

State Contract

Exhibit from s. 106 PC/PB662

THIS DEED OF AGREEMENT is made the

day of October 2002 BETWEEN SEDDON HOMES LIMITED of Hope Street Chapel Sandbach Cheshire CW11 1BA (Company Number 3045309) (hereinafter called "Seddon") of the first part and MACCLESFIELD BOROUGH COUNCIL of Town Hall Macclesfield Cheshire SK10 1DX (hereinafter called "the Council") of the second part

WHEREAS:-

- (1) The Council is the Planning Authority for the area to which this Agreement relates for the purposes of the Town and Country Planning Acts ("the 1990 Act")
- (2) Seddon have recently purchased the fee simple absolute in possession free from incumbrances of all that land and property abutting to and to the south west of Moss Lane Macclesfield registered with title absolute under the number CH460313 which is shown edged red on the plan numbered VWB 2579/13^M annexed hereto ("the Site" and "the Plan" respectively).
- (3) By planning application 01/0559P Seddon has applied for full planning permission for the residential development of the Site and associated roadworks acoustic screening open space and amenity land provision and parking facilities and it has been agreed that a proportion of the residential development intended to be constructed on the Site will (subject to the provisions herein contained) be affordable housing
- (4) At a meeting of the Council's Planning Committee held on 23 July 2001 the Council resolved that upon completion of the within written Agreement pursuant to the 1990 Act to grant planning permission for the carrying out and implementation of the development hereinafter referred to in the form of the specimen Planning Permission annexed hereto ("the Planning permission" or "the Planning Consent")
- (5) The Council and Seddon have agreed to enter into this Agreement to give effect to these provisions and arrangements under and pursuant to the statutory provisions herein recited and of all other powers in that behalf them enabling

NOW THIS DEED WITNESSETH as follows:-

14 15 16 17 and 18 off Road 3 and plots 21 22 23 25 26 and 27 off Road 4 and similarly Open Space Area (2) shall be completed as aforesaid after the occupation of the dwellings comprising plots 61 62 63 64 73 74 and 75 and Open Space Area (4) shall be completed as aforesaid after the occupation of the dwellings comprising plots 8 9 10 11 12 70 71 72 and 73. However no dwelling comprising plots 41 42 43 44 45 46 47 and 48 shall be occupied unless and until Open Space Area (3) shall have been completed being the final area of Open Space and being required to be completed in this case PRIOR to the first occupation in the final phase of the Development (all such areas of Open Space being numbered and as shown on the Plan)

Any of The Open Space areas shown numbered on the Plan may be transferred at separate times and as separate transfers pursuant to the Second Schedule hereto in which case the commuted lump sum referred to in Clause 5.8 shall be apportioned according to the area of each Open Space Area and paid accordingly

Upon completion of the creation of each Open Space Area(s) as aforesaid to the reasonable satisfaction of the CLSO as aforesaid prior to the occupation of the first dwelling fronting the same as aforesaid Seddon shall maintain the said Open Space Area for a period of 12 months thereafter in accordance with a Maintenance Schedule and regime to be agreed with CLSO in writing (both parties acting reasonably) at the same time as the landscaping plan referred to in Clause 5.9 (but such maintenance shall include grass cutting tree maintenance rubbish removal and replacing any plant or immature tree failures planted by Seddon) and upon the satisfactory conclusion of the said maintenance period as certified in writing by the CLSO then the Transfer of the Open Space Area(s) in question and the payment as aforesaid of commuted lump sum monies shall take place as soon as reasonably practicable in accordance with the arrangements set out in the Second Schedule hereto.

Prior to the commencement of development hereby intended by Seddon at or on the Site in accordance with Section 56 of the 1990 Act Seddon shall further pay to the Council the sum of £372,911 together with an additional sum arrived at by multiplying

the sum aforesaid by the percentage increase (if any) in the Index of Retail Prices (or such other index as shall be generally accepted to have replaced the same) between August 2001 and the date of payment of the aforesaid sum ("the Off Site Provision")

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In consideration of the payment of the Off Site Provision the Council will cause to be erected created planted and/or constructed (as appropriate) and thereafter supervised maintained repaired and replaced **FIRSTLY** -

