

Dated

19<sup>th</sup> June

2015

Planning Obligation by Deed of Agreement  
under Section 106 of the Town and Country Planning Act 1990  
relating to land at Parkgate Farm, Knutsford, Cheshire

**SHOOSMITHS**

3 Hardman Street  
Spinningfields  
Manchester  
M3 3HF

(Ref: KJ-M-00249043)

DATE

19<sup>TH</sup> June 2015

PARTIES:

- (1) **CHESHIRE EAST BOROUGH COUNCIL** of Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ ("the Council")
- (2) **RANDLE BROOKS, ESQ. and THE TRUSTEES OF H.R.BROOKS 1998 SETTLEMENT** both of Peover Hall, Knutsford, Cheshire WA16 9HW ("the Owner")

## 1 INTRODUCTION

- 1.1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 1.2 The Council is the highway authority for the purposes of the Act for the area in which the Site is situated.
- 1.3 The Council is the education authority for the purposes of the Act for the area in which the Site is situated.
- 1.4 The Owner is the freehold owner of 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.
- 1.6 The Council resolved on 5<sup>th</sup> March 2014 to approve the Application and grant Planning Permission subject to the prior completion of this Deed.

## **NOW THIS DEED WITNESSES AS FOLLOWS:**

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

"Act"	the Town and Country Planning Act 1990(as amended)
"Adam's Hill Contribution"	a sum to be calculated in accordance with the formula set out in the Fifth Schedule of this Deed
"Adam's Hill Junction"	the junction of the A50 and Adam's Hill
"Adam's Hill Works"	the widening of the Adam's Hill Junction as shown on Plan 2
"Affordable Housing"	Social Rented Housing Affordable Rented Housing and Intermediate Housing provided to Qualifying Persons
"Affordable Housing Scheme"	means a scheme which specifies in relation to the each phase of the Site:  (a) 30% of the Dwellings on the Site to be provided as Affordable Housing (to the nearest whole number where there results in a figure which is not a whole number)  (b) 65% of the Affordable Housing to be

Affordable Rented Housing (to the nearest whole number where there results in a figure which is not a whole number) and the balance to be Intermediate Housing; the location and distribution of the Affordable Housing within the Site, ensuring that the Affordable Housing is pepper-potted throughout the Site and not segregated from the Market Housing;

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

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

"Affordable Housing Units"

the individual Dwellings to be provided on the Development as Affordable Housing in accordance with the Affordable Housing Scheme

"Affordable Rented Housing"

those Dwellings to be let to Qualifying Persons by the Registered Provider as Affordable Housing subject to rent controls that require a rent of no more than 80% of the local Market Rent (including service charges where applicable)

"Application"

the application for outline planning permission registered by the Council on the 12<sup>th</sup> July 2013 and allocated reference number 13/2935M

"Commencement of Development"

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this agreement and for no other purposes) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other ground conditions, erection of temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly

"Completed"	constructed and fitted out ready for Occupation
"Contributions"	the Adam's Hill Contribution, the Hollow Lane Contribution, the Education Contribution, the Public Art Contribution and the Recreation and Outdoor Sports Facilities Contribution
"Development"	the development of the Site in accordance with the Planning Permission
"Developable Area"	The area of the Site shown hatched purple on plan 5 attached
"Discount for Sale Housing"	Affordable Housing which is to be sold to Qualifying Persons at no more than 70% of Open Market Value in accordance with the Resale Covenant Scheme which the Owner shall ensure binds the Discount for Sale Housing Dwellings in perpetuity
"Disposal"	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
"Dwellings"	the residential units built on Site pursuant to the Planning Permission and reference to "Dwelling" shall mean any one of the Dwellings
"Education Contribution".	the sum to be calculated in accordance with the following formula:  $0.18 \times \text{the number of two (or more) bedroomed dwellings to be built on the Site in accordance with the Planning Permission} \times 11919 \times 0.91$
"Education Purposes"	the funding of primary school places within a two miles radius of the Site with places funded from general taxation and which serve the area within which the Development is located
"Hollow Lane Contribution"	a sum to be calculated in accordance with the formula set out in the Fifth Schedule of this Deed
"Hollow Lane Junction"	the junction of Hollow Lane and the A537 Brook Street
"Hollow Lane Works"	the widening of the Hollow Lane Junction as shown on Plan 3
"Homes and Communities Agency" or "HCA"	the non-departmental public body whose role it is to regulate and fund registered social landlord's (or any statutory successor or successor as recognised by the Government)
"Housing Manager"	the Council's strategic housing and intelligence manager for the time being or their successor post or any other officer to whom they delegate some or all of their functions
"Housing Need"	living in unsuitable housing conditions and/or

being unable to afford suitable housing at open market prices either to rent or to buy

"Index"

all In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation except in relation to the Education Contribution for which it shall mean the Public Sector Non-Housing Tender Price Index (PUBSEC) published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

"Industrial Buffer Mound"

a mound along the boundary (or any part of the boundary) with the Parkgate Industrial Estate details of which are required to be submitted as part of the landscaping scheme required by condition 7 of the Planning Permission.

"Interest"

interest at 4 per cent above the base lending rate of the Bank of England from time to time.

"Intermediate Housing"

the Dwellings to be used as Affordable Housing for sale and rent provided at a cost above Social Rent, but below market levels. For the purposes of this agreement this includes Shared Equity Housing, Discount For Sale Housing (Shared Ownership but not equity loans) or such other suitable form of intermediate affordable Housing approved in writing by the Council

"Landscaped Areas"

the areas of landscaping and general amenity to be provided on Site the location of which is (except for the Industrial Buffer Mound) indicated for the purposes of identification only hatched green and cross hatched green and cross hatched brown on Plan 5 attached and which include but are not limited to the Industrial Buffer Mound, the woodland buffer (to include open space and combined footpath and cycleway), ecological and nature conservation areas and buffer, and amenity grassland and which do not form part of a demise of a Dwelling

"Landscape and Habitat Management Plan"

a plan to be submitted and approved by the Council at the same time as the Landscape Scheme and prior to Commencement of Development for the future management and maintenance of the Public Open Space and the Landscaped Areas in perpetuity and in accordance with the Landscape Scheme that identifies the maintenance requirements for the Public Open Space and the Landscaped Areas 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 Public Open Space and the Landscaped Areas to include hard and soft landscaping, footpath / cycleway, surfacing materials, furniture, play equipment, ponds, signs, lighting, boundary treatments, fences, trees,

shrubs and hedge plants and details of who is to undertake the on-going future maintenance

"Landscape Phasing Plan"

a plan to be submitted and approved by the Council at the same time as the Landscape Scheme and Landscape and Habitat Management Plan and prior to Commencement of Development including details of the phased development of the Site and which identifies the delivery of the Landscaped Areas and the Public Open Space all of which to be delivered prior to the Occupation of any adjoining Dwelling

"Landscape Scheme"

the detailed plan and specification for the Public Open Space and the Landscaped Areas to be submitted to and approved by the Council prior to the Commencement of Development including full details and specifications for works and materials, how the Public Open Space and Landscaped Areas will be delivered in accordance with the Landscaped Phasing Plan, graded, drained, landscaped, seeded, planted, laid out and provided safe and fit for use by the public and specifically in relation to the LEAP and the LAP a detailed specification of the construction method and materials to be used

"Local Area for Play" "LAP"

an unsupervised area for play specifically for pre school children designed to encourage informal play and social interaction, the play area should contain at least 3 play features and be laid out to meet relevant safety standards for play facilities (which shall be the appropriate European Standard), including suitable safety surfacing, fencing and seating for supervising adults. Such LAP provision to be located within the residential development, in a central position alongside the LEAP forming a central play and amenity space

