Permission.
"Parties"	means the parties to this Agreement and the word "Party" shall mean any one of them
"Phase"	means a part of the Site identified as a construction phase on the Phasing Plan
"Phasing Plan"	means a plan to be approved by the Development Manager before Commencement of Development identifying the number, location, extent and programming of construction phases of the whole Site and showing the number of

CEBC S106 Agreement

houses to be provided in each Phase and the location and provision of all of the Open Space serving the whole Site

"Plan 1"

means the plan attached to this Deed and marked Plan 1.

"Planning Permission"

means the outline planning permission subject to conditions granted by the Council pursuant to the Application

"Reserved Matters"

means has the same meaning as in The Town and Country Planning (Development Management Procedure)(England) Order 2010;

"S106 Monitoring Officer"

means the Council's S106 Monitoring Officer for the time being or their successor post or any other officer to whom they delegate their S106 monitoring functions

"Site"

means the land edged red on Plan 1 comprising the land registered at HM Land Registry under title number CH561581 (freehold) being part of the Tabley Estate and known as the land West of Manchester Road Knutsford, Cheshire against which this Deed may be enforced.

"Travel Plan Monitoring Contribution"

means the sum of £5,000 (Five Thousand Pounds) to be used by the Council towards the implementation and monitoring of the Travel Plan;

"Travel Plan"

means the travel plan for the Development secured by the Planning Permission and required to be submitted at the Reserved Matters stage;

Affordable Housing Definitions

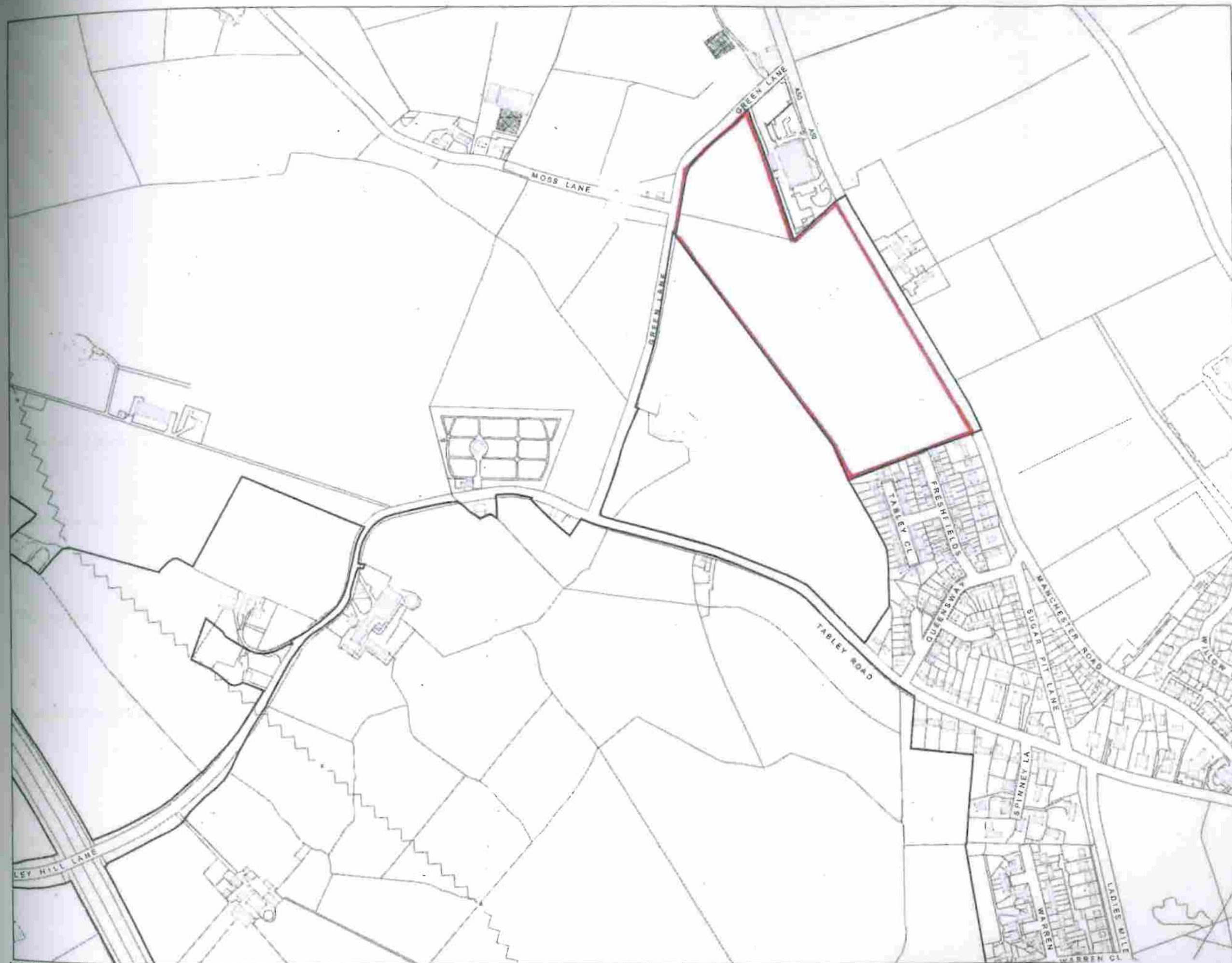
"Affordable Housing"

means Social Rented Housing or Affordable Rented Housing and Intermediate Housing as defined in the NPPF or its successor policy guidance provided to eligible households whose needs are not met by the market, determined with regard to local incomes and local house prices, and which includes provision for the housing to be retained at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision and "Affordable House" shall be construed accordingly

"Affordable Housing Scheme"

means a scheme which specifies in relation to the whole of the Site:

- (a) the Agreed Mix;
- (b) the timing, location and distribution of the Affordable Housing within the Site, ensuring that the Affordable



The status of this drawing must be ascertained.
 Revision: 1 Date: 18.11.18
 Description: Site Boundary updated

- Site Boundary (10.52Ha)
- Other Land within Same Ownership



PLAN 1

[Handwritten signature]

Project:
 Land West of Manchester Road
 Knutsford
 Drawing Title:
 Site Boundary Plan

Date: 15.11.18	Scale: 1:2,500 (A1)	Drawn By: SJS	Check By: SJS
Project No: 20514	Drawing No: R/G-M-01	Author: SJS	Version: 1

CEBC S106 Agreement

Housing is pepper-potted throughout the Site and not segregated from the Open Market Housing;

- (c) details of how the proposed design and construction of the Affordable Housing will ensure that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from the Open Market Housing of similar size within the Development;
- (d) if Shared Equity Sale Houses are to be delivered, the detailed terms of the Shared Equity Sale Scheme, together with the legal mechanisms by which it is to be secured and marketed;
- (e) if Discounted Sale Houses are to be delivered the detailed terms of the Resale Covenant Scheme, together with the legal mechanisms by which it is to be secured and marketed .

and which may be amended from time to time with the written approval of the HM

"Affordable Housing Units"

means the 30% of the Dwellings identified pursuant to the Affordable Housing Scheme to be constructed on the Site pursuant to the Planning Permission in accordance with the Affordable Housing Scheme approved by the Council;

"Affordable Rented Housing"

means Affordable Housing to be let by the RPSH to households whose needs are not adequately served by the commercial housing market at no more than 80% of the local Market Rent (including service charges where applicable);

"Agreed Mix"

means subject to and in accordance with Paragraph 1.3 of Schedule 1, the number size tenure and mix of Affordable Housing Units approved by the Council in writing and which shall be determined having regard to the identified housing needs within the Council's administrative area;

"Cheshire Homechoice Scheme"

means a partnership scheme between the Council and RPSH in the area of the Council that enables registration to the scheme by those in Housing Need and maintains a list of those in Housing Need and how urgently they require accommodation and any successor scheme or process for a similar purpose as approved by the Council

"Completed"

means constructed and fitted out ready for Occupation in accordance with the standards approved in the Affordable Housing Scheme;

CEBC S106 Agreement

"Council's Legal Mortgage"

means a fixed legal charge ranking behind a purchaser's first legal charge (if any), upon terms for repayment and redemption (restricting repayment until a period of five years has elapsed from the date of the mortgage) in a form approved by HM substantially in the form attached in the Fifth Schedule;

"Discounted Sale Houses"

means Affordable Housing identified in the Affordable Housing Scheme which is to be sold to Qualifying Persons at the Discounted Sale Price in accordance with the Resale Covenant Scheme which the Owners shall ensure binds the Discounted Sale Houses in perpetuity;

"Discounted Sale Price"

means no more than seventy per cent (70%) of Open Market Value

"Disposal"

means the sale, transfer, option, gift exchange, declaration of trust, assignment, lease and including a contract for any such disposal and "Disposals" "Dispose" and "Disposed of" shall be construed accordingly;

"Homes England"

means the non-departmental government body that funds Registered Providers of Social Housing or such other body as may replace it and is recognised as such by the Government;

"HM"

means the Council's senior housing manager for the time being or any other officer to whom they delegate some or all of their functions

"Housing Need"

means living in unsuitable housing conditions and/or being unable to afford suitable housing at open market prices either to rent or to buy

"Intermediate Housing"

means homes for sale or rent provided at a cost above Social Rented Housing but below market levels which for the avoidance of doubt may include Shared Ownership Housing, Shared Equity Sale House, Discounted Sale Houses or such other similar form of intermediate Affordable Housing approved in writing by the Council;

"Local Connection"

means that a person:

- currently lives or has lived within the administrative area of the Council and has done so for at least 2 consecutive years; or
- has immediate family (parent, sibling, child or adoptive parent) who are currently living in the administrative area of the Council and who has done so for at least 5 years; or

CEBC S106 Agreement

- has a permanent contract of employment in the administrative area of the Council; or
- is a member of the armed forces or former service personnel (within 5 years of their discharge) or a bereaved spouse or civil partner of a member of the armed forces leaving services family accommodation following the death of their spouse or partner, or a serving or former member of the reserve forces who needs to move because of a serious injury, medical condition or disability sustained as a result of such membership; or
- has other significant connections to the administrative area of the Council such that in the reasonable opinion of the HM, they should be eligible for Affordable Housing within the administrative area of the Council;

"Market Rent"

means the estimated amount for which the relevant Dwelling should lease (let) on the date of valuation between a willing lessor and willing lessee on appropriate lease terms in an arms length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion

"Nominations Agreement"

means an agreement between the Council and a RPSH establishing a process for nominating Qualifying Persons as tenants for a percentage of the Affordable Rented Housing substantially in the form appended at the Third Schedule;

"Open Market Housing"

means Dwellings constructed on the Site pursuant to the Planning Permission which are not identified as Affordable Housing Units in the Affordable Housing Scheme;

"Open Market Value"

means

- (a) in relation to Social Rented Housing Affordable Rented Housing and Shared Ownership Housing such open market value as is agreed between the Owner and the Registered Provider;
- (b) in relation to the Discounted Sale Houses and the Shared Equity Sale Houses such open market value as is agreed between the Owner and HM;

in each case assessed in general accordance with the Appraisal & Valuation Manual of the Royal Institute of Chartered Surveyors as amended from time to time;