- (a) Upon land in its ownership (or as may come into its ownership for these purposes within the periods hereinafter set out) and pursuant to the requirements and general indications of the Macclesfield Local Plan for the area generally in the vicinity of the Site and its surroundings to provide and construct greenways habitat creation and wildlife protection measures woodlands wetlands public art seating signage senior play equipment and informal kick-about areas pathways and other access arrangements ("The Greenways") - the creation period for which is 7 years from the date hereof together with the provision of a significant area of hard surfaced multi play children's play area and associated and attendant facilities and of a skating and skate-board and BMX bicycle area together with such other appropriate support facilities for the same for their access use and enjoyment ("The Multi-Play area") - the creation period for which is 10 years from the date hereof - **PROVIDED ALWAYS THAT:-**

- (i) in carrying out such works aims and objections that total cost thereof shall include all reasonable and proper professional and administrative fees associated therewith and other proper outgoings and expenses
- (ii) If the Greenways have not been created within 7 years from the date hereof and/or
- (iii) the Multi-play area has not been created within 10 years from the date hereof

THEN to the extent that any monies provided by Seddon for the off-site provision has not been spent or irrevocably contractually committed for the purpose(s) as aforesaid then such sums then remaining with the Council at the 7th and 10th Anniversary respectively as aforesaid shall be promptly repaid to Seddon by the

Council (and the Council shall supply an account and reasonable and necessary evidence of its stewardship and use of any such monies) **TOGETHER WITH INTEREST** thereon as shall have been accrued by the same being on deposit with a clearing bank in the United Kingdom at the reasonable and commercially sensible rates that the Chief Financial Officer (or equivalent) for the time being of the Council may reasonably have been able to procure in normal banking circumstances and **SECONDLY** -

- (b) In the event that all or part of either the Greenways and/or The Multi-play area or any part of either of the same cannot or have not been achieved and created (notwithstanding the reasonable and commercially sensible endeavours of the Council) because the sites allocated or partly allocated for the same within the South Macclesfield Development Area in the Macclesfield Local Plan have not and will not within the aforesaid 7 or 10 year periods respectively come into the ownership and possession of the Council and/or there is no commercially sensible prospect of the same happening within a sufficient lead-in time to achieve the same **THEN** at a sufficient time before the expiry of the aforesaid 7 or 10 year periods respectively the CLSO can direct such monies to the creation of and the provision of the same such facilities either in South Park Macclesfield or elsewhere appropriate for the purpose in the Council's ownership in the southern half of the township of Macclesfield so that the same may be publicly available open space amenity and sports facilities within a reasonable distance from the Site **PROVIDED ALWAYS** that the CLSO shall keep Seddon informed in advance of all and any such proposals to the end and intent that Seddon shall know how where and when the monies it has paid for the Off Site Provision have been used deployed and spent (save always for the repayment provisions in any event referred to at the end of clause 5.13 (a) hereof)
- (c) At the expiry of 7 years from the date hereof in respect of the Greenways if the Greenways or some part thereof have not been implemented as to an apportionment to them in the sum of £197,911 or the works thereof do not cost

upon their completion £197,911 and at the expiry of 10 years from the date hereof in respect of the Multi-Play Area if the Multi-Play Area or some part thereof has not been implemented as to an apportionment to it in the sum of £175,000 or the works thereof do not cost upon their completion £175,000 **TOGETHER** with interest on any unexpended balance as aforesaid **THEN** the Council shall promptly repay the said unexpended balances (if any) together with interest as aforesaid to Seddon

- (d) Upon completion of works in respect of the Greenways and/or The Multi-Play Area Seddon shall accept the Certificate of the Council (acting by its Director of Leisure or other relevant officer responsible for such matters) in respect of the cost of such works or any relevant part thereof and the costs thereof shall include such reasonable design staff costs and administrative costs and expenses associated therewith and other legitimate costs expenses and disbursements properly attributable thereto (such as planning application fees, costs and fees of public notices and other necessary advertising supervision fees and the bills of Statutory Undertakers regarding services diversions and the like) **PROVIDED ALWAYS:-**

- (a) that the contract rates for works carried out are reasonable in all the circumstances of the case and compatible with industry standards and norms in such matters
- (b) reasonable disclosure of costs and bills information is supplied to justify and support the outturn prices charged and
- (c) subject always nevertheless to the Arbitration Provisions hereof set out in Clause 8

PHASING

In the interests of the proper planning of the area and pursuant to the requirements of the current Local Plan and the Macclesfield South West Development Area Planning Brief Seddon shall develop the Site in stages or phases to the end and intent that only the dwellings on plots 1-30 inclusive shown on the Plan may be occupied prior to the