"Locally Equipped Area for Play" "LEAP"

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), including suitable safety surfacing, fencing and seating for supervising adults. Such LEAP provision to be located within the residential development, in a central position alongside the LAP forming a central play and amenity space

"Local Connection"

a person who:

(a) currently lives or has lived within the administrative area of the Council and has done so for 6 out of the last 12 months or 3 out of the last 5 years; or

(b) has immediate family (parent, sibling, child or adoptive parent or child) who are currently living

in the administrative area of the Council and who has done so for at least 5 years; or

(c) has a permanent contract of employment in the administrative area of the Council; or

(d) 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 service; or

(e) has other significant connections to the administrative area of the Council such that in the reasonable opinion of the Housing Manager, they should be eligible for Affordable Housing within the administrative area of the Council

"Management Company"

a limited company with the purpose of managing the Public Open Space and the Landscaped Areas within the Development in perpetuity in accordance with the Landscape and Habitat Management Plan

"Market Dwelling"

Dwelling which is or is intended to be sold or let at a price governed by the open market

"Market Rent"

the estimated rent for the relevant Dwelling 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

"Market Housing"

the Dwellings excluding the Affordable Housing Units comprising the Development

"Nominations Agreement"

an agreement substantially in the form set out in the Third Schedule

"Occupation" and "Occupied" and "Occupier"

occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

"Open Market Value"

the price at which the sale of the long leasehold interest in an Affordable Housing Unit at a premium payment only might reasonably be expected to be completed unconditionally for cash consideration on the date of valuation assuming:-  
(a) a willing seller  
(b) that prior to the date of valuation there had been a reasonable period (having regard to

the nature of the Affordable Housing Unit and the state of the market) for the proper marketing of the Affordable Housing Unit for the agreement of price and terms and for the completion of the same

(c) that the state of the market level of values and other circumstances were on any other earlier assumed date of exchange of contracts the same as on the date of valuation

(d) that no account is taken of any additional bid by a purchaser with a special interest and

(e) the provisions contained in the First and Third Schedule hereto (regarding Affordable Housing) shall be disregarded

"Other Hollow Lane Developments"

developments which when fully occupied will add to the volume of traffic using the Hollow Lane Junction including but not limited to development on the whole or any part of the sites identified on Plan 4

"Other Adam's Hill Developments"

developments which when fully Occupied will add to the volume of traffic using the Adam's Hill Junction including but not limited to development on whole or part of the sites identified on Plan 4

"Parties"

the parties to this Agreement and the word "Party" shall mean any one of them

"Plan 1"

the plan attached to this Deed and marked Plan 1

"Plan 2"

the plan attached to this Deed and marked Plan 2

"Plan 3"

the plan attached to this Deed and marked Plan 3

"Plan 4"

the plan attached to this Deed and marked Plan 4

"Plan 5"

the plan attached to this Deed and marked Plan 5

"Planning Permission"

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

"Public Open Space"

a minimum of 40 sqm per Dwelling of public open space to be provided by the Owner within the Site save where otherwise agreed in writing by the Council including formal and informal recreation areas, the fenced central play and amenity space with LEAP and LAP, seating, signage and informal amenity area with sports pitch, trim trail footpaths, seating and signage of which a minimum of 2,000 sqm shall be within the Developable Area (but not on the Industrial Buffer Mound) and the remainder shall be in the area shown for identification cross hatched brown on Plan 5 attached save where otherwise agreed in writing by the Council.

"Public Open Space Completion Certificate"

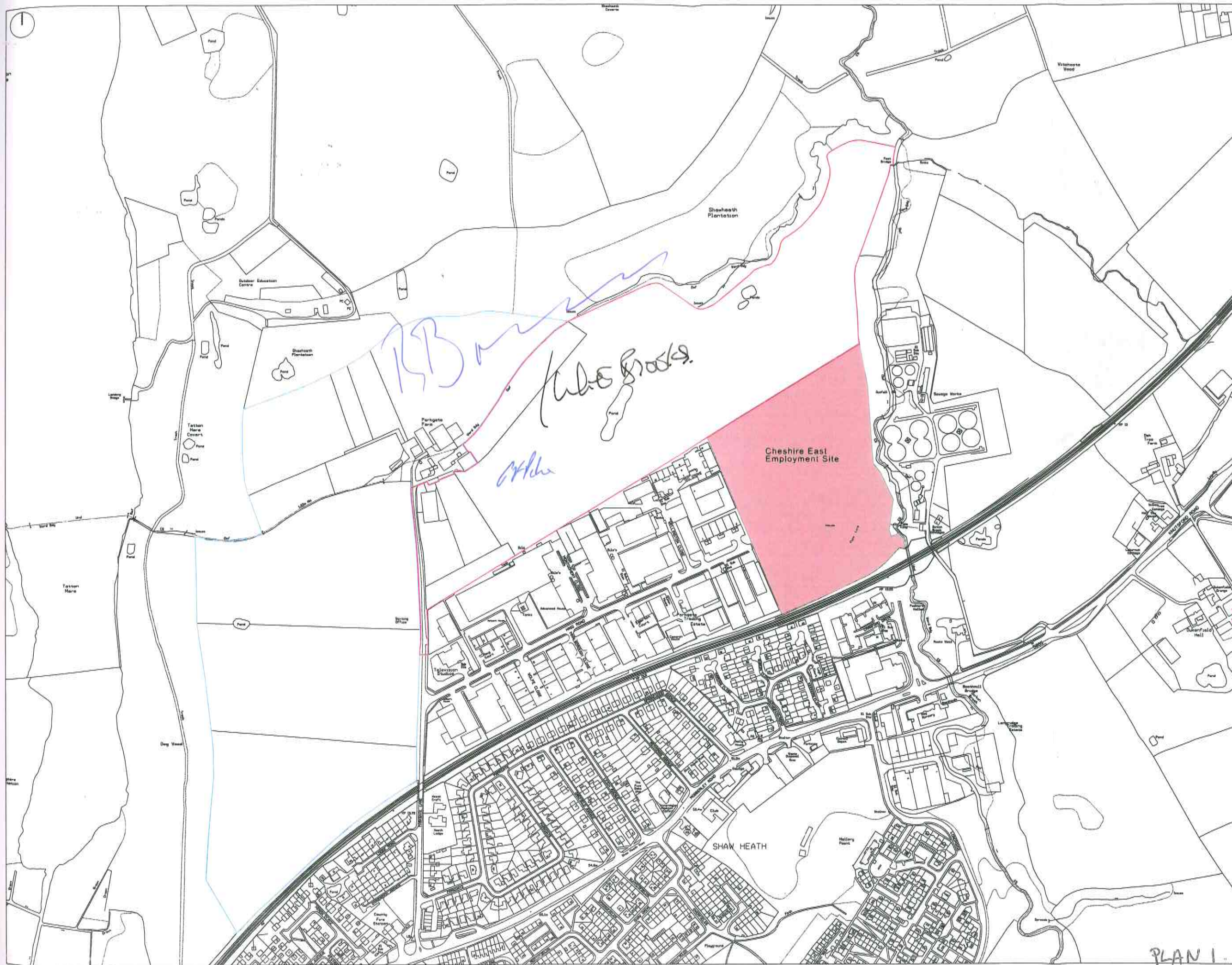
a certificate issued by the Council on the completion of the Landscaped Areas and Public Open Space to the Council's reasonable