"Qualifying Persons"	means persons approved by the HM in writing who have demonstrated that they are In Housing Need, will Occupy Affordable Housing as a sole or main residence and who have a Local/Community Connection and "Qualifying Person" shall be construed accordingly;
"Registered Provider of Social Housing" and "RPSH"	means a registered provider of social housing within the meaning of Section 80(2) of Part 2 of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England;
"Resale Covenant Scheme"	means a scheme approved in writing by HM which restricts the sale price of the Discounted Sale Houses to the Discounted Sale Price and restricts owner-occupation to Qualifying Persons and the terms upon which such occupation and /or sale or transfer of such Dwellings may take place within the parameters set out in the First Schedule such scheme to be substantially in the form set out at the Fourth Schedule with such modifications and amendments as may be agreed in writing by the HM
"Serviced Condition"	means in relation to the land to be used for Affordable Housing the remediation of the land to a standard fit for its end use and the provision of roads, sewers, gas, wheelchair access, electricity and telecommunications to the boundary of the said land in accordance with a scheme which has first been submitted to and approved by the Council
"Shared Equity Sale Houses"	means those Affordable Housing identified in the Affordable Housing Scheme which are to be sold subject to the Shared Equity Sale Scheme to Qualifying Persons at no more than 70% of the Open Market Value with the remaining percentage of the Open Market Value(30% or the proportionately greater percentage if the relevant Dwelling is sold at less than 70% of the Open Market Value)secured by the Council's Legal Mortgage in accordance with the Shared Equity Sale Scheme approved by the Council
"Shared Equity Sale Scheme"	means a scheme approved in writing by the HM which controls the permitted sale price of the Shared Equity Sale Houses, the categories of persons who are eligible to own and/or occupy the Shared Equity Sale Houses and the terms upon which such occupation and/or Disposal of such houses may take place and which arranges for a 30% affordable subsidy to secured and redeemed in accordance with the Council's Legal Mortgage, within the parameters set out in the First Schedule and on such legally binding terms as the HM may reasonably require
"Shared Ownership Housing"	means Affordable Housing sold and leased by a RPSH on Shared Ownership Terms as HM may approve

"Shared Ownership Terms"

means terms of disposal contained in model shared ownership leases published by the HOMES ENGLAND from time to time whereby (i) a RPSH sells shares in the equity of a dwelling to an occupier who pays rent upon the remainder and (ii) Staircasing to 100% of the equity of the dwelling is allowed;

"Staircasing"

means the exercise by the owner-occupier of a Shared Ownership Housing of the right to purchase additional equity shares up to 100% of the entire interest in the dwelling after which the rent payable on any equity share retained by the RPSH shall be reduced proportionally

"Surplus Sale Proceeds"

means any sums received by a RPSH by way of Staircasing or exercise of a tenants right to acquire so far as such sale proceeds exceed:

1. all capital debt incurred by the RPSH in relation to the relevant dwelling including interest and costs thereon; and
- (b) all related costs in respect of the purchase and sale of the relevant dwelling or an equity share in the relevant dwelling

"Target Rent"

target rents for social rented housing (or its equivalent) as published from time to time by Homes England (or such other body as may replace Homes England, having responsibility for setting target rents for social housing);

"Transfer"

means the transfer of the freehold or grant of a lease for a term of at least 125 years unless otherwise agreed in writing with the Council and "Transferred" shall be construed accordingly;

Education Definitions

"BB104"

means the document described as Building Bulletin 104 and entitled "Area Guidelines for SEND and alternative provision" published by the Department for Education and the Education Funding Agency and dated December 2015 including any document which from time to time replaces in whole or in part that document

"Education Index"

means the BCIS (Building Cost Information Service) all in tender price index

"Local Factors"

means the factors which will be taken into account (in addition to the Special Education Needs Provision Factors by the Council in relation to the provision of additional and / or replacement educational facilities for children of school age namely the need for process involved in and outcome of any consultation which is necessary under the School

Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2013 and the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, the purchase or other acquisition of any necessary land and / or rights for the provision of such facilities, the need to obtain and the terms of any approval of the Secretary of State for Education under section 77 of the School Standards and Framework Act 1998, the need for and if necessary obtaining of any planning permission for such facilities and (where appropriate) the organisation of classrooms and other accommodation within the school(s) concerned and the ability of the Council to enforce the expansion of the school(s) concerned where any such school is its own admission authority.

<p>“Special Education Contribution”</p>	<p>Education Needs</p>	<p>means the sum of £45,500.00 (Forty Five Thousand Five Hundred Pounds) towards the costs for sufficient classroom(s) and/or additional or alternative accommodation having regard to the need for specialist educational facilities within the schools concerned in accordance with BB104 and associated ancillary building areas (including but not limited to hall, office, group room) plus any required external works such as (but not exclusively) playgrounds, playing fields and car parks for the accommodation of one pupil with an SEN need that can be expected to be generated (in accordance with BB103) by the Development such classroom or other facilities to be provided (at the sole discretion of the Council as the local education authority and having regard to the application of the Special Education Provision Factors and the Local Factors) in Knutsford, or at such other school catering for Special Educational Needs as may be being provided within ten years of the payment of the Education Contribution or in the event that the Council triggers the need for a new school.</p>
---	------------------------	---

<p>“Special Education Needs Provision Factors”</p>	<p>means the factors to be taken into account in respect of the provisions of buildings and/or facilities to accommodate children of Special Education Needs school age as set out in BB104 including the provision of net area and/or non-net area accommodation as described in BB104</p>
--	---

Highways Definitions

<p>“Highways Contribution”</p>	<p>The sum of £663,000.00 (Six Hundred and Sixty Three Thousand pounds) to be utilised for the Highways Works</p>
--------------------------------	---

<p>“Highways Index”</p>	<p>The Tender Price Index of Road Construction (Table 4) as published by the Office for National Statistics</p>
-------------------------	---

<p>“Highways Works”</p>	<p>Works for mitigating the traffic and transportation impacts of the Development through improvements to the Adams Hill and Hollow Lane Junctions, and towards the widening</p>
-------------------------	--

CEBC S106 Agreement

of the A50 along King Edward Road so as to remove the single lane and provide two lanes in each direction.

Open Space Definitions

"Certificate"	means a certificate containing a summary of the Expenditure and specifying the amount of the Estate Service Charge for any Financial Year.
"Estate Service Charge"	means an estate service charge forever charged on and issuing out of the Site and representing a fair and proper proportion of the Expenditure applicable to the particular Dwelling and payable annually to the Management Company in respect of its administration and of insuring and maintaining, repairing and as necessary renewing the Open Space in accordance with the Management Scheme
"Financial Year"	means each year ending on 31 st December or such other date as the Management Company shall determine
"Great Crested Newt District Level Licence"	means a Licence issued by Natural England in respect of the Site in accordance with the Conservation of Habitats and Species Regulations 2017 permitting acts, subject to licence conditions, including killing, injury, disturbance, capture and transport of Great Crested Newts, as well as damage and destruction of their breeding sites and resting places.
"Great Crested Newt Mitigation Scheme"	means a scheme of mitigation approved by the Council giving details of how the impact of the Development on any great crested newts on the Site will be mitigated offsite
"Indoor Recreation Contribution"	means the sum of £10,400.00 (Ten Thousand and Four Hundred Pounds) for the provision of additional/enhanced equipment at Knutsford Leisure Centre
"Local Area Play" "LAP"	means an unsupervised equipped play area containing at least 3 different fixed items of play equipment (including one multi unit) which are suitable for use by toddlers designed and laid out to meet relevant safety standards for play facilities (which shall be the appropriate European Standard).
"Locally Equipped Area for Play" "LEAP"	means an unsupervised equipped play area containing at least 5 different fixed items of play equipment (including one multi unit) which are suitable for use by children of early school age (aged 4-10 years old) designed and laid out to meet relevant safety standards for play facilities (which shall be the appropriate European Standard
"Management Company"	means a limited company with the purpose of managing the Open Space within the Development in accordance with the Management Scheme

“Management Scheme”

means a scheme for the future management and maintenance of the Open Space that identifies the maintenance requirements for the Open Space including all ongoing maintenance operations, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space to include hard and soft landscaping, surfacing materials, furniture, play equipment, refuse or other storage units, signs, lighting, boundary treatments, trees, shrubs and hedge plants and details of who is to undertake the ongoing future maintenance of the Open Space

“Open Space”

means the areas of open space within the Development adjacent to the Dwellings and identified within the Phasing Plan, and detailed in the Open Space Scheme to be provided by the Owner and including formal and informal recreation areas, the combined LEAP and LAP and free play / kick about amenity area, the Play Space, incidental green spaces around the Development outside of residential curtilage, pedestrian and cycle links, wildlife habitats, landscaping belts, water features and drainage areas

“Open Space Scheme”

means a scheme approved by the Development Manager in respect of each Phase detailing (i) the size location and type of Open Space (ii) details and specifications for works and materials showing how the Open Space will be graded, drained, landscaped, seeded, planted, laid out and provided fit for use by the public (iii) in relation to the combined LEAP and LAP and free play / kick about amenity area details of the design and layout of the play area, the construction specification, the safety surfacing, materials and play equipment, demonstrating that they meet relevant European safety and disability standards, together with details of fencing, seating for supervising adults and a buffer zone landscaped with low level planting, (iv) a specification of the construction method and materials to be used

“Open Space Index”

means all In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

“Play Space”

means adjacent free play/kick about amenity area adjacent to the LAP and LEAP to be provided by the Owner within the Site

“Recreation Open Space Facilities Commuted Sum”

means the sum of £1000.00 (One Thousand Pounds) per market dwelling and £500.00 (Five Hundred Pounds) per 1 or 2 bed market apartment, and the sum of £300.00 (Three Hundred Pounds) per 30 (thirty) square metres of Commercial Unit floor space approved, or part thereof, approved at Reserved Matters stage to be used to cover the deficiencies in the provision of Recreation Open Space

Facilities within the Development as identified by the Council the need for which arises directly from the Development

“Recreation Open Space Facilities Purposes”

means towards works of addition, improvement and enhancement to the recreation open space facilities together with all proper and reasonable professional fees and administrative expenses directly attributable thereto to the end and intent that the said monies shall be used towards additions, improvements and enhancements of Egerton Youth Club sports pitches and Knutsford Sports Club tennis and cricket facilities.

“Service Charge Payment Date”

the date of completion of the transfer of each Dwelling comprised in the Development and thereafter on 1st January in each year or such other date as may be set by the Management Company.

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 interchangeable 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 against each individually 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 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Any obligation, covenant, undertaking or agreement by any party to this Deed not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit, procure or allow the doing of that act or thing.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and (in relation to Affordable Housing matters) Section 609 of the Housing Act 1985 with the intention that it shall bind the Parties interests in the Site.
- 3.2 The covenants, restrictions and requirements imposed upon the Parties under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Parties and to the extent that any of the obligations are not planning obligations within the 1990 Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers.

