

**Agreement**

**LAND AT SOUTH MACCLESFIELD DEVELOPMENT AREA**

**BETWEEN**

**CHESHIRE EAST COUNCIL**

**And**

**EAST CHESHIRE ENGINE OF THE NORTH LIMITED**

**And**

**TG LIMITED**

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out and granted in the Schedule hereto and delivery of the Through Road, and each party undertakes not to frustrate or otherwise block or delay delivery of the Through Road.

10. Each party agrees all information obtained by any of the Parties relating to the Project hereto shall be shared information and collateral warranties for the landowning parties shall be obtained for all work done by the Planning Professionals Team.

11) Additional land acquired by either the Council and/or TG and brought into the Site to fulfil the Objectives shall be recorded in a Schedule to be appended hereto and shall be regarded as land held by the parties as at the date hereof

## B. Definitions and Interpretation

In this Agreement the following words and expressions have the following meanings unless inconsistent with the context: -

<b>WORDS &amp; EXPRESSIONS</b>	<b>MEANINGS</b>
<b>"Act"</b>	means The Town and County Planning Act 1990 and any Act for the time being in force amending or replacing the same
<b>"Authority"</b>	means the relevant planning authority (and where that planning authority is the Council then the term shall mean the Authority acting in its distinct and separate capacity as a statutory regulating authority) or such other statutory authorities having power to determine the Planning Submission
<b>"Challenge Period"</b>	means: - (a) subject to paragraph (b) in the event of a Satisfactory Planning Permission consequent on a decision of the Authority the period of <u>six (6)</u> weeks from the Planning Date (b) in the event of Planning Proceedings the period until a Satisfactory Planning Permission is finally granted (if applicable) or upheld following those proceedings whether (if applicable) by reference back to the Secretary of State an Inspector or the Authority or any other relevant authority (as the case may be) or otherwise and until the date by which any further Planning Proceedings against any such grant or upholding can be lodged has expired without any such further Planning Proceedings being lodged
<b>"Consents"</b>	means planning permissions and all other statutory or other consents permissions licences and approvals necessary for the carrying out and completion of the Project
<b>"Council Land"</b>	The land within the Site owned by the Council

	comprising title numbers CH568518, CH609579, CH607276, CH611396, CH504080 and CH512038 together with and such other additional land as may be acquired by the Council in relation to the delivery of the Project as recorded in the schedule of additional land to be annexed and updated from time to time as necessary
<b>"Dispute"</b>	has the meaning given to that term in Clause 14
<b>"Executed Disposal"</b>	<p>(a) any disposal to a service authority or utility company which acquires an interest in the Property in order to provide a water, gas, electricity, communication services or foul or surface water disposal facilities to or from the Site;</p> <p>(b) any disposal or dedication of highway land pursuant to a statutory Agreement;</p> <p>(c) any disposal of a single residential unit or any disposal of a group of residential units to a registered social landlord constructed on the Site</p>
<b>"Infrastructure"</b>	<p>Infrastructure works within or outside the Site required by or necessary to implement a Satisfactory Planning Permission or any Planning Agreement including (but not limited to):-</p> <p>(a) the construction or stopping up closure or diversion of any roads, footways, cycleways or bridleways including any junctions, roundabouts, landscaping, street furniture or street lighting</p> <p>(b) the provision of the Open Space</p> <p>(c) the construction, laying or re-routing of any necessary Service Media</p> <p>(d) any ground remediation or ground stabilisation works</p>
<b>"Inspector"</b>	means any person appointed by the Secretary of State pursuant to the powers contained in the Act for the purpose of determining appeals made pursuant to Section 78 of the Act
<b>"Leading Counsel"</b>	means such leading counsel specialising in matters relating to town and country planning or compulsory purchase as the Parties shall agree