	satisfaction in accordance with the Landscape Scheme and the required standard safe and fit for public use and meeting all relevant safety standards
"Practical Completion"	issue of a certificate of Practical Completion by an architect, quantity surveyor or other suitably qualified and informed person
"Public Art Contribution"	the sum of £7,500 to be used to provide public art on the Site
"Qualifying Person"	persons nominated by the Council in writing who are In Housing Need and who have a Local Connection and "Qualifying Person" shall be construed accordingly
"Recreation and Outdoor Sports Facilities Contribution"	the sum of £1000 per unit of Market Housing (except apartments with two or more bedrooms in respect of which the contribution shall be £500 per apartment) permitted by Reserved Matters application or applications approved pursuant to the Application to be used for the Recreation and Outdoor Sports Facilities Works
"Recreation and Outdoor Sports Facilities Works"	works of improvement addition and enhancement to the existing sports pitches and sports facilities in Knutsford and/or the provision of a new sports facility in Knutsford and any essential related land purchase (which may for the avoidance of doubt include provision on the Site) together with all proper and reasonable professional fees and administrative expenses directly attributable thereto
"Registered Provider"	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 the HCA and as approved by the Council or other competent authority pursuant to the Housing and Regeneration Act 2008 or any other body who may lawfully provide or fund Affordable Housing from time to time and as approved by the Council
"Rented Housing"	Dwellings to be constructed on the Site pursuant to the Planning Permission and to be used as either Affordable Rented or Social Rented Housing
"Resale Covenant Scheme"	a scheme approved in writing by the Council which governs the permitted sale price of the Discount for Sale Housing Dwellings and the terms upon which such occupation and /or sale or transfer of such Dwellings may take place such scheme to be substantially in the same form as set out at Schedule 3 with such modifications and amendments as may be agreed in writing by the Housing Manager

"Reserved Matters"	has the same meaning as in The Town and Country Planning (Development Management Procedure)(England) Order 2010
"Section 106 Monitoring Officer"	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
"Serviced Condition"	the provision of roads, sewers, gas, electricity and telecommunications to the Dwellings
"Shared Equity Housing"	housing to be sold to Qualifying Persons at no more than 70% of Open Market Value which upon every transfer shall be subject to a legal mortgage in favour of the Council (or its nominee) which shall secure the remaining 30% (or a proportionately greater percentage if the relevant Dwelling is sold at less than 70% of the Open Market Value) of the Open Market Value of the relevant Dwelling in accordance with the Shared Equity Sale Scheme approved by the Council
"Shared Equity Sale Scheme"	a scheme approved in writing by the Housing Manager which controls the permitted sale price of the Shared Equity Housing Dwellings, the categories of persons who are eligible to own and/or occupy such Dwellings and the terms upon which such occupation and/or sale or transfer of such Dwellings may take place and such scheme shall require each Shared Equity Housing Dwelling to be subject to a legal mortgage in favour of the Council which secures to the Council a 30% share in the Open Market Value of the relevant Dwelling and the scheme shall be on such legally binding terms as the Housing Manager may reasonably require
"Shared Ownership"	a form of tenure granted by lease by the Registered Provider to be disposed pursuant to shared ownership arrangements within the meaning of section 70(4) of the Housing and Regeneration Act 2008
"Site"	the land known as land to the north of Parkgate industrial Estate Parkgate Lane Knutsford and registered at Land Registry under title numbers CH436835 and CH323744 against which this Deed may be enforced as shown edged red on Plan 1
"Social Rented Housing"	Affordable Housing managed by a Registered Provider for which the rent is no higher than Target Rent
"Sports Pitch"	a grass pitch to be provided in the area hatched cross hatched brown on Plan 5 or in such other location as may be agreed in writing by the Council no more than 68.25 x 42m plus reasonable run offs to Sports England Natural Turf for Sport standard for use by the local





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Red Line Site Boundary  
Blue Line Ownership

REV | DATE | DETAILS

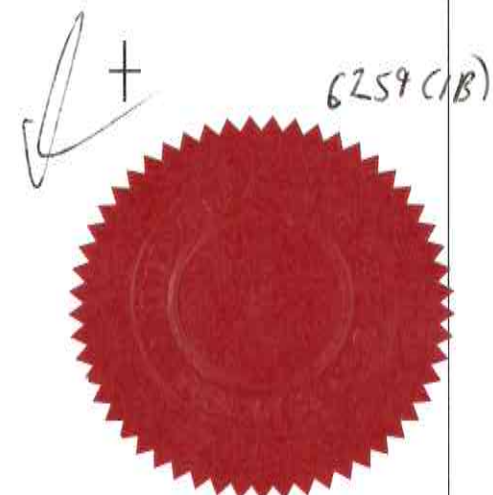
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PROJECT:  
Parkgate, Knutsford  
Proposed Residential Development  
TITLE:  
Site Location Plan  
SCALE:  
1:2500 @A1  
DATE:  
29/04/13  
DRAWN:  
JC  
CHECKED:  
JM  
STATUS:  
Outline Planning  
DRAWING NO:  
08202\_BB\_00\_000  
Architect | Masterplanning | Interior | Graphic | Branding

PLAN 1



RTB  
Celia Brooks  
C/K

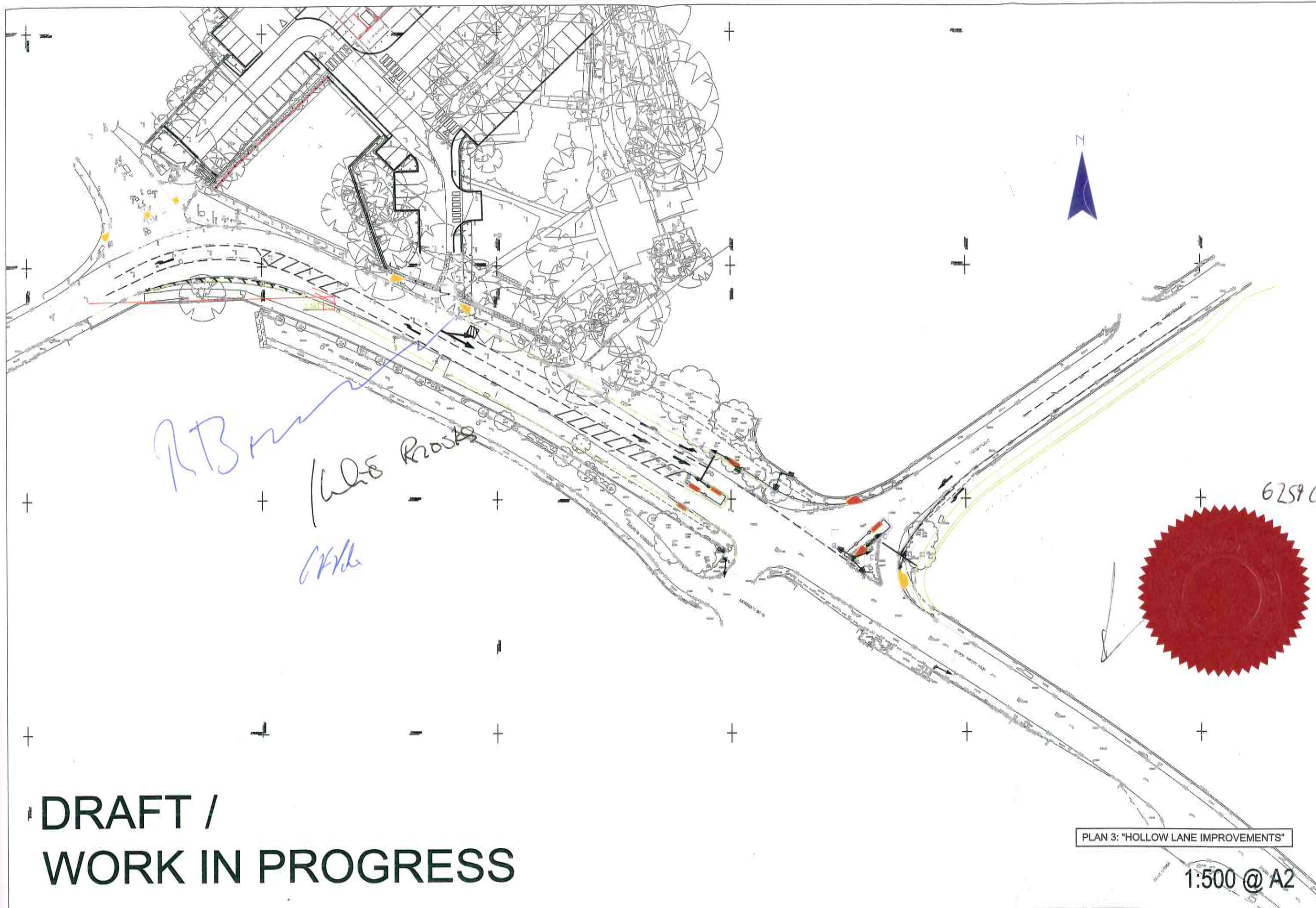


DRAFT /  
WORK IN PROGRESS

PLAN 2: "ADAMS HILL IMPROVEMENTS"