4 CONDITIONALITY

- 4.1 This Deed shall come into effect upon the issue of the Planning Permission except for clause 7.1, 9, 13, 14, 15 and 16 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council

5.1.1 as set out in the First Schedule;

5.1.2 not to encumber or otherwise deal with their interest in the Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Agreement are rendered impossible to carry out;

5.1.3 To notify the Council's S106 Monitoring Officer within five Working Days of the occurrence of the following dates:

- Commencement of the Development; and
- Occupation of the first Dwelling within each Phase of the Development; and
- Commencement of construction of the Affordable Housing Dwellings; and
- Occupation of the first Affordable Housing Dwelling within the Development;

5.1.4 that there are no interests (legal or equitable) required for the purposes of S106 in the Site other than detailed in this Deed.

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner

6.1.1 as set out in the Second Schedule

6.1.2 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Deed,

- (a) to place the payments or financial contributions on deposit in the Council's Bank accounts (as the Council in its sole discretion shall decide) and to attribute a rate of interest thereon; and
- (b) to apply such payments or financial contributions only for the purposes specified in this Deed provided that the Council will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Owner and for the avoidance of doubt the Council may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Deed.

7 MISCELLANEOUS

7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal and planning costs of the Council in the sum of £3500 incurred in the negotiation, preparation and execution of this Deed.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

7.3 This Deed shall be registerable as a local land charge by the Council.

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given by the Development Manager unless otherwise stated.

7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development.

7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest provided that the notice required by Clause 9 has been given.

7.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

- 7.9 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.
- 7.10 The obligations contained in this Deed shall not be binding upon nor enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 7.11 The obligations to pay the Indoor Recreation Contribution, Recreation Open Space Facilities Commuted Sum, Highways Contribution Education Contribution, Health Contribution, and Travel Plan Monitoring Contribution, pursuant to provisions Parts 4, 5, 7, 8, 9 and 10 of the First Schedule to this Deed shall not be enforceable against an owner/occupier or tenants or their successors in title (or in either case their respective mortgagees) of a Dwelling Disposed of pursuant to the Planning Permission PROVIDED THAT on the date of first Disposal of the Dwelling any payment which has become due as at the date of such Disposal pursuant to the provisions of Parts 4, 5, 7, 8, 9 and 10 of the First Schedule has been made and FOR THE AVOIDANCE OF DOUBT an owner/occupier or tenant or their successors in title (or in either case their respective mortgagees) of that Dwelling shall not be liable for any payment that was not due at the date of the first Disposal of that Dwelling nor for any payment that becomes due after the date of first Disposal of that Dwelling.
- 7.12 The exemption from liability in clause 7.11 shall be suspended for Dwellings in the event that at the time of first Disposal any payments due under this Agreement are outstanding and shall remain suspended until all outstanding payments plus the required Interest shall have been paid and PROVIDED THAT any restriction on Occupation in this Deed shall remain enforceable against any owner/occupiers or tenants (or their mortgagees) occupying a Dwelling in breach of such restriction.

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

- 9.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

10 INDEXATION

- 10.1 Unless otherwise referred to below, any sum referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

- 10.2 The Highways Contribution referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Highways Index from the date hereof until the date on which such sum is payable.
- 10.3 The Indoor Recreation Contribution Recreation Open Space Facilities Commuted Sum referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Open Space Index from the date hereof until the date on which such sum is payable.
- 10.4 The Special Education Needs Contribution referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Education Index from the date hereof until the date on which such sum is payable.

11 INTEREST

- 11.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12 VAT

- 12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 JURISDICTION

- 13.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

14 DELIVERY

- 14.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

15 NOTICES

- 15.1 In this Clause:
- 15.1.1 'The Council's address' means the address of the Council shown on the first page of this Deed or such other address as the Council may from time to time notify to the Owner and its successors as being its address for service for the purposes of this Deed
 - 15.1.2 'The address of the Owner' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed. Any notices for the Owner should be marked for the attention of the Strategic Land Manager.
- 15.2 Any notice or other communication given or made in accordance with this Deed shall be in writing and:
- 15.2.1 May (in addition to any other effective mode of service) be delivered personally or sent by registered or recorded delivery or prepaid first class letter post or its equivalent and

15.2.2 Shall in the case of a notice or other communication to the Council be served on the Council at the Council's address addressed to its Planning S106 Monitoring Officer

15.2.3 Shall in the case of a notice or other communication to the Owner be served on the Owner at the address of the Owner

15.3 Notices shall not be sent by email or DX

16 DISPUTES

16.1 One Party may by serving notice on all the other Parties (the **Notice**) require a dispute to be referred to an expert for determination.

16.2 The Notice must specify:

16.2.1 The nature, basis and brief description of the dispute;

16.2.2 The Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and

16.2.3 The proposed expert.

16.3 The expert may be agreed upon by the Parties and in the absence of such agreement within one month of the date that the Notice is issued pursuant to clause 16.1 either Party may request that the following nominate the expert at their joint expense:

16.3.1 If such dispute relates to matters concerning the construction, interpretation and/or the application of this Agreement, the Chairman of the Bar Council to nominate the expert;

16.3.2 If such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the expert;

16.3.3 If such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the expert;

16.3.4 If such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the expert;

16.3.5 If such dispute relates to Affordable Housing the expert shall be nominated by the President of the Royal Town Planning Institute; and

16.3.6 In all other cases, the President of the Law Society to nominate the expert as he thinks appropriate including joint experts

16.4 If an expert nominated or appointed pursuant to clause 16 shall die or decline to act another expert may be appointed in his place in accordance with the provisions of clause 16.9.

16.5 The expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of the notice of his appointment which is served on the parties pursuant to clause 15.

16.6 Notice in writing of the appointment of an expert pursuant to this clause 16 shall be given by the expert to the Parties and he shall invite each of the Parties to submit to

him within ten Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.

- 16.7 The expert shall act as an expert and not as an arbitrator. He shall consider any written representation submitted to him within the period specified in clause 16 and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
- 16.8 The expert shall give notice of his decision in writing and his decision will (in the absence of manifest error) be final and binding on the Parties hereto.
- 16.9 If for any reason the expert fails to make a decision and give notice thereof in accordance with this clause 16 the Party or Parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).
- 16.10 The expert's costs shall be in the expert's award or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.
- 16.11 Nothing in this clause shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

17. THE CROWN ESTATE PROVISIONS

- 17.1 For the avoidance of doubt any covenant agreement or obligation made by The Crown Estate or otherwise implied on the part of The Crown Estate under this Deed is made by or implied on the part of the The Crown Estate acting in exercise of the powers conferred by The Crown Estate Act 1961 and no covenant agreement or obligation is given by Her Majesty or anyone who reigns after her or by The Crown Estate in any personal or private capacity.
- 17.2 The Crown Estate enters into this Deed in order to give effect to the obligations contained in this Deed and more particularly to consent to the enforcement of the obligations against the Site so that in the event of default by any Party the obligations are enforceable against any person with an interest in the Site and for no other purpose whatsoever PROVIDED THAT no liability shall be incurred under this Deed on the part of The Crown Estate or any successor statutory body unless the Planning Permission is implemented by them in which case The Crown Estate will be bound by the obligations contained in this Deed.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written.

THE FIRST SCHEDULE

Owner's Covenants with the Council

The Owner covenants with the Council as follows:

Part 1 - General Provisions

1. Development shall not Commence unless with the first Reserved Matters application for approval of details of the layout of part or all of the Site, the Owner has submitted a Phasing Plan showing:
 - 1.1 the number, programming and physical extent of each phase of construction
 - 1.2 the total number of Dwellings to be constructed on the Site
 - 1.3 the total number of Affordable Housing to be constructed on the Site which shall comprise 30% of the Dwellings split 65% Affordable Rented Housing and 35% Intermediate Housings
 - 1.4 the location and type of Open Space to be provided for the whole Siteand the Council has approved the Phasing Plan in writing.
2. Development shall not Commence on any Phase unless with the Reserved Matters application for approval of details of the layout of that Phase, the Owner has submitted and the Council has approved in writing:
 - (i) an Affordable Housing Scheme showing how the Affordable Housing is to be provided and managed within that Phase
 - (ii) an Open Space Scheme showing how the Open Space is to be provided and managed within that Phase
 - (iii) a Management Scheme for the Open Space
 - (iv) details of the Management Company to which all the Open Space will be transferred in accordance with this Deed,

PROVIDED ALWAYS that the Phasing Plan, the Affordable Housing Scheme(s), the Open Space Scheme(s), the Management Scheme(s) may each be amended at any time with the written consent of the Development Manager or HM as appropriate.

3. Development shall be carried out in complete accordance with the Phasing Plan, the Affordable Housing Scheme(s), the Open Space Scheme(s), and the Management Scheme as amended from time to time.

Part 2 - Affordable Housing Provisions

- 1 The Owner covenants with the Council that subject to the releases and mortgagee protection contained in this Deed:
 - 1.1 30% of the Dwellings permitted by the Planning Permission shall be constructed as Affordable Housing Units.
 - 1.2 The Affordable Housing Units shall not be used or Occupied other than as Affordable Housing in perpetuity, as the sole private residence of a Qualifying Person and in accordance with the requirements of this Schedule and with the requirements of the Affordable Housing Scheme.
 - 1.3 The Affordable Housing Units shall comprise:
 - (a) 65% Affordable Rented Housing
 - (b) 35% Intermediate Housing
 - 1.4 The Affordable Housing Units shall only be Transferred:
 - (a) Completed and in a Serviced Condition
 - (b) With vacant possession
 - (c) Shall contain provisions that the grant of rights of access and passage of services and other rights reasonably necessary for the use of the Affordable Housing Units as Dwellings
 - (d) On terms to ensure this Deed is complied with including a requirement to ensure a RPSH enters into the Nominations Agreement
2. The Affordable Housing Scheme for each Phase shall detail;
 - 2.1 the number of Affordable Housing Units which shall be constructed within that Phase
 - 2.2 the type and tenure of each of the Affordable Housing Units, identifying which are Affordable Rented Housing or Intermediate Housing
 - 2.3 the construction standards of the Affordable Housing Units which, in respect of the Intermediate Housing shall satisfy the requirements of Building Regulations current at the time of construction and, in respect of the Social Rented Housing and the Affordable Rented Housing shall satisfy HOMES ENGLAND Design & Quality Standards (2007) as updated from time to time.
 - 2.4 the location of the Affordable Housing Units

- 2.5 the timescale for provision of the Affordable Housing Units which shall accord with this Deed

PROVIDED THAT

- 2.6 the total number of Affordable Housing Units provided on the whole Site shall not be less than 30% of the Dwellings and the tenure of the Affordable Housing Units provided on the whole Site shall be split overall between 65% Affordable Rented Housing and 35% Intermediate Housing
- 2.7. the type, construction standards, location, the timescale for provision of the Affordable Housing Units, the designation of either Affordable Rented Housing within the 65% split, the designated type of Intermediate Housing tenure within the 35% split may be amended at any time with the written approval of HM.

- 3 Within each Phase, not more than 80% of the Open Market Housing shall be Occupied until:

- 3.1.1 all the Affordable Housing Units have been Completed in accordance with the Planning Permission, this Deed and the Affordable Housing Scheme and made ready for immediate Occupation and use; and
- 3.1.2 all of the Shared Ownership Housing and Affordable Rented Housing have been Transferred to a RPSH in accordance with the Affordable Housing Scheme and this Deed; and
- 3.1.3 a comprehensive marketing campaign in respect of all of the Discounted Sale Houses and Shared Equity Sale Houses has been approved in writing by the Council, commenced and thereafter actively pursued using best endeavours to secure a sale of those Dwellings in accordance with this Deed.

Affordable Rented Housing

- 4 Following Transfer pursuant to this Deed of the Affordable Rented Housing to an RPSH, the Affordable Rented Housing shall at all times be owned and managed by a RPSH for the purpose of providing social housing at or below a Market Rent or a Target Rent (as appropriate) and the Affordable Rented Housing shall be maintained and repaired in accordance with the proper and normal customs and practices of a good

landlord and the RPSH shall accept full responsibility for servicing managing repairing and maintaining the Affordable Rented Housing.

5 If the Owner Transfers the Affordable Rented Housing to a RPSH which is a party to the Cheshire Homechoice Scheme then the allocation of each of the Affordable Rented Housing and the Social Rented Housing to a tenant shall be governed by such scheme.

6 If the Owner Transfers the Affordable Rented Housing to a RPSH which is not a party to the Cheshire Homechoice Scheme then the Owner shall procure that upon such transfer the RPSH enters into a Nominations Agreement with the Council, allowing the Council to nominate tenants to 50% of first and subsequent lettings

7 The RPSH will only allocate tenancies to persons in Housing Need who will Occupy the Affordable Rented Housing as their sole or main residence and, in addition to its own lettings policy, the RPSH will prioritise applicants with a Local/Community Connection. Where the Council fails to nominate a prospective occupier to any of the Affordable Rented Housing in accordance with the agreed nomination procedure, the RPSH can substitute an occupier from their own waiting list provided that the potential occupier is in Housing Need and will Occupy the Affordable Rented Housing as their sole or main residence and in accordance with the Local/Community Connection priority order.

8 With the object of preserving the Affordable Rented Housing as Affordable Housing none of them shall be sold into owner occupation or otherwise disposed of by a RPSH other than by way of:

- 8.1 disposal to another RPSH for the purposes of providing social housing at or below a Target Rent; or
- 8.2 Transfers of Engagements under section 110 Co-operative and Community Benefit Societies Act 2014; or
- 8.3 creation of easements or other rights in favour of statutory undertakings or service companies for the purpose of providing services to the Site; or
- 8.4 sale to a sitting tenant by way of a tenants` statutory right to acquire, or by way of a social homebuy scheme or arrangement imposed or promoted by the HOMES ENGLAND whether as a condition of grant funding or otherwise; or

- 8.5 mortgage or charge and subject always to the residual power of sale of a mortgagee in possession; or
- 8.6 assured tenancies granted to Occupiers.

Shared Ownership Housing

- 9 Following Transfer of the Shared Ownership Housing to an RPSH, the Shared Ownership Housing shall be provided by an RPSH for the purpose of providing Shared Ownership Housing and will only be Occupied as Affordable Housing in accordance with the terms of this Deed on the Shared Ownership Terms.
- 10 In addition to the RPSH's standard arrangements governing the nomination and approval of applicants to buy and rent Shared Ownership Housing, the RPSH will prioritise applicants who are in Housing Need with a Local/Community Connection
- 11 The first Disposal of each Shared Ownership Dwelling by a RPSH shall not involve the sale of an equity stake of less than 25% or more than 75% nor a rental element calculated at more than 2.75% of the value of the unsold equity PROVIDED THAT within the permitted range of 25% and 75% the RPSH shall use reasonable endeavours to transfer an equity stake of 50%.

Recycling of Surplus Sale Proceeds

- 12 The Registered Provider shall:
 - 12.1 advise HM of all sales of equity in the Affordable Rented Housing and the Shared Ownership Housing; and
 - 12.2 hold any Surplus Sale Proceeds in an interest bearing account; and
 - 12.3 inform HM on request of the amount of money at any one time in that account and
 - 12.4 use such Surplus Sale Proceeds whether in part, in full or in conjunction with other sums in the following order of priority
 - 21.4.1 for repurchasing any of the Affordable Housing if sufficient funds have accrued;
 - 21.4.2 for other Affordable Housing projects within Knutsford;

21.4.3 for other Affordable Housing projects anywhere within Cheshire East.

Discounted Sale Houses

13 The Discounted Sale Houses will only be Occupied as Affordable Housing in accordance with the terms of this Deed and the Resale Covenant Scheme.

14 The Owner will not advertise for sale or otherwise market the Discounted Sale Houses until he has obtained HM's written approval of a Resale Covenant Scheme which

14.1 prevents all subsequent sales from taking place in excess of the Discounted Sale Price;

14.2 restricts purchasers to Qualifying Persons

14.3 sets out the nomination rights and eligibility criteria

14.4 allows for eligibility but not price restrictions to be lifted in appropriate circumstances;

14.5 sets out a procedure governing subsequent Disposals including notification of intention to sell, reasonable timescales, assessment of Open Market Value and any other appropriate remarketing provisions;

14.6 sets out appropriate administrative and conveyancing arrangements for Disposals which shall be tailored according to the Owner's intention to sell freehold or leasehold title and which include the model transfers or leases which will be used to bring the Resale Covenant Scheme into binding effect

15 The first Disposal of each Discounted Sale House shall be at the Discounted Sale Price to a Qualifying Person and shall secure that the approved Qualifying Person enters into appropriate covenants direct with the Council pursuant to section 33 Local Government (Miscellaneous Provisions) Act 1982 to ensure the enforceability of the Resale Covenant Scheme PROVIDED THAT if the Owner demonstrates to HM's reasonable satisfaction that:

15.1 he gave HM full details of his marketing arrangements 14 days before a Discounted Sale House was first advertised and invited HM to nominate Qualifying Persons to purchase and Occupy it; and

- 15.2 he advertised the Discounted Sale House at the Discounted Sale Price on the open market for ten weeks (and that it was Completed for at least four of those weeks) or for such lesser period (or periods) as HM may agree; and
- 15.3 he used best endeavours to advance a sale with any Qualifying Persons who appeared to be suitable prospective purchasers; and
- 15.4 a contract for sale has not been executed and exchanged,
- then the Owner may Dispose of the Discounted Sale House at the Discounted Sale Price to any person who on completion enters into covenants with the Council pursuant to s33 Local Government (Miscellaneous Provisions) Act 1982 ensuring the enforceability of the Resale Covenant Scheme.
- 16 All second and subsequent Disposals of a Discounted Sale House shall be at the Discounted Sale Price to an approved Qualifying Person in accordance with the Resale Covenant Scheme to the intent and effect that this shall continue to apply to all second and subsequent disposals but the word 'Owner' shall instead read 'seller of the Discounted Sale House'
- 17 Upon Disposal of any Discounted Sale Houses the Owner shall observe and perform the obligations of the Owner and transferee within the Resale Covenant Scheme agreed by the Council and shall procure that all future Disposals of those Dwellings shall be bound by the terms of the Resale Covenant Scheme.

Shared Equity Sale Houses

- 18 The Shared Equity Sale Houses will only be Occupied as Affordable Housing in accordance with the terms of this Deed and the Shared Equity Sale Scheme.
- 19 The Owner will not advertise for sale or otherwise market the Shared Equity Sale Houses until he has obtained HM's written approval of a Shared Equity Sale Scheme which details:
- 19.1 the restriction of purchasers to Qualifying Persons
- 19.2 the procedural steps notifications and timescales governing Disposals of the Shared Equity Sale Houses including notification of intention to sell, reasonable timescales, assessment of Open Market Value and any other appropriate remarketing provisions;

- 19.3 eligibility criteria;
- 19.4 alternative arrangements in the event that sales are not forthcoming within reasonable timescales;
- 19.5 a procedure for assessing Open Market Value;
- 19.6 terms of Disposal including appropriate administrative and conveyancing arrangements requiring co-operation between sellers buyers and chargees including the Council;
- 19.7 terms regarding priority, repayment and redemption of the Council's Legal Mortgage.

20 The first Disposal of each Shared Equity Sale House shall be in accordance with the Shared Equity Sale Scheme to a Qualifying Person and at no more than seventy per cent (70%) of Open Market Value and the Council shall be entitled to the remaining percentage of the Open Market Value (a thirty per cent (30%) minimum share of the Open Market Value) such sum to be secured upon each Shared Equity Sale House by way of the Council's Legal Mortgage.

21 All second and subsequent Disposals of a Shared Equity Sale House shall be in accordance with the Shared Equity Sale Scheme to a Qualifying Person and any part of the Council's initial minimum 30% share of Open Market Value which remains unpaid shall again be secured upon the Shared Equity Sale House.

22 Upon Disposal of any Shared Equity Sale House the Owner shall observe and perform the obligations of the Owner within the Shared Equity Sale Scheme and shall procure that all future Disposals of those Dwellings shall be bound by the terms of the Shared Equity Sale Scheme approved by the Council.

23 If the Owner has used all reasonable endeavours to Dispose of a Shared Equity Sale House, in accordance with this Deed and the Shared Equity Sale Scheme then the relevant Shared Equity Sale House may be Disposed of to a person who is not a Qualifying Person PROVIDED ALWAYS that the Shared Equity Sale Scheme shall apply in full to any subsequent Disposal by that disponent or their successors in title.

Mortgagee Protection and Releases

24. The restrictions in this Part Two – Affordable Housing Provisions of the First Schedule shall not apply to Affordable Housing:
 - 24.1 in the control of a chargee or mortgagee of a RPSH in the event of a default under a mortgage or charge or in the control of any receiver appointed by them or any successors in title to such mortgagee or chargee PROVIDED THAT
 - 24.1.1 the chargee or mortgagee has given the Council at least three months written notice of its intention to exercise such power of sale, and
 - 24.1.2 the chargee or mortgagee has used reasonable endeavours to first dispose of the dwellings to another RPSH and has provided written evidence of such reasonable endeavours to HM and for the avoidance of doubt such chargee or mortgagee shall not be under any obligation to dispose of the dwellings for a sum less than the monies outstanding pursuant to the legal charge or mortgage plus any interest and cost
 - 24.1.3 If the said mortgagee, chargee or receiver shall not have disposed of the said Affordable Housing Units or any part thereof in accordance with paragraph 24.1.2 above, within the said three month period, the said mortgagee, chargee or the receiver may (but without imposing any obligation on the said mortgagee or receiver) dispose of the Affordable Housing Units which have not by that time been disposed of to such RPSH on the open market to a willing buyer, and such buyer shall take free of the restrictions imposed herein in relation to the relevant Affordable Housing Units.
 - 24.2 owned by a tenant who has exercised a statutory right to acquire by way of a purchase grant or like scheme or any mortgagee or chargee of such tenant or any receiver appointed by such mortgagee or chargee (including administrative receivers)
 - 24.3 in the control of a chargee or mortgagee in accordance with the Shared Ownership Terms or any receiver appointed by such mortgagee or chargee (including administrative receivers)

- 24.4 owned by an Occupier who has purchased 100% of the equity of a Shared Ownership lease following the exercise of Staircasing rights or in accordance with any other Homebuy scheme or any mortgagee or chargee of such Occupier or any receiver appointed by such mortgagee or chargee (including administrative receivers).