1:500 @ A3



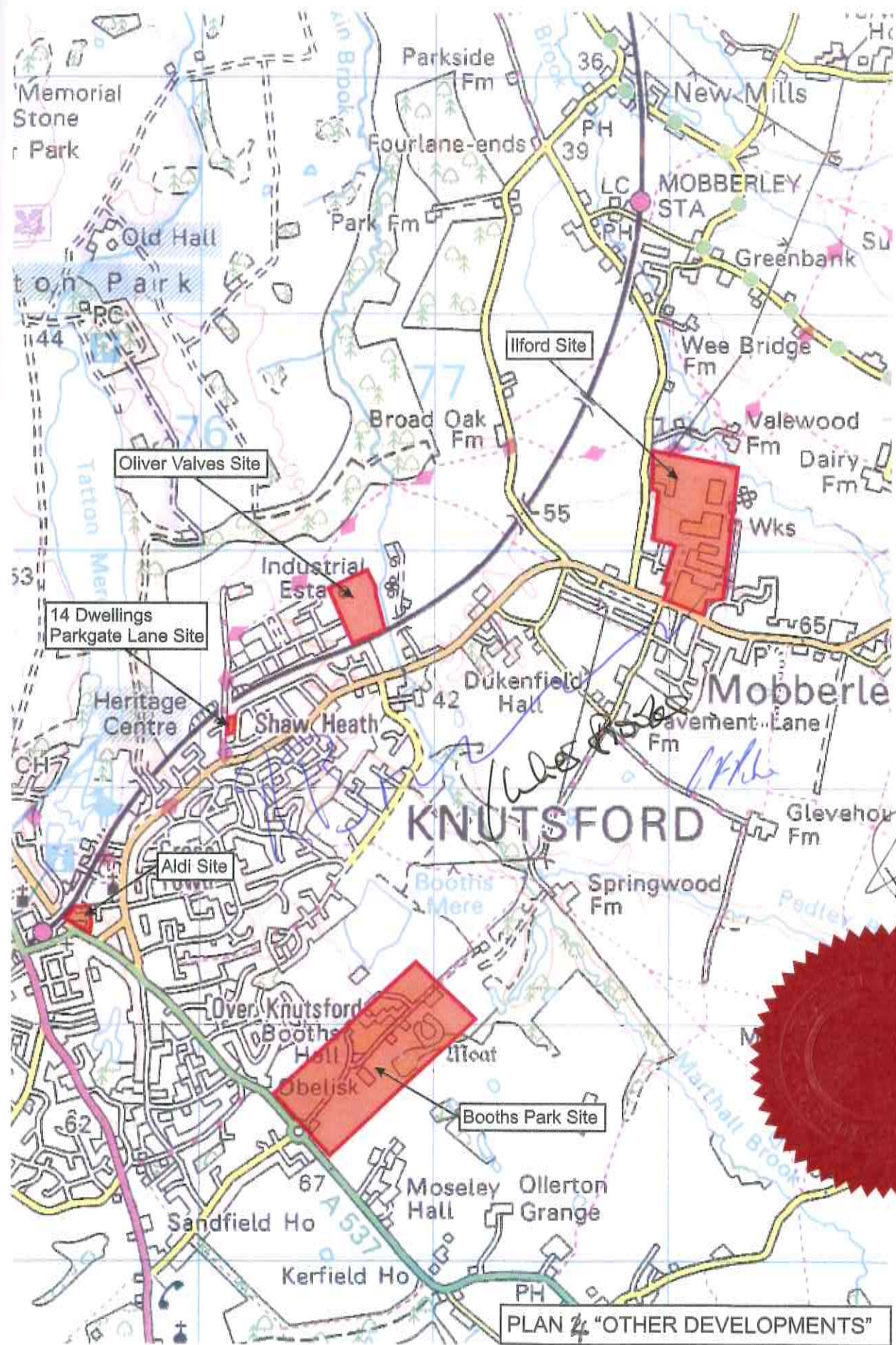


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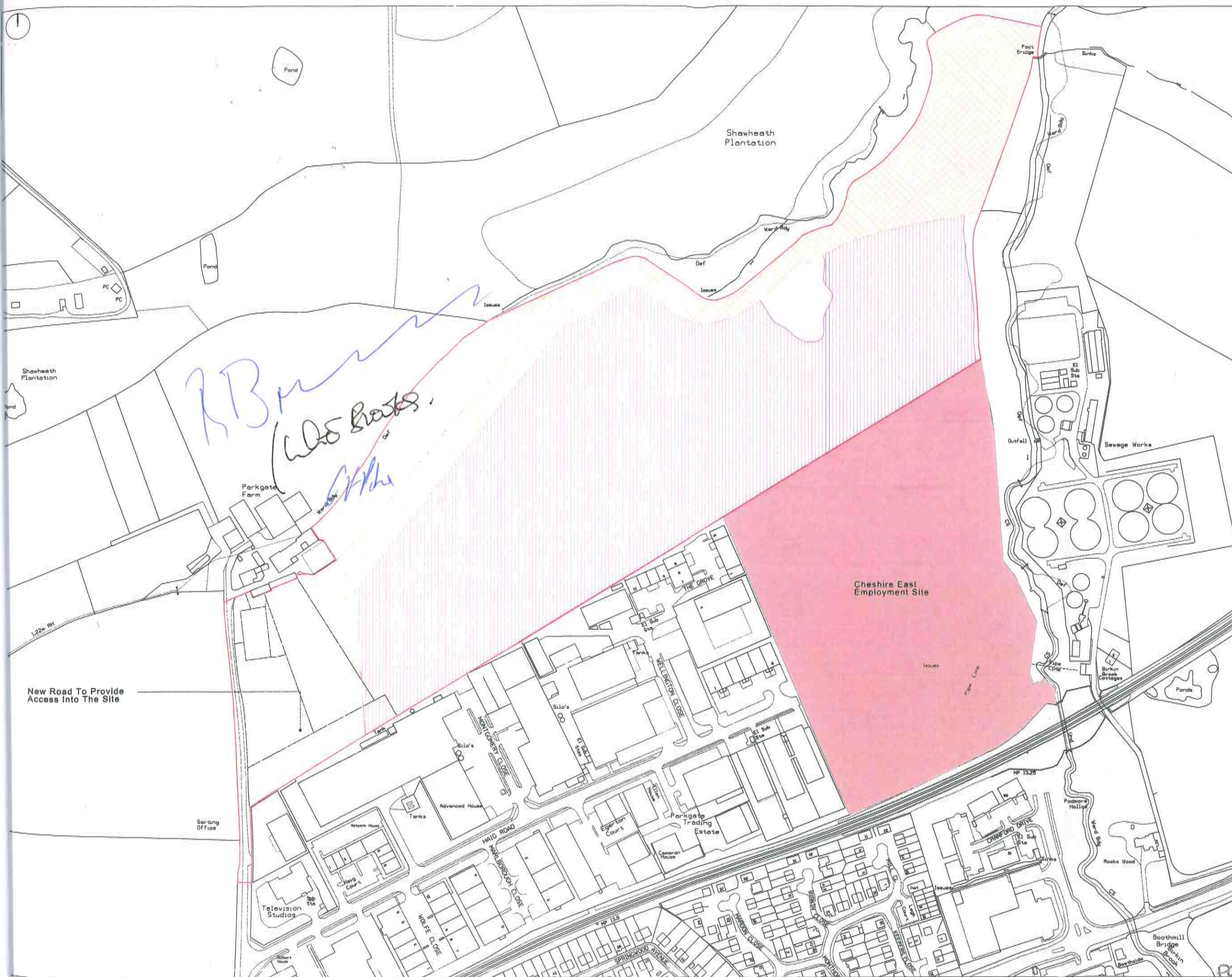
PLAN 3: "HOLLOW LANE IMPROVEMENTS"

1:500 @ A2









6259 (IE)

Site Boundary

Net Developable Area  
Corresponds with Macclesfield Borough  
Local Plan allocation  
and omits ecological mitigation area  
and landscape buffers.

Ecological Nature Areas & Buffer

Grassland

Woodland Buffer To Include Open  
Space & Combined Footpath & Cycle  
Path

Rev. | Date | Initials

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www.5plusarchitects.com

PROJ: Parkgate, Knutsford  
Proposed Residential Development  
Title: Site Plan  
Section 108  
Scale: 1:1500 @A1  
Date: 07/04/15  
Drawn: JC  
Checked: JM

Outline Planning  
Project: 05202 BB\_00\_006

PLAN 5



	community for sports and community activities and events, appropriately laid out, graded, drained and with appropriate goals x 2
"Staircasing"	the purchase by the Owner of additional equity in a Dwelling disposed of on a Shared Ownership basis
"Target Rent"	target rents for social rented housing (or its equivalent) as published from time to time by the Homes and Communities Agency (or such other body as may replace the Homes and Communities Agency, having responsibility for setting target rents for social housing);
"Trim Trail"	a minimum of 5 pieces of trim trail or fitness equipment to be located within the woodland buffer cross hatched brown on Plan 5 with hardstanding where required and appropriate information panels
"Trustees of the Henry Randle Brooks Settlement"	Randle Brooks and Graham Francis Pike and Juliet Marit Gabriel Brooks

## 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.

## 3 LEGAL BASIS



3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2002 (in relation to Affordable Housing matters), Section 609 of the Housing Act 1985 and Section 1 of the Localism Act 2012.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and to the extent that any of the obligations are not planning obligations within the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and section 1 of the Localism Act 2012 and all other enabling powers.

#### **4 CONDITIONALITY**

4.1 This Deed shall come into effect upon the Commencement of Development 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 AND MORTGAGEE'S ASSENT**

5.1 The Owner covenants with the Council as set out in the First Schedule.

#### **6 THE COUNCIL'S COVENANTS**

6.1 The Council covenants with the Owner as set out in the Third Schedule.

#### **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 incurred in the negotiation, preparation and execution of this Deed not to exceed £3470.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 save by successors in title of the Owner and those deriving title from the Owner to the Site or any part of it

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 Head of Development Management and Building Control.

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request from the Owner confirm compliance with the obligations contained in this Deed and remove reference to it from the Local Land Charges Register.

7.6 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.

7.7 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 (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.8 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 or in

the part of it in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest

- 7.9 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.

- 7.10 The Obligations set out in this Deed shall not be enforceable against the freeholders or leaseholders of individual Dwellings or the freeholders or leaseholders of any individual non-residential unit comprised within the Development (or in each case their mortgagees or any person deriving title from any of them) SAVE THAT the following clauses will be enforceable against such parties to the extent stated in this clause

7.10.1 The occupation restrictions set out in this Deed which apply to the Dwelling or non-residential unit comprised in the Development in respect of which they have an interest shall bind the freeholders of individual Dwellings and non residential units such that if they Occupy a Dwelling or non-residential unit comprised in the Development when an Obligation which restricts said occupation in this Deed has not been complied with they will then be in breach of this Deed

7.10.2 SUBJECT TO the releases in clause 17 of The First Schedule clauses 2.1 and 12 of The First Schedule shall be enforceable against the freehold and leasehold Owners of the Affordable Housing in so far as there is a breach in relation to the Dwelling in which they have an interest

7.10.3 Clauses 36 and 37 of the First Schedule shall bind the freeholders of individual Dwellings in so far as there is a breach in relation to the Dwelling in which they have an interest

7.10.4 The freeholders of the individual Dwellings which are the last 25% of the dwellings permitted to be constructed under the reserved matters related to the Planning Permission to be Occupied shall be bound by the provisions of clauses 20 – 22, 25 and 40 to 41 of the First Schedule.

- 7.11 The obligations contained in this Deed shall not be binding on or 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 telecommunications services or public transport

## **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 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, save in the case of the sale of individual Dwellings, 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 Any sum referred to as due in the First or Second 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.

## **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; and

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

- 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;

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; and

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 If any dispute or difference shall arise between the parties hereto as to any works to be done or achieved and the costings thereof pursuant to this Agreement the same shall be referred to a surveyor to be agreed upon between the parties hereto or failing agreement as to the same (within fourteen days of any party calling upon the others to agree) to be appointed upon the application of any party hereto by the President for time being of the Royal Institution of Chartered Surveyors or his Deputy

- 16.2 If any dispute shall arise as to the interpretation and operation of the provisions of this Agreement the same shall be referred to a Barrister of not less than seven years called to be agreed between the parties hereto or failing agreement as to the same (within

fourteen days of any party calling upon the others to agree) to be appointed upon the application of any party hereto by the President for the time being of the London Law Society or his Deputy

- 16.3 A person agreed or appointed as aforesaid shall act as an expert and not as an arbitrator and shall be entitled to look to other experts who he considers to be appropriately qualified for advice and who shall allow each side twenty one days from the reference of the dispute to him to make to him such written representations in relation to the dispute as they consider to be appropriate and whose decision upon the reference (including the question of who shall pay his fees and outgoings in relation thereto) shall be delivered in writing to the parties hereto and shall be final and binding upon the parties
- 16.4 If the expert shall die delay or become unwilling or incapable of acting or if for any reason the President or his Deputy appointing the expert shall in his absolute discretion think fit he may in writing discharge the expert and appoint another in his place
- 16.5 The provisions of this clause shall not affect the ability of any party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

## **17. SECTION 73 APPLICATIONS**

- 17.1 If the parties shall so agree in writing in relation to any planning permission granted as a result of any application under section 73 of the Act affecting the Planning Permission the parties shall comply with the terms of this Deed as if the definition of the Planning Permission in this Deed had been replaced by the description of the said planning permission granted as a result of any application under section 73 of the Act affecting the Planning Permission with the intention that the provisions of this Deed will apply as if the definition of the Planning Permission in this Deed were the new planning permission granted as a result of such application and a memorandum of that agreement shall be endorsed on the face of the Agreement which is recorded on the public register.

## **18. COMMUNITY INFRASTRUCTURE LEVY**

- 18.1 If the Council adopts a charging schedule, for the purposes of introducing the Community Infrastructure Levy, prior to Planning Permission being granted, the Owner shall be released from any planning obligation that relates to an item or project included on the Council's regulation 123 list of infrastructure.