Part 3 - Open Space Provisions

On-site Open Space

- 1.1 Prior to the Commencement of Development on each phase to submit the Open Space Scheme for that Phase (if applicable) to the Council and not to Commence Development on each Phase unless and until the Open Space Scheme for that Phase (if applicable) has been submitted to and approved in writing by the Council
- 1.2 In order to maintain the integrity and long term future viability of the Open Space, not without the prior consent of the Council to locate any site and work compounds on the Open Space.
- 1.3 Prior to the Occupation of 50% of the Dwellings of each Phase of the Development and prior to the occupation of any adjoining Dwelling, to provide the Open Space within that phase in complete accordance with the approved Open Space Scheme and Phasing Plan so that it is available and safe for immediate public use and not to permit or allow the Occupation of more than 50% of the Dwellings of each Phase of the Development until the Open Space within that Phase has been provided in complete accordance with the approved Open Space Scheme and Phasing Plan so that it is available and safe for immediate public use.
- 1.4 Not to permit or allow the use of the Open Space until a Royal Society for the Prevention of Accidents (or any successor body or organisation) post installation inspection written report, and evidence of manufacturers warranties of at least 5 years duration from the date of installation of equipment in relation to combined LEAP and LAP and free play / kick about amenity area has been provided to the Council, and for the avoidance of doubt, the Open Space will not be considered available and safe

for immediate public use unless and until the inspection report and manufacturers warranties described in this clause have been provided.

- 1.5 To maintain the Open Space in accordance with the Management Scheme approved by the Council at all times from Occupation of 50 % of the Dwellings in each Phase of the Development to the satisfaction of the Council.
- 1.6 To amend the Management Scheme only with the Council's written consent.
- 1.7 To keep the Open Space open, unbuilt upon (save for permitted play equipment) and available for public recreational use in perpetuity save for access to any wildlife area to which access is restricted in the Management Scheme(s).

Management Company

- 2.1 To prevent the sale of any individual Dwelling until a Management Company has been formed and the Owner has provided evidence of such formation to the Council (including a certified copy of the Memorandum and Articles of Association of the Management Company).
- 2.2 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing.
- 2.3 Not to permit or allow the sale, transfer, grant of an option, gift, exchange in return for other property, a declaration of trust, assignment, lease or other disposal of any individual dwelling comprised in the Development until the buyer of such dwelling has applied for and been granted membership of the Management Company.
- 2.4 The Owner will procure that the buyer of each Dwelling comprised in the Development enters into covenants substantially in the form set out below (or in such other form as agreed in advance by the Council in writing) direct with the Management Company under which the buyer shall covenant:-

- (i) to pay the estimated Estate Service Charge (or an appropriate proportion of it in respect of the payment due on the date of this transfer) to the Management Company in advance on the Service Charge Payment Date or if later immediately on receipt of a demand for payment from the Management Company; and
- (ii) immediately on receiving a Certificate, to pay to the Management Company any shortfall between the estimated Estate Service Charge paid and the amount of the Estate Service Charge so certified,
- (iii) not to dispose (other than by way of mortgage or assured shorthold tenancy) of the Dwelling unless the disponee enters into and delivers to the Management Company a direct covenant with the Management Company in the form set out at sub-paragraphs (i) and (ii) above and this paragraph (iii).

2.5 to procure that an application is made to the Land Registry for entry of a restriction onto the register of the title of each Dwelling comprised in the Development in standard form L in Schedule 4 of the Land Registration Rules 2003 namely:

'No disposition of the registered estate (other than a charge) by the proprietor of the registered estate , or by the proprietor of any registered charge, not being a charge registered before entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of paragraph [the provisions referred to at paragraph 2.4 above] of a transfer dated [] and made between [name] (1) and [name] (2) have been complied with or that they do not apply to the disposition

2.6 The Owner shall not permit or allow the Occupation of more than 75% of the Dwellings that form part of the Development unless and until the freehold interest in the Open Space has been transferred free from incumbrances (other than as set out below) to the Management Company but for the avoidance of doubt the transfer shall:

- i. be a transfer of the entire freehold interest of the Open Space
- ii be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. include all usual and necessary rights of way with or without vehicles
- v. be subject to rights of reasonable access to the public

- vi. reserve any usual and necessary rights to use existing services and to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- vii. declare that boundary structures shall belong to and be maintained by adjoining owners
- viii. not require consideration in excess of one pound (£1)
- ix. contain covenants by the Management Company in favour of the Council and pursuant to Section 33 of the Local Government (Miscellaneous provisions) Act 1982 to the effect that the Management Company shall maintain, repair, replace as necessary and generally manage the Open Space in strict accordance with the Management Scheme and the principles of good estate management to the intent that the Open Space remains fit for purpose and available for safe use by the public at all times during which any part of the Development is Occupied
- x. include provisions securing the sole use of the Open Space for the recreational enjoyment of the public.
- xi. include a declaration that no area of the Open Space is dedicated as public highway nor that any use by the public of any part of the Open Space shall be taken in any way as an intention by the Owner to dedicate the same as highway.

Part 4 Indoor Recreation Contribution.

1. Prior to the Commencement of Development to pay the Indoor Recreation Commuted Sum to the Council and not to permit or allow the Commencement of Development unless and until the Indoor Recreation Commuted Sum has been paid to the Council for the provision of indoor recreation facilities at Knutsford Leisure Centre.

Part 5 Recreation Open Space Facilities Commuted Sum

1. Prior to the Commencement of the Development to pay the Recreation Open Space Facilities Commuted Sum to the Council and not to permit or allow the Commencement of the Development unless and until the Recreation Open Space Facilities Commuted Sum has been paid to the Council for the Recreation Open Space Facilities Purposes.

Part 6 - Mitigation for Great Crested Newts

1. Prior to the Commencement of Development to submit to the Council's Nature Conservation Officer EITHER the proposed Great Crested Newt Mitigation Scheme OR a certified copy of a Great Crested Newt District Level Licence issued in respect of the Site and not to Commence Development at the Site unless and until the Council's Nature Conservation Officer has approved the proposed Great Crested Newt Mitigation Scheme OR is in receipt of a certified copy of a Great Crested Newt District Level Licence in respect of the Site.

Part 7 - Highways Contribution

1. Prior to the Commencement of Development to pay the Highways Contribution to the Council and not to allow or permit the Commencement of Development until the Highways Contribution has been paid in full.

-Part 8 – Special Education Needs Contribution

1. Prior to the Commencement of Development to pay to the Council the Special Education Needs Contribution for the Special Education Needs Purposes and not to allow or permit Commencement of Development until the Special Education Needs Contribution has been paid.

Part 9 - Health Contribution

1. Prior to the Commencement of Development to pay to the Council the Health Contribution for the Health Purposes and not to allow or permit the Commencement of Development until the Health Contribution has been paid.

Part 10 – Travel Plan Monitoring Contribution

1. Prior to Commencement of Development to pay the Travel Plan Monitoring Contribution to the Council and not to allow or permit the Commencement of Development until the Travel Plan Monitoring Contribution has been paid in full.

THE SECOND SCHEDULE Council's Covenants

The Council covenants

- 1.1 that at the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
- 1.2 to operate abide by and comply with the arrangements terms conditions and obligations for the purposes set out in the First Schedule hereto

Recreation Clauses

- 1.3 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contributions and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the tenth anniversary of the date of receipt of the last instalment thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Indoor Recreation Contribution and the Recreation Open Space Facilities Commuted Sum or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Highways Clauses

- 1.4 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contributions and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the tenth anniversary of the date of receipt of the last instalment thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Highways Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Education Clauses

- 1.5 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contribution and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the tenth anniversary of the date of receipt of the last instalment thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Special Education Needs Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Healthcare Clauses

- 1.6 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contribution and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the tenth anniversary of the date of receipt of the last instalment thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Health Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Travel Plan Monitoring Clause

- 1.7 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contribution and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the tenth anniversary of the date of receipt of the last instalment thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Travel Plan Monitoring Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

THE THIRD SCHEDULE

Nominations Agreement

NOMINATIONS AGREEMENT

Between Cheshire East Council &.....Registered Provider

It is the intention of this agreement to establish a framework by which Cheshire East Council (the Council) make nominations to Registered Providers. From 1st April 2010

the nominations will be made from the Council's housing register via Cheshire Homechoice.

1. The Registered Provider will in any one year (April to April) pass XX% (percentage to reflect historic agreement) of their vacancies within in the Cheshire East Borough for nomination. Where alternative quota or contracts have been formally agreed between the RPSH& the Council, these will take precedence over the general target.
2. Where back office access is not in place, all details of empty properties and nominations must be emailed between the Council and the Registered Provider to ensure the minimum time delay.
3. Where back office access is not in place, the Registered Provider Officer will email full details of the nominations request to the Cheshire homechoice team (cheshirehomechoice@cheshireeast.gov.uk) using the designated request form, including photographs and advert details. These are to be received by 12 noon on Mondays (in the case of a Bank Holiday, these must be received by 12noon on the Friday preceding) for inclusion in the weekly cycle for that same week. Requests received after this time will not be advertised until the following weekly cycle.
4. Where back office access is not in place, the Homechoice Advisor will ensure that the property advert is registered on the homechoice website in time for the next weekly cycle, commencing 00:01 (one minute past midnight) on Wednesday morning. Adverts will be clearly labelled to show the property features, local neighbourhood information and types of household that are able express an interest.
5. Where back office access is in place, adverts will be placed containing the correct letting parameters to enable the maximum number of eligible applicants to apply. These should be set to "ready to advertise" before the start date of the next cycle 00:01 (one minute past midnight) on Wednesday morning.
6. Properties will be advertised for a full weekly cycle to enable homechoice customers to express interest in the property. Expressions of interest can be made via telephone, the website or a visit to any one of the partnership offices. Advice and support will be provided to customers who need it, to ensure they are able to access and use the scheme.
7. Where back office access is not in place, after a full weekly cycle the Registered Providers will be supplied with a list of the top 5 eligible applicants for the property, in order of priority and will be expected to work through them in order of priority until they find a suitable/ interested applicant. The customer will then be contacted by the Registered Provider to confirm their successful application and advised about procedures for viewing/ assessment for the

property. If the list is exhausted, a further 5 applicants from those who expressed an interest in the property will be supplied.