## **19. APPEAL**

- 19.1 No individual covenant on the part of the Owner in this Deed shall take effect if the Inspector on an appeal to determine the Application or in relation to any appeal against the conditions imposed in relation to the Planning Permission indicates in his decision letter that he considers that the covenant does not satisfy one or more of the tests in Regulation 122 of the Community Infrastructure Regulations 2010 or other similar provision which may from time to time be in force

**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**

1. To give the Council written notice of the Commencement of Development within 7 days of Commencement.
2. To give the Council written notice of Occupation of the Development within 7 days of first Occupation and thereafter (within 7 days of the relevant Occupation trigger) to give the Council written notice of the Occupation of 25% 38% and 75% the Dwelling respectively)..

#### **Part 2- Affordable Housing**

- 2 The Owner covenants with the Council that subject to the releases and mortgagee protection contained in paragraph 16 of this Schedule (which shall apply to the mortgagee of a Registered Provider only) and subject to the releases set out in Paragraph 17 of this Schedule:
  - 2.1 The Affordable Housing Units shall not be used or Occupied other than as Affordable Housing in perpetuity and in accordance with the requirements of this First Schedule.
  - 2.2 30% of the Dwellings permitted by the Planning Permission shall be constructed as Affordable Housing Units.
  - 2.3 The Affordable Housing Units shall comprise:
    - 2.3.1 65% Affordable Rented Housing or Social Rented Housing (to the nearest whole number where there results in a figure which is not a whole number)
    - 2.3.2 The balance to be Intermediate Housing.
  - 2.4 The Owner shall submit the Affordable Housing Scheme for each phase to the Council for approval with the first Reserved Matters application submitted to the Council for that phase pursuant to the Planning Permission and no Development on that phase shall Commence until the Affordable Housing Scheme for that phase has been submitted to and approved by the Council.
  - 2.5 The Affordable Housing Units shall be provided in accordance with the approved Affordable Housing Scheme and retained as such in perpetuity.

#### **Timing of Occupation of Affordable Housing and Market Housing**

3. Not more than 50% (or 80% in the event that the Development is phased and the Affordable Housing Scheme shows a degree of pepper-potting which the Council agrees in writing at the request of the Owner is high such agreement not to be unreasonably withheld or delayed) of the Market Housing shall be Occupied until:
  - 3.1 all the Affordable Housing Units have been Completed in accordance with the Planning Permission, this schedule and the Affordable Housing Scheme and made ready for beneficial Occupation and use; and

- 3.2 all of the Shared Ownership Housing and Affordable Rented Housing and Social Rented Housing or the land on which they are to be constructed have been transferred to a Registered Provider (by way of the transfer of a freehold or a long lease of not less than 125 years) in accordance with the Affordable Housing Scheme and the provisions of this Schedule; and
- 3.3 a comprehensive marketing campaign in respect of all of the Discount for Sale Housing Dwellings and Shared Equity Housing Dwellings has been approved in writing by the Council and implemented.

#### **Disposal of Discount for Sale Housing Dwellings and Shared Equity Housing Dwellings**

4. Upon Disposal of any Discount for Sale Housing Dwelling it shall observe and perform the obligations of the Owner and transferee within the Resale Covenant Scheme set out in the Third Schedule of this Deed and shall procure that all future Disposals of those Dwellings shall be bound by the terms of the Resale Covenant Scheme.
5. Upon Disposal of any Shared Equity Housing Dwelling it 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.

#### **Disposal of Affordable Housing to a Registered Provider**

6. The Owner covenants with the Council to transfer the Affordable Housing Units or the land on which they are to be constructed (with the exception of the Discount for Sale Housing and the Shared Equity Housing) to the Registered Provider in accordance with this Deed and on terms that accord with the appropriate HCA funding requirements

#### **Design of Affordable Housing**

7. The Affordable Housing Units shall be constructed and Completed to at least the HCA Design & Quality Standards (2007) and shall achieve at least Level 3 of the Code for Sustainable Homes (2007).
8. The size of the private amenity space to be provided for the Affordable Housing Units shall be consistent with that of Market Dwellings of a similar size and type and prior to Commencement of Development the Owner shall submit to the Council for its approval the details of the private amenity space to be provided unless and to the extent that such details have already been approved by the Planning Permission.
9. No Development shall Commence until the Council has given its written approval of the details of the private amenity space to be provided for the Affordable Housing Units pursuant to paragraph 8 above (unless such details were approved by the Planning Permission).

#### **Terms of Affordable Housing Transfer**

10. The Owner covenants that where any Affordable Housing Units (or the land on which they are to be constructed) are transferred to a Registered Provider it shall be with vacant possession; shall contain provisions that grant of rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and shall be in a Serviced Condition
11. The terms of any transfer of the Affordable Housing Units to a Registered Provider shall impose a requirement on the Registered Provider to enter into the Nominations



Agreement in respect of the said Affordable Housing Units that are the subject of the Transfer and are not Intermediate Housing unless otherwise agreed in writing by the Council.

#### **Occupation of the Affordable Housing**

12. Subject to paragraph 13 below the Owner shall not permit or otherwise allow any of the Affordable Housing Dwellings to be Occupied otherwise than:
  - 12.1 as the sole private residence of the Occupier; and
  - 12.2 by a person who is a Qualifying Person at the time of the commencement of his Occupation of the Affordable Dwelling;  
  
and in accordance with the Council's Nominations Agreement for all Affordable Housing Units that are not Intermediate Housing (unless otherwise agreed in accordance with paragraph 13 below).
13. In accordance with paragraph 12 if the Owner has used reasonable endeavours to Dispose of the relevant Dwelling:
  - 13.1 In the case of the Discount for Sale Housing Dwellings, in accordance with this Schedule and the Third Schedule; and
  - 13.2 In the case of the Shared Equity Housing Dwellings, in accordance with this Schedule and the Shared Equity Housing Scheme approved by the Council;  
  
but has failed to find a purchaser who is ready willing and able to exchange contracts, then the relevant Discount for Sale Housing Dwelling or Shared Equity Housing Dwelling may be occupied by a person who is not a Qualifying Person PROVIDED ALWAYS that the provisions of Paragraph 12 of this Schedule shall apply to any subsequent Disposal by that person or their successors in title.
14. The first Disposal of each Shared Ownership Housing Dwelling to a person who is proposed to become an Occupier shall include the following terms:
  - 14.1 The Disposal shall not involve the sale of an equity stake of less than 25% or more than 75%; and
  - 14.2 The rent payable under the shared ownership lease shall not amount to more than 2.75% of the value of the unsold equity of the relevant Shared Ownership Housing Dwelling.
15. Notwithstanding Paragraph 14.1 but subject to Paragraph 14.2 on the first Disposal of each Shared Ownership Housing Dwelling to a person who is proposed to become an Occupier, the Owner shall use reasonable endeavours to Dispose of an equity share of 50% to that proposed Occupier.

#### **Registered Provider Mortgage Disposal**

16. The covenant in paragraph 2.1 of this Schedule the Affordable Housing Units shall not be binding on or enforceable against any mortgagee or chargee of a Registered Provider or any administrator, fixed charge receiver (including an administrative receiver appointed pursuant to the Law of Property Act 1925), administrative receiver or any other person appointed under any security documentation to enable such mortgagee or chargee of the Registered Provider to realise its security or their successors in title or persons deriving title therefrom exercising a power of sale in

respect of the Affordable Housing Units PROVIDED that the mortgagee of such Registered Provider:

- 16.1 has given the Council at least three months' written notice of its intention to exercise such power of sale; and
- 16.2 if the said mortgagee or receiver has used its reasonable endeavours to first dispose of the Affordable Housing Units to a Registered Provider, and provided written evidence of such reasonable endeavours and secured the Council's written approval thereof, and, for the avoidance of doubt, such mortgagee, chargee or receiver shall not be under any obligation to dispose of the Affordable Housing Units for a sum less than the monies outstanding pursuant to the legal charge or mortgage plus any interest and costs; and
- 16.3 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 16.2 above, within the said three month period, the said mortgagee or the receiver may (but without imposing any obligation on the said mortgagee charge or receiver) dispose of the Affordable Housing Units which have not by that time been disposed of to such Registered Provider 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.

#### **Releases**

- 17. The provisions of this Schedule shall:
  - 17.1 Cease to apply to any part or parts of the property which are disposed of in accordance with paragraph 16.3
  - 17.2 Cease to apply to any completed Affordable Housing Units where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable.
  - 17.3 Cease to apply to any completed Affordable Housing Units where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof.
  - 17.4 Cease to apply to any Shared Ownership Housing where the tenant has Staircased up to 100% in accordance with the terms of such Shared Ownership Housing lease.
  - 17.5 In respect of the Discount for Market Sale Housing Dwellings, be subject to the provisions of the Third Schedule.

#### **Proceeds of Sales Arising from Sale of Affordable Housing**

- 18. The Registered Provider shall apply all monies which arise from the sale of any Affordable Dwelling following:
  - 18.1 the exercise of a tenant's right to buy;
  - 18.2 the exercise of a tenant's right to acquire; or
  - 18.3 the sale of a share in each Shared Ownership Housing Dwelling following the exercise of Staircasing rights; or



- 18.4 any similar transfer of equity or rights from the Registered Provider to the Owner of an Affordable Dwelling under which a capital receipt arises

firstly to discharge its obligations to any mortgagee or charge of the Affordable Housing Units and then to other Affordable Housing projects within the Council's administrative area as the Council shall approve

### **Part 3 – The Hollow Lane and Adam's Hill Contributions**

19. Not later than the date on which 25% of the Dwellings permitted have been Occupied to pay to the Council the Adam's Hill Contribution and not to allow or permit the Occupation of more than 25% of the Dwellings so permitted until the Adam's Hill Contribution has been paid in full PROVIDED ALWAYS THAT if at the time the payment is due it is apparent that fewer than 200 Dwellings will be provided on the Site the Adam's Hill Contribution shall be recalculated on the basis of the number of Dwellings which are actually to be provided on the Site and the amount then due shall be such recalculated sum, and in which case the number of Dwellings built on the Site will be capped at the number used to calculate the actual amount of Adam's Hill Contribution paid
20. Not later than the date on which 75% of the Dwellings permitted have been Occupied to pay to the Council the Hollow Lane Contribution and not to allow or permit the Occupation of more than 75% of the Dwellings so permitted until the Hollow Lane Contribution has been paid in full PROVIDED ALWAYS THAT if at the time the payment is due it is apparent that fewer than 200 Dwellings will be provided on the Site the Hollow Lane Contribution shall be recalculated on the basis of the number of Dwellings which are actually to be provided on the Site and the amount then due shall be such recalculated sum, and in which case the number of Dwellings built on the Site will be capped at the number used to calculate the actual amount of Hollow Lane Contribution paid
21. In the event that (a) planning permission is granted (whether on appeal or otherwise) for any one or more of the Other Hollow Lane Developments before the Hollow Lane Contribution has been paid to the Council; and (b) the Council has received funds from one or more of the Other Hollow Lane Developments then the Hollow Lane Contribution shall be reduced by a sum which is the lesser of the amount by which the contribution would be reduced in accordance with the formula set out at the Fifth Schedule of this Deed and the sum which the Council has received from the Other Hollow Lane Developments.
22. In the event that (a) planning permission is granted (whether on appeal or otherwise) for any one or more of the Other Hollow Lane Developments within 7 years of the Hollow Lane Works having been completed; and (b) the Council has received funds from one or more of the Other Hollow Lane Developments then the Council shall refund to the Owner (which does not for these purposes include its successor in title) or its nominee an amount which is the lesser of the amount determined in accordance with the formula set out in the Fifth Schedule of this Deed or the sum that it has received from the other Hollow Lane Developments with interest within 3 months after the said permission has been granted SAVE THAT the Council shall be under no obligation to make such a refund to the extent that it can show that the cost of the Hollow Lane Works is such that it would not be able to fund the Hollow Lane Works if the whole sum were to be refunded and that it used reasonable endeavours to keep the cost of the Hollow Lane Works as low as reasonable practicable
23. In the event that (a) planning permission is granted (whether on appeal or otherwise) for any one or more of the Other Adams Hill Developments before the Adams Hill Contribution has been paid to the Council; and (b) the Council has received funds from one or more of the Other Adams Hill Developments then the Adams Hill Contribution shall be reduced by a sum which is the lesser of the amount by which the contribution would be reduced in accordance with the formula set out at the Fifth Schedule of this

Deed and the sum which the Council has received from the Other Adams Hill Developments.

24. In the event that (a) planning permission is granted (whether on appeal or otherwise) for any one or more of the Other Adams Hill Developments within 7 years of the Adams Hill having been completed; and (b) the Council has received funds from one or more of the Other Adams Hill Developments then the Council shall refund to the Owner (which does not for these purposes include its successor in title) or its nominee an amount which is the lesser of the amount determined in accordance with the formula set out in the Fifth Schedule of this Deed or the sum that it has received from the other Adams Hill Developments with interest within 3 months after the said permission has been granted **SAVE THAT** the Council shall be under no obligation to make such a refund it to the extent that it can show that the cost of the Adams Hill Works is such that it would not be able to fund the Adams Hill Works if the whole sum were to be refunded and that it used reasonable endeavours to keep the cost of the Adams Hill Works as low as reasonable practicable
25. In the event that the Hollow Lane Works or substantially similar road improvements are included in a charging schedule adopted by the Council under the Community Infrastructure Regulations at any time after the date of this Agreement the Hollow Lane Contribution shall not be payable in the event that it has at the date of adoption of the schedule not been paid and shall be refunded in full by the Council with interest in the event that it has already been paid at the date of adoption of the charging schedule.
26. In the event that the Adam's Hill Works or substantially similar road improvements are included in a charging schedule adopted by the Council under the Community Infrastructure Regulations at any time after the date of this Agreement the Adam's Hill Contribution shall not be payable in the event that it has at the date of adoption of the schedule not been paid and shall be refunded in full by the Council with interest in the event that it has already been paid at the date of adoption of the charging schedule.

#### **Part 4 –Open Space provision**

27. That the Landscape Scheme, the Landscape Habitat and Management Plan and Landscape Phasing Plan will be submitted for approval by the Council at the same time as the first Reserved Matters application submitted to the Council in relation to the Development and in any event prior to Commencement of Development
28. In order to maintain the integrity and long term future viability of the Landscaped Areas and Public Open Space, not without the prior consent of the Council to locate any site and work compounds on the Landscaped Areas and Public Open Space
29. Not to permit or allow the Occupation of any Dwellings adjacent to the Public Open Space or Landscaped Area within any phase of the Development until the approved Landscape Scheme has been implemented and the adjoining area of Public Open Space or Landscaped Area for that phase has been delivered in complete accordance with the approved Landscape Scheme so that it is available and safe for immediate public use.
30. Not to permit or allow the use of the Public 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 the Trim Trail, LEAP and the LAP has been provided to the Council.
31. To maintain repair and renew the Public Open Space and the Landscaped Areas and all its features fixtures and fittings in accordance with the Landscape and Habitat Management Plan approved by the Council in perpetuity from completion of any part of the Landscape Scheme