8. Where back office access is in place, Registered Providers will be able to access a full shortlist of all applicants and will be expected to work through them in order of priority until they find a suitable/ interested applicant. The customer will then be contacted by the Registered Provider to confirm their successful application and advised about procedures for viewing/ assessment for the property.
9. If no suitable customers have expressed an interest in a property advertised or the list has been exhausted, the Registered Provider will have an option to withdraw the property from the scheme or to run the advert for a further weekly cycle. Any nominations withdrawn from the scheme after a full weekly cycle of advertising will constitute a failed nomination and will count as part of the nominations quota.
10. The Registered Provider will process the nomination in accordance with the Common Allocations Policy.
11. Where there is no back office access in place, the Registered Provider will inform homechoice (cheshirehomechoice@cheshireeast.gov.uk) of the results of the nomination by email, within 5 working days of the offer made to the applicant.
12. Where back office access is in place, the Registered Provider, will complete the matching process on the back office system in order to formally remove the applicant from the register and record the nomination. This will happen within 5 working days of the offer.
13. The Homechoice Team and the nominee will be kept informed of any delays regarding the availability of property, for example due to extensive repairs, alterations and revised termination dates.
14. Quarterly nomination outcomes will be sent to the Homechoice Team Leader at the Council, on a quarterly basis
15. The Registered Provider will advise the Homechoice Team Leader of all new developments coming into management at least 3 months before handover and a nomination timetable will be agreed. References will be made to the legal agreement drawn up between the Registered Provider and the Council's legal department with regard to all new developments.
16. Both the RPSH & the Council will maintain and review such records as is necessary to ensure there are no criteria relating to re-housing and nomination process which directly or indirectly discriminate against any applicant on the ground of race, religion, sex, sexuality or disability.

17. The Registered Provider and the Council will at all times work in ways which are mutually advantageous. For example, they will advise each other of any internal restructure which may affect the nominations process.
18. The Registered Provider and the Council agree to sharing information regarding Homechoice applicants & nominees for monitoring purposes.

This process has been agreed between:

SIGNATURE

NAME (PRINTED)

DESIGNATION

ON BEHALF OF CHESHIRE EAST COUNCIL

And

SIGNATURE

NAME (PRINTED)

DESIGNATION

ON BEHALF OFREGISTERED PROVIDER

THE FOURTH SCHEDULE

Discounted Sale House Resale Covenant Scheme Clauses

**Standard Remarketing Provisions for Discounted Sale Houses
forming the basis for a
Re-Sale Covenant Scheme
to be tailored for freehold or leasehold sales**

1. On any disposal of a Discounted Sale House the following definitions shall be imposed in the deed of transfer or lease (as applicable):
 - 1.1 "the Agreement" means a s106 Agreement dated20 made between Cheshire East Borough Council (1) and (2) and(3)
 - 1.2 "the Assumptions" are:
 - 1.2.1 a willing seller and buyer
 - 1.2.2 that prior to the date of valuation the Dwelling was freely exposed to the market and there has been a reasonable period within which to negotiate the sale (having regard to the nature of the Dwelling and the state of the market) and that values remained static throughout that period and
 - 1.2.3 that no account is taken of any bid by any prospective purchaser with a special interest and
 - 1.2.4 that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
 - 1.2.5 that the Dwelling is in its existing state of repair and sold with vacant possession
 - 1.2.6 that the transfer/assignment does not contain any provisions that are not standard or usual in residential freehold/leasehold transactions
 - 1.3 "Council" means Cheshire East Borough Council of Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ
 - 1.4 "Discounted Sale Price" means no more than seventy per cent (70%) of the Open Market Value of the Dwelling
 - 1.5 "Disposal" means sale, transfer, option, gift exchange, declaration of trust, assignment, lease and including a contract for any such disposal and "Disposals" "Dispose" and "Disposed of" shall be construed accordingly;
 - 1.6 "Independent Valuer" means a member of the Royal Institution of Chartered Surveyors appointed by the Owner of the Dwelling at his own cost but first approved by the Council in writing
 - 1.7 "Open Market Value" means the value assessed by an Independent Valuer and agreed by the Council in accordance with paragraph 2.3 below or determined in accordance with paragraph 2.4 below.

- 1.8 "Owner" means the person who intends to Dispose of the relevant Dwelling
- 1.9 "Dwelling" means the property the subject of this deed
- 1.10 "Approved Person" means a Qualifying Person (as defined in the Agreement), who is approved by the Council to purchase the Dwelling or such other persons as are approved by the Council in writing pursuant to clauses 2.7 or 2.8 below or such other persons as are approved by the Council from time to time
- 1.11 "Main Residence" means a dwelling lived in by an owner/occupier as his sole or main home for more than thirty-five weeks in every calendar year
- 1.12 a 'Sale' of the Dwelling occurs in every case where there is a Disposal of the Dwelling except when the Disposal is:
- (i) executed pursuant to an order of a court on granting in respect of the parties a decree of dissolution of marriage or judicial separation or
 - (ii) executed pursuant to an order of a court which is made in connection with the dissolution or annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such decree or
 - (iii) executed at any time in pursuance of an agreement made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or their judicial separation or
 - (iv) executed by personal representatives of a deceased Owner for the purpose of transferring or assigning into the sole ownership of the spouse of the Owner
 - (v) executed by personal representatives of a deceased joint tenant and a surviving joint tenant for the purpose of transferring or assigning the Premises into the sole ownership of the surviving joint tenant

PROVIDED THAT where a Disposal falls within the categories set out in paragraph 1.12(i) – (v) the transferee covenants with the Council as set out in paragraph 2.11 below and "Sell" shall be construed accordingly

2. The following shall apply where a person wishes to Sell the Dwelling:

- 2.1 The Owner of the Dwelling shall before commencing marketing of the Dwelling, submit an assessment of Open Market Value.
- 2.2 The assessment produced pursuant to sub paragraph 2.1 above shall be prepared by an Independent Valuer and submitted by the then Owner to the Council for approval within one month of the valuation being carried out.

- 2.3 The Council shall either approve the assessment submitted to it in accordance with to sub-paragraph 2.2 above or provide an alternative assessment of the Open Market Value with a view to arriving at an agreed valuation.
- 2.4 If agreement between the Council and the Owner is not reached under sub paragraph 2.3 above within 4 weeks of the Council's receipt of the assessment then the matter shall be referred to an appropriate independent expert (who shall either be agreed between the parties by the President for the time being of the Royal Institution of Chartered Surveyors or any person acting with his authority) and the decision of the expert shall be final and binding (save in the case of manifest error) and his costs shall be borne as he shall direct (or where no direction is made, the costs shall be borne by the Owner).
- 2.5 Having obtained the Council's agreement of the Open Market Value or having received the binding decision of the expert in accordance with paragraph 2.4 of this deed in order to establish the Open Market Value, the Owner will give the Council written notice of (a) the date upon which he or she has arranged for the Dwelling to be advertised for sale and (b) the name and address of the agent who will market the premises, and will invite the Council to nominate Approved Persons to purchase the Dwelling.
- 2.6 If exchange of contracts for the Sale of the Dwelling has not occurred within 6 months of the date of the valuation being agreed or determined in accordance with paragraph 2.4 of this deed, then the Owner shall submit a new valuation, repeating the steps set out in paragraphs 2.1 to 2.3 and any Sale shall only proceed in accordance with the new Valuation, which in turn shall only be valid for a period of six months from the date it is agreed or determined in accordance with paragraph 2.4 of this deed.
- 2.7 At any time up to exchange of contracts for the sale of the Dwelling the Council may nominate Approved Persons to the Owner as prospective purchasers prioritised from its own affordable housing lists and from applications made to it in response to the Owner`s own marketing exercise. Priority will be given to applicants in accordance with any Local/Community Connection criteria set out in the Agreement.
- 2.8 Prioritising nominees in the order indicated by the Council (if any) and having satisfied himself regarding their sustainability as prospective purchasers, the Owner will use reasonable endeavours to advance a sale of the Dwelling to an Approved Person.
- 2.9 If the Owner satisfies the Council (by written confirmation from his solicitor or estate agent) that the Dwelling has been advertised continuously for ten weeks at the Discounted Sale Price to those who would qualify as Approved Persons and that he or she has not been able to exchange contracts for sale then he shall be entitled to sell the Dwelling to any person at the Discounted Sale Price.

2.10 If a Dwelling is sold to a purchaser in accordance with clause 2.9 above

(i) *the Council will certify to the Land Registrar that the disposition complies with clause [] of the transfer/lease dated [] made between [] and [] so that the disposition may be registered in accordance with the restriction on the register of title of the Dwelling and*

(ii) *the Dwelling shall remain subject to the terms of the Agreement and the transfer/lease and the requirements of Paragraph 2.11 shall apply regarding future disposal to and occupation by an Approved Person.*

2.11 Upon Sale of the Dwelling and upon every transfer/assignment of the Dwelling described in clause 1.10 (i) – (v) above, the transferor shall covenant with the Council and as a separate covenant with the transferee (but not so as to render the transferor liable to the transferee after the transferor shall have parted with his interest in the Dwelling) that:

(a) any Sale of the Dwelling shall only be for the Discounted Sale Price

(b) any Sale of the Dwelling shall be to an Approved Person

(c) the Dwelling shall at all times be the Main Residence of the transferee

(d) the transferee shall not effect a Sale save in accordance with Paragraph 3 above

(e) the transferee shall not sell the Dwelling without first:

(i) procuring that any transferee enters into a covenant with the Council to observe and perform the covenant set out in this paragraph 2.11; and

(ii) delivering to the Council the covenant referred to in this paragraph 2.11 on the Sale of the Dwelling

2.12 To the intent that no transfer of the Dwelling shall take place otherwise than in accordance with paragraph 2.11 above the transferee shall at the transferee's own expense apply to the Chief Land Registrar to enter the following restriction on the register of the title to the Dwelling such restriction to remain on the register during its subsistence:

'No disposition of the registered estate (other than a charge) by the Registered Proprietor is to be registered without a certificate addressed to the Land Registry and signed by the Borough Solicitor, Cheshire East Borough Council, Westfields, Middlewich Road, Sandbach, Cheshire,

CW11 1HZ that the disposition complies with clause [] of a transfer/lease dated [] made between [] (1) and [] (2)'

- 2.13 The Council shall have the benefit of the right to enforce the covenants contained above pursuant to the Contracts (Rights of Third Parties) Act 1999

THE FIFTH SCHEDULE
FIXED PERCENTAGE SHARED EQUITY
LEGAL MORTGAGE

DATED _____ **200[]**

(1) [SALE UNIT PURCHASER]

and

(2) CHESHIRE EAST BOROUGH COUNCIL

FIXED PERCENTAGE SHARED EQUITY
LEGAL MORTGAGE

Relating to leasehold property known as
[insert Property address]

Cheshire East Council
Legal Department
Westfields
Middlewich Road
Sandbach
Cheshire CW11 1HZ

NOTICE TO BORROWER - IMPORTANT - YOU SHOULD READ THIS CAREFULLY

WHAT YOU WILL HAVE TO REPAY

The amount you are required to repay when the loan comes to an end (the Repayment Sum) is linked to the value of your home at that time. This agreement requires all outstanding amounts to be repaid by the 25th anniversary of the date of this loan. You may have to repay less than you borrowed, or the same amount, but it is likely that you will have to repay more. The amount you will have to repay will depend on what has happened to the value of your home. If you have to repay more than you borrowed, the effect will be similar to a loan under which you pay interest at the rate at which your home has increased in value. In addition, you will have to pay a valuation fee at the time of redemption of the mortgage.

Please note that the Repayment Sum will be calculated in accordance with either Clause 6 or 11 of this agreement, and will be based on the amount for which you sell your property, or the valuation of the property at the time, whichever is the higher. The percentage of the relevant amount that you will have to repay will be the same as the percentage of the purchase price funded by your loan from us.

You will not be able to repay part or all of this mortgage in the first five years of this agreement.

If you do not pay any amounts when they become due you will have to pay additional interest, which is explained in Clause 12.4 of this agreement.

If you do not comply with the terms of this mortgage and we take legal action against you, we may be able to charge you for the costs of that action. This is explained in Clause 12.3 of this agreement.

FIXED PERCENTAGE SHARED EQUITY MORTGAGE DEED

This **CHARGE BY WAY OF LEGAL MORTGAGE** is made the _____ day of _____ 20[]

BETWEEN

(1) [] of [] ("the Borrower")

(2) **CHESHIRE EAST BOROUGH COUNCIL** of Westfields Middlewich Road Sandbach
Cheshire CW11 1HZ ("the Council")

Whereas

A The Borrower has on the date hereof acquired the leasehold property described in the First Schedule to this mortgage ("**the Property**") from the Developer for the Purchase Price and the Council has agreed to provide the Council's Contribution being part of the Purchase Price in order to assist the Borrower with the purchase of the Property.

B This Deed is to secure the repayment by the Borrower to the Council of the Repayment Sum (as defined later on in this mortgage).

Now this deed witnesses as follows:-

(1) INTERPRETATION

1.1 In this mortgage the following expressions shall have the following meanings:-

"Bankrupt" means the Borrower has become bankrupt or makes or seeks an arrangement with its creditors or an interim order is made under section 252(1) of the Insolvency Act 1986 in relation to the Borrower;

"Default Interest Rate" means a rate being 1% above the Bank of England base lending rate from time to time;

"Developer" means [];

"Disposal" means a transfer to a third party of the Borrower's interest in the Property or any part of the Property or the grant of a lease whether periodic or for a fixed term other than an Exempt Disposal;

"**Exempt Disposal**" means a disposal that is the vesting of the whole of the Borrower's interest in the Property in a person taking under a will or on an Intestacy or under Section

24 or 24A of the Matrimonial Causes Act 1973 or under Section 2 of the Inheritance (Provision for Family and Dependants) Act 1975 or 17 Matrimonial and Family Proceedings Act 1984 where (in the case of the death of the Borrower) such person is a member of the family of the Borrower who has resided with the Borrower throughout the period of 12 months ending with the death of the Borrower and for the purposes of this Deed, a "member of the family" has the same meaning as that contained in Section 62 of the Housing Act 1996 (as amended or replaced from time to time);

"Purchase Price" means [] pounds (£[]) which is equal to the Initial Market Value;

"Initial Market Value" means the sum of £[] being the Market Value at the date of this mortgage;

"Percentage" means []%;

"Market Value" means the price which the Property would achieve on the open market on a sale by a willing vendor to a willing purchaser on the assumption if not a fact that all the covenants on the part of the Borrower in this mortgage have been fully complied with and in the event of damage to the Property that it has been fully reinstated and disregarding any additions or improvements made by the Borrower with the written consent of the Council **provided that** in the case of a Disposal where the Disposal price (disregarding any part of that price attributable to any additions or improvements made by the Borrower with the written consent of the Council) is greater than the Market Value then the Market Value shall be substituted with such Disposal price when calculating the Repayment Sum;

"Council Contribution" means [] pounds (£[]);

"Qualifying Lender" has the meaning given in Statutory Instrument 2005/2863;

"First Legal Mortgage" means the mortgage described in the Second Schedule to this mortgage;

"Nominated Purchaser" means a person or persons who are nominated by the Council in writing (via its Home Ownership Section) and who (in the absolute opinion of the Council) has or have demonstrated to the Council a need for affordable housing;

"Repayment Sum" means the Percentage of the Market Value shown in the Valuation obtained under clause 6 or 11;

"Security Interest" means any mortgage, pledge, lien, charge, security assignment, hypothecation or security interest or any other agreement or arrangement having the effect

of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement having a similar effect;

"Transfer Notice" means notice served pursuant to clause 6.1;

"Valuation Notice" means notice of the determination of the Valuer of the Market Value;

"Valuer" means an independent qualified valuer appointed by agreement between the parties or failing agreement by or on behalf of the president for the time being of the Royal Institute of Chartered Surveyors on the application of either party;

"Working Days" means any day except a Saturday, a Sunday or any Bank or Public Holiday;

1.2 In this mortgage where the context admits references to the "Borrower" and "the Council" include their successors and the persons deriving title under them.

1.3 Where the Borrower is more than one person the covenants on the part of the Borrower shall be joint and several covenants and references to the Borrower include any one or more of those persons.

1.4 The singular includes the plural and the masculine includes the feminine and the neuter and vice versa.

1.5 Any clauses schedules and paragraphs referred to in this mortgage are clauses schedules and paragraphs to this mortgage unless specifically stated otherwise.

1.6 Any primary or subordinate statutory provisions referred to in this mortgage shall include any regulations statutory instruments or secondary legislation made pursuant to those statutory provisions and any variation amendment or re-enactment of such provisions.

(2) MORTGAGE

2.1 In consideration of the Council Contribution as a result of which the Developer agreed the Borrower would acquire the Property by paying the Purchase Price less the sum equal to the Percentage of the Purchase Price the Borrower with full title guarantee charges all of his rights, title and interest in the Property by way of legal mortgage to the Council as security for the discharge of the obligations and the making of the payments referred to in clause 2.2.

- 2.2 The Borrower covenants with the Council that it will, on demand, discharge all of its obligations which arise under the terms of this Mortgage and make all payments to the Council as set out in this Mortgage as and when they fall due.

(3) **PROVISO FOR REDEMPTION AND POWER OF SALE**

- 3.1 If the Borrower pays to the Council all the sums he covenants in this mortgage to pay the Council, the Council will duly discharge this security in accordance with the terms of this Mortgage.

- 3.2 The Council shall at any time after the occurrence of one of the events set out in Clause 5 have the power of sale and of appointing a receiver and other powers conferred by the Law of Property Act 1925 **save that** section 103 (which restricts the exercise of said power of sale) shall not apply to this security.

(4) **COVENANTS BY THE BORROWER**

The Borrower covenants with the Council:-

- 4.1 To pay to the Council on or immediately after a redemption event (which is described in Clause 5) an amount equal to the Repayment Sum by reference to the valuation as on the date of such an event together with any other sums payable and outstanding under this Mortgage. This payment is to be made in the way described in Clause 6 which clause also describes the valuation which is required.
- 4.2 To occupy the Property as the Borrower's only or main residence.
- 4.3 To keep the Property and all additions to the Property in good and substantial repair (allowing the Council to enter and view the state of repair of the same at all reasonable times on reasonable notice without becoming liable to account as mortgagee in possession) and insured against loss or damage by fire and all other risks which the Council reasonably considers ought to be insured against in the Borrower's name and with the interest of the Council noted on such insurance to the full value of the Property in an insurance office of repute and will duly and punctually pay all premiums and other monies necessary for effecting and keeping up such insurance immediately on the same becoming due or within one week of the due date and will on demand produce to the Council the policy or policies of such insurance and the receipt for every such payment.
- 4.4 To apply all monies received on any insurance whatsoever in respect of loss or damage by fire or otherwise to the Property or any part of the Property in making good the loss or

damage as soon as possible or (at the option of the Council where repayment has become due under Clause 5) in or towards the discharge of the Repayment Sum.

- 4.5 To observe and perform all restrictive and other covenants all building regulations and all restrictions conditions and stipulations (if any) for the time being affecting the Property or the mode of the user or enjoyment of the same or any part of the Property.
- 4.6 To pay and discharge all existing and future rents rentcharges rates taxes duties charges assessments impositions and outgoings whatever (whether imposed by deed or statute or otherwise and even though of a wholly novel character) now or at any time during the continuance of this security payable in respect of the Property or any part of the Property or by the owner or occupier of the Property.
- 4.7 To execute and do at the expense of the Borrower all such works and things whatever as may now or at any time during the continuance of this mortgage be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Property or any part of the Property or by the owner or occupier of the Property.
- 4.8 To obtain all licences permissions and consents and execute and do all works and things and bear and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Borrower on the Property or any part of the Property or of any user of the Property during the continuance of this mortgage.
- 4.9 Not to make or cause or permit to be made any alteration in or addition to the Property nor carry out any development or change of use on the Property within the meaning of any legislation for the time being relating to town and country planning without the previous consent in writing of the Council such consent not to be unreasonably withheld.
- 4.10 To deliver to the Council within seven days of receiving them full particulars of any notice or order or proposal served or made by a planning authority affecting the Property or any part of the Property of which the Borrower has notice and take all necessary steps to comply with any notice order or proposal received. If you do not comply you must permit the Council to enter on the Property for the purpose of taking such steps.
- 4.11 At the Borrower's own cost at the request of the Council to make or join with the Council in making such representations or objections or appeals in respect of any such notice, order or proposal served or made by any planning authority as the Council may reasonably require and indemnify the Council against all costs charges and expenses reasonably and properly incurred by the Council in respect of such representations objections and appeals.

- 4.12 Not without the prior consent in writing of the Council to exercise the power of leasing or agreeing to lease or accepting surrenders of leases conferred on a mortgagor in possession by the Law of Property Act 1925 nor otherwise to grant or agree to grant any lease or tenancy of the Property or any part of the Property nor to confer upon any person any contractual licence right or interest to occupy the Property or any part of the Property or part with possession of the Property.
- 4.13 Not to deal with his interest in the Property in any way other than in accordance with clause 6 or 11.
- 4.14 Without limiting the generality of Clause 4.13, not to create or permit to subsist any Security Interest on the Property, save for
- 4.14.1 any lien arising by operation of law in the ordinary course of business in relation to fixtures and fittings and securing amounts not more than 30 days overdue;
 - 4.14.2 a Security Interest securing amounts owing to a Qualifying Lender but only to the extent permitted by paragraph 10.1;
 - 4.14.3 any Security Interest created with the prior written consent of the Council.
- 4.15 To keep the Council fully indemnified in respect of any breach or non-observance of the covenants contained in this clause.

(5) **REDEMPTION EVENTS**

The occurrence of any of the following events shall trigger repayment under the provisions of Clause 4.1 of this Mortgage:-

- 5.1 Subject to clause 6. any Disposal save for an Exempt Disposal; or
- 5.2 If the Borrower is in breach of the Borrower's covenants and obligations under this Mortgage the expiry of a default notice served by the Council under section 87(1) (and in accordance with the requirements of Section 88) of the Consumer Credit Act 1974 where the Borrower fails to take the action specified by the Council in any default notice by the date specified for such purpose in the default notice; or
- 5.3 Subject to clause 6, upon repayment in full of the first charge or mortgage obtained by the Borrower as referred to in Clause 12 of this Mortgage unless at the same time the Borrower takes out another first charge or mortgage in accordance with Clause 12; or
- 5.4 The Borrower is Bankrupt; or

5.5 The twenty fifth anniversary of the date of this Mortgage.

(6) **TRANSFER OF THE PROPERTY AND DETERMINING THE REPAYMENT SUM**

6.1 If the Borrower wishes to make a Disposal the Borrower must notify the Council in writing to the effect that he wishes to make a Disposal and the Borrower covenants not to make a Disposal without first complying with the procedures in clauses 6.2, 6.3 and 6.4 below.