32. To amend the Landscape and Habitat Management Plan only with the Council's written consent.
33. To keep the Public Open Space open, unbuilt upon (save for permitted play equipment) and available for public recreational use in perpetuity.
34. 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).
35. 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.
36. 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.
37. The Owner will procure that the buyer of each Dwelling has entered into covenants substantially in the following form direct with the Management Company under which the buyer shall:-
  - (i) covenant to pay to the Management Company a pro rata proportion (according to the number of Dwellings comprised in the Development to be constructed on the Site) of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining, repairing and as necessary renewing the Public Open Space and Landscaped Areas in accordance with the Management Plan; and
  - (ii) covenant that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 37 (i) and (ii).
38. The Owner shall not permit or allow the Occupation of more than 75% of the Dwellings unless and until the freehold interest in the Public Open Space and Landscaped Areas 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 Public Open Space and Landscaped Areas
  - 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 Public Open Space and Landscaped Areas in strict accordance with the Management Plan and the principles of good estate management to the intent that the Public Open Space and Landscaped Areas remain 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 Public Open Space for the general recreational enjoyment of the public as general amenity open space
- xi. include a declaration that (save as expressly dedicated) no area of the Public Open Space or Landscaped Areas 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 5 – Education**

- 39. No later than Occupation of the first Dwelling to pay to the Council ten percent (10%) of the Education Contribution and not to allow or permit Occupation until the sum has been paid.
- 40. No later than the date on which the first 38% of the number of Dwellings permitted to be built have been Occupied to pay to the Council 45% of the Education Contribution and not to allow or permit the Occupation of more than 38% of the Dwellings so permitted until the amount due has been paid in full
- 41. No later than the date on which the first 75% of the number of Dwellings permitted to be built have been Occupied to pay to the Council a further 45% of the Education Contribution and not to allow or permit the Occupation of more than 75% of the Dwellings so permitted until 100% of the Education Contribution (including the 10% payable under paragraph 39 above) has been paid in full

#### **Part 6- Recreation and Outdoor Sports Facilities Contribution**

42. Not later than Commencement of Development to pay to the Council the Recreation and Outdoor Sports Facilities Contribution

#### **Part 7- Public Art Contribution**

- 43. Not later than Commencement of Development to pay to the Council the Public Art Contribution

**THE SECOND SCHEDULE**  
Form of Nomination 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 1<sup>st</sup> 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 Registered Provider & 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 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](mailto: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 Registered Provider & 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 OF ..... REGISTERED PROVIDER



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

1. On any disposal of a Discount for Sale Housing Dwelling or Shared Equity Housing Dwelling the following definitions shall be imposed in the deed of transfer or lease (as applicable):
  - 1.1 "the Agreement" means a s106 Agreement dated .....20 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 3.3 or 3.5 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 or appointed 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 Council)
  - 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 transferee's own marketing exercise. Priority will be given to applicants in accordance with any local 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 licensed conveyancer or estate agent) that the Dwelling has been advertised continuously for twenty 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 transferee shall covenant with the Council and as a separate covenant with the transferor (but not so as to render the transferee liable to the transferor after the transferee 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 FOURTH 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
- 1.3 To place each of the Contributions on deposit in separate interest bearing bank accounts and to apply the Contributions and any interest accrued thereon solely for the purposes for which they were paid (as set out in Clause 1 of this Deed)
- 1.4 To keep the Owner reasonably informed of the use of and deployment of the Contributions and in the event that any of the Contributions shall not have been expended or contractually committed to be spent within the period of 10 years from the date the relevant payment is made (or 15 years in the case of the Recreation and Outdoor Sports Facilities Contribution) then the Council shall repay to the Owner or its estate or nominee (but not for these purposes successors in title) the payment any unspent element of the relevant Contribution together with any interest accrued upon such balance (if any).

## THE FIFTH SCHEDULE

### Highway Contribution Formula

The formula for determining the percentage contribution to the "Adam's Hill Works" and the "Hollow Lane Works" as defined in the text of the Section 106 agreement is:

$$\frac{\text{Development 'A' Traffic Flow}}{\text{Total Development Traffic Flow}} \times 100 = A\%$$

Where:

"Development 'A' Traffic Flow" equals the total traffic flow linked to Development 'A', as agreed with Cheshire East Council Highways. This total is derived through the addition of the development traffic flow through the A50 / Adams Hill junction plus the development traffic flow through the A537 Brook Street / Hollow Lane junction during the weekday morning peak hour.

"Total Development Traffic Flow" equals the total development traffic flow for all developments that are subject to the formula, as agreed with Cheshire East Council Highways. This total is derived through the addition of the total development traffic flow through the A50 / Adams Hill junction plus the total development traffic flow through the A537 Brook Street / Hollow Lane junction during the weekday morning peak hour.

The contribution is towards a total cost of (as agreed in emails dated 29<sup>th</sup> November and 2<sup>nd</sup> December 2013):

£184,281 for the A50 / Adams Hill junction works; and

£805,653 for the A537 Brook Street / Hollow Lane junction works

#### Calculation based on current agreed approach

**Development A = Parkgate (167 vehicles in total)**

**Development B = Booths Hall (261 vehicles in total)**

Application to formula:

$$\text{Development A} = \frac{167}{167 + 261} \times 100 = 39\%$$

Contribution for Parkgate scheme therefore equals:

$$£184,281 \times 39\% = £71,869$$

$$£805,653 \times 39\% = £314,204$$

**£386,073 total**

**Example application of the formula based on additional applications coming forward prior to the above derived Parkgate application contribution being paid**

**Development A = Parkgate (167 vehicles in total)**

**Development B = Booths Hall (261 vehicles in total)**

**Development C = Site 'X' (say 150 vehicles in total)**

Application to formula:

$$\text{Development A} = \frac{167}{167 + 261 + 150} \times 100 = 29\%$$

Contributions for Parkgate scheme therefore equals:

$£184,281 \times 29\% = £53,441$   
 $£805,653 \times 29\% = £233,639$

**£287,080 total**

**Example application of the formula based on additional applications coming forward following the above derived Parkgate application contribution being paid**

**Development A = Parkgate (167 vehicles in total)**  
Development B = Booths Hall (261 vehicles in total)  
Development C = Site 'X' (say 150 vehicles in total)

Application to formula:

$$\text{Development A} = \frac{167}{167 + 261 + 150} \times 100 = 29\%$$

Contributions for Parkgate scheme therefore equals:

$£184,281 \times 29\% = £53,441$   
 $£805,653 \times 29\% = £233,639$

**£287,080 total**

**Parkgate Scheme refund** = £386,073 (based on current applications) minus  
£287,080 (based on additional applications)  
**= £98,993**

**SIGNED** as a Deed by RANDLE BROOKS

in the presence of

Witness Signature:

Name:

Address:

Occupation:

**SIGNED** as a Deed by JULIET MARIT GABRIEL BROOKS)

in the presence of

Witness Signature:

Name:

Address:

Occupation:

**SIGNED** as a Deed by GRAHAM FRANCIS PIKE

In the presence of

Witness Signature:

Name:

Address:

Occupation

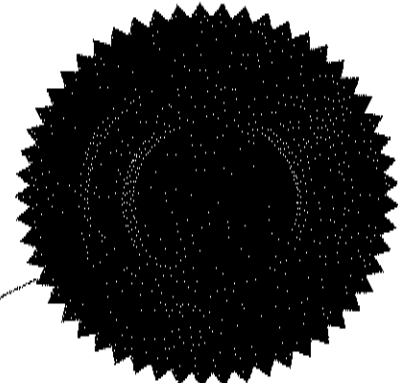
**THE COMMON SEAL of**

**CHESHIRE EAST BOROUGH COUNCIL**

was affixed in the presence of:

Authorised Signatory:

*[Handwritten signature]*



62SP (1F)