6.2 Within fourteen (14) days of service of the Transfer Notice or where any of the other events set out in Clause 5 applies (each a "relevant event"), the Borrower shall apply (at its own cost) to the Valuer (whose decision shall be final) to determine the Market Value as at the date of receipt of the Transfer Notice or as at the date of the other relevant event as the case may be and within five (5) Working Days of receipt of such determination the Borrower shall serve a Valuation Notice on the Council.

6.3 The Valuation Notice shall remain valid for a period of three (3) months (or four (4) months if extended by the Valuer) and in the case of a Disposal where completion of the Disposal does not take place within three (3) months (or as extended) of service of the Valuation Notice by the Borrower on the Council, the procedure set out in Clauses 6.1 and 6.2 shall be repeated prior to the Disposal.

6.4 Within 40 Working Days of receipt of a Transfer Notice from the Borrower the Council shall notify the Borrower in writing of the following:-

6.4.1 Whether the Council requires the Borrower to dispose of the Property to a Nominated Purchaser (in which event the provisions of clause [7] shall apply);
or

6.4.2 That the Borrower may proceed with a Disposal of the Property on the open market and (at the Borrower's option) upon completion of the Disposal the Borrower shall either:-

(a) Pay to the Council the Repayment Sum (after redemption of the First Legal Mortgage) (in which event the provisions of clause [8] shall apply);
or

(b) procure that the disponent of the Property enters into a legal mortgage with the Council in the same form as this deed (in which event the provisions of clause [9] shall apply); or

- 6.4.3 that upon completion of this Disposal the Council shall release the Borrower from this deed and will discharge this legal mortgage (in which event the provisions of clause [10] shall apply).

And if the Council shall fail to notify the Borrower in accordance with this clause 6.4 then the Council shall be deemed to have provided notice in the terms of clause 6.4.2 above and in any event that the terms of clause 6.4.2 shall apply the Borrower shall have notified the Council in the Transfer Notice as to whether the Borrower would like the Disposal to proceed in accordance with clause 8 or clause 9 of this deed and the Council shall accept such decision of the Borrower and proceed in accordance with the appropriate clause of this deed.

- 6.5 Upon completion of the Disposal in accordance with this Clause 6 or, where any other relevant event occurs within seven (7) days after determination of Market Value under Clause 6.2, the Borrower shall either:-

- 6.5.1 pay to the Council the sums due in accordance with clause 4.1 if clause 5 or 6.4.2 (a) applies; or
- 6.5.2 if clause 6.4.2 (b) applies, deliver to the Council a certified copy of the completed legal mortgage in favour of the Council on the same terms as this deed entered into by the disponent (the "**new legal mortgage**") together with an undertaking from solicitors acting on behalf of the disponent confirming (i) that the new legal mortgage will be registered at the Land Registry on registration of the Disposal and (ii) that following completion of such registration a full copy of the registers of title to the Property will be sent to the Council evidencing registration of the new legal mortgage

PROVIDED THAT following completion of a Disposal no person shall be registered as proprietor of the Property until such time as the sums due in accordance with clause 4.1 are paid to the Council or a certified copy of the new legal mortgage and the solicitors' undertaking are delivered to the Council whereupon the Council shall provide consent to the registration in accordance with Clause 13 and apply to the Land Registry to remove the restriction referred to in Clause 13 from the Register or certify compliance with the restriction referred to in clause 13 as appropriate.

(7) **DISPOSAL TO A NOMINATED PURCHASER**

- 7.1 In the event that the Council notifies the Borrower that it must Dispose of the Property to a Nominated Purchaser in accordance with clause 6.4.1 above the Council shall have a

further period of 10 Working Days from the date of such notice in which to confirm the identity of the Nominated Purchaser for the Property.

7.2 The Borrower shall allow such Nominated Purchaser 12 weeks from the date of nomination by the Council to exchange contracts for the purchase of the Property at the Market Value Provided That if the Nominated Purchaser has failed within 12 weeks of his nomination to exchange an agreement to purchase the Property then the Borrower shall notify the Council's Chief Housing Officer and the Council shall immediately be deemed to consent to the Disposal proceeding pursuant to the provisions of clause 6.4.2 of this deed and the provisions of clause 8 or clause 9 shall apply.

7.3 Upon completion of the Disposal of the Property by the Borrower to the Nominated Purchaser the Borrower shall procure that the Nominated Purchaser shall enter into a new legal mortgage in the same form as this Deed (save as to parties) whereupon the Council shall promptly certify to the Land Registry compliance with the restriction set out in clause 13 of this Deed.

(8) **PAYMENT OF THE PERCENTAGE TO THE COUNCIL**

In the event that the Council gives notice or is deemed to give notice in accordance with clause 6.4.2 above and the Borrower shall have notified the Council that clause 6.4.2 (a) shall apply then on completion of the Disposal the Borrower shall pay by direct credit to the Council a sum equal to the Repayment Sum (after redemption of any charge on the Property) and the Council shall immediately provide a release of this Deed to the Borrower at the cost of the Borrower.

(9) **NEW LEGAL MORTGAGE**

In the event that the Council gives notice or is deemed to give notice in accordance with clause 6.4.2 above and the Borrower shall have notified the Council that clause 6.4.2 (b) shall apply then upon completion of the Disposal the Borrower shall procure that the transferee of the Property shall enter into a legal mortgage with the Council in the same form as this Deed (save as to parties) whereupon the Council shall forthwith certify to the Land Registry compliance with the restriction set out in clause 13 of this Deed.

(10) **RELEASE OF THIS DEED**

In the event that the Council gives notice under clause 6.4.3 above then upon completion of the Disposal of the Property the Council shall provide a release of this Deed to the Borrower at the cost of the Borrower.

(11) **REDEMPTION BEFORE TRANSFER**

11.1 If the Borrower wishes to redeem this mortgage before an event specified in clause 5 the following procedure shall apply:-

- 11.1.1 The Borrower shall (at any time after five years from the date hereof) apply in writing to the Council to redeem this mortgage;
- 11.1.2 Within fourteen (14) days of service of the notice as specified in 11.1.1 the Borrower shall apply (at its own cost) to the Valuer (whose decision shall be final) to determine the Market Value as at the date of receipt of such application and within five Working Days of receipt of such determination by the Valuer the Borrower shall serve a Valuation Notice on the Council;
- 11.1.3 At any time within three (3) months of service of the Valuation Notice the Borrower may pay to the Council an amount equal to the Repayment Sum together with any reasonable costs and expenses incurred by the Council pursuant to this Mortgage and together with any other sums payable and outstanding under this Mortgage.
- 11.1.4 As soon as reasonably possible after receipt of such payment the Council will duly discharge this security and apply to the Land Registry to remove the restriction referred to in clause 13 from the register.

(12) **PROVISOS**

12.1 This Mortgage shall have priority immediately after one (1) prior legal charge being the First Legal Mortgage (including any further advances issued in accordance with that legal charge for the purposes below) securing an amount advanced to the Borrower by a lending institution which is a Qualifying Lender for the purposes of enabling the Borrower to:-

- 12.1.1 acquire the Property; or
- 12.1.2 fund improvements in the Property which have been approved by the Council;
or
- 12.1.3 redeem a sum pursuant to Clause 11;
- 12.1.4 refinance an existing loan made in accordance with this clause 12.1;

provided that the legal mortgage is approved in advance in writing by the Council and the capital sum advanced under such legal mortgage does not exceed, where clause 12.1.1

applies, the sum equal to the Initial Market Value less the Council Contribution and any deposit paid by the Borrower or where clause 12.1.2 applies, the amount payable in respect of such improvements or where clause 12.1.3 applies, the sum required to redeem a sum pursuant to Clause 11 or where 12.1.4 applies, the amount originally borrowed under the existing loan as approved in accordance with this Clause 12.1.

12.2 If default shall at any time be made by the Borrower in the performance of any of the covenants contained in this Deed it shall be lawful for but not obligatory upon the Council:-

12.2.1 to perform the same and to pay all costs and damages reasonably occasioned by such default; and

12.2.2 with power in the case of any failure to repair in accordance with the covenants contained in this mortgage to enter upon the Property upon reasonable prior written notice without becoming liable to account as mortgagee in possession.

12.3 All monies expended by the Council for any such purpose and all costs charges and expenses reasonably and properly incurred by the Council in relation to compliance with the terms of or the protection or enforcement of this security whether involving litigation or not shall on demand be repaid to the Council by the Borrower.

12.4 If the Borrower fails to pay any amount payable by it under this Deed, it shall on demand by the Council, pay interest on both the overdue amount and on all costs, charges and expenses properly incurred by the Council in relation to the protection or enforcement of this security (whether involving litigation or not and on a complete unlimited and unqualified indemnity basis) from the date upon which such amount was due up to the date of actual payment, both before and after judgement, at the Default Interest Rate (such interest being compounded at such intervals as the Council shall determine but no more than once per year).

12.5 Until repayment all monies due shall be a charge on the Property provided that the charge shall be in addition and without prejudice to any and every other remedy lien or security which the Council may or but for the said charge would have for the recovery of monies secured by this mortgage or any part those monies.

(13) **RESTRICTION**

The parties agree that no person or persons shall be registered under the Land Registration Acts 1925 to 2002 or any statutory amendment or re-enactment of those Acts as proprietor or proprietors of the Property or any part of the Property without the consent in writing of the Council (which shall not be granted if the Council is not satisfied that other provisions

All that leasehold land and buildings known as [] comprised in a
lease dated [] day of [] [200[] made between (1) [] and (2)
[].

Title Number

[]

The Second Schedule

First Legal Mortgage

A first fixed charge on the Property by way of legal mortgage dated [] of []
20[] and made between (1) [] and (2) [the Borrower]

This Deed has been executed as a deed by the Borrower and is delivered and takes effect on the date at the beginning of this deed.

**THE COMMON SEAL of
CHESHIRE EAST BOROUGH
COUNCIL**

was affixed in the presence of:-

Authorised Officer

EXECUTED as a **DEED** by
[Borrower]

in the presence of:-

Witness: (Signature)

(Name)

(Address)

(Occupation)

EXECUTED as a **DEED** by
[Borrower]

in the presence of:-

Witness: (Signature)

(Name)

(Address)

(Occupation)

THE OFFICIAL SEAL of THE CROWN)
ESTATE COMMISSIONERS placed)
here was confirmed as authentic by:-)



[Handwritten signature]
David Robert Booth
Authorised by the Crown Estate Commissioners

THE COMMON SEAL of)
CHESHIRE EAST BOROUGH COUNCIL)
was affixed in the presence of:)

Authorised Signatory:

[Handwritten signature]
(ASIF IBRAHIM)



12492(2)