	upon or in default of Agreement as shall be nominated pursuant to Clause 14
<b>"Net Developable Area"</b>	means the area of land proposed to be sold to a third party less such part or parts thereof as shall comprise land required for Infrastructure to facilitate the land for development pursuant to Satisfactory Planning Permission
<b>"Objective"</b>	<p>To facilitate the development of the Site for the provision of:-</p> <ul style="list-style-type: none"> <li>(i) up to 1000 residential dwellings</li> <li>(ii) ancillary retail and or local centre</li> <li>(iii) playing fields and/or community sports facility</li> <li>(iv) The Through Road</li> <li>(v) any other uses ancillary to (i) – (iv) above</li> </ul> <p>or such other use as is agreed from time to time (the Parties acting reasonably) and such Agreement to be recorded in writing and to facilitate the implementation of the Satisfactory Planning Permission and the Infrastructure, the Shared Infrastructure and the Through Road</p>
<b>"Open Space"</b>	<p>The land required under a Satisfactory Planning Permission or Planning Agreement for:</p> <ul style="list-style-type: none"> <li>(a) public open space, public recreational social or communal use (including (but not limited to) amenity land, landscaped areas, play areas, school sports grounds, playing fields and all other land required for community or social purposes); and</li> <li>(b) parkland and woodland (including (but not limited to) any areas of land required for tree belts, structural landscaping buffer zones and noise bunds).</li> </ul>
<b>Parties</b>	means (1) the Council (2) EotN and (3) TG and the word Party shall be construed accordingly
<b>"Permission Date"</b>	Means the 1 <sup>st</sup> working day after the Challenge Period expires leaving in place a Planning Permission

<b>"Pre Planning Application Work"</b>	The external fees and expenses incurred to the date of this Agreement by EotN and TG which are agreed by the Parties to be applicable to the Planning Submission (as provided for in this Agreement)
<b>"Plan"</b>	means the indicative plan annexed hereto at Appendix 1
<b>"Planning Agreement"</b>	means an Agreement (or where applicable unilateral undertaking) concluded between one or more Parties and (a) the Authority regulating the use of the Site pursuant to the Phase 2 Planning Application (whether or not under Section 106 of the Act Section 111 of the Local Government Act 1972 or Sections 120 or 139 of the Local Government Act 1972) (b) s33 of the Local Government (Miscellaneous Provisions) Act 1982 any other authority relating to the construction maintenance or adoption of any Shared Infrastructure or Through Road provision affecting or serving the Site (whether or not under Section 38 or Section 278 of the Highways Act 1980 or Section 104 of the Water Industry Act 1991)
<b>"Planning Appeal"</b>	means any of the following as the case may be namely: - (i) any appeal in accordance with Section 78 of the Act against: - (ii) refusal or deemed refusal of a Planning Application (iii) the grant of a Planning Permission which is not a Satisfactory Planning Permission (iv) non determination of a Planning Application the reference of a Planning Application to the Secretary of State under Section 77 of the Act
<b>"Planning Application"</b>	means the Planning Application or any further planning application made by the Parties (or any of them) in respect of the whole Site or part thereof
<b>"Planning Date"</b>	means the date of a Planning Permission which shall mean: - (a) in the case of a grant of a Planning Permission by the Authority the date printed on the notice of such grant (b) in the case of the grant of a Planning Permission by the Secretary of State or Inspector the date printed on the letter or other instrument given by or on behalf of the Secretary of State or Inspector (as the case may be) notifying such grant

<b>“Planning Permission”</b>	means any planning permission granted pursuant to a Planning Application whether by the Authority, the Secretary of State or an Inspector
<b>“Planning Proceedings”</b>	<p>means all or any of the following (as the case may be): -</p> <ul style="list-style-type: none"> <li>(a) an application for judicial review under Civil Procedure Rules Part 54 arising from: - <ul style="list-style-type: none"> <li>(i) the grant of a Satisfactory Planning Permission by the Authority made by any third party</li> <li>(ii) a Planning Refusal by the Authority</li> </ul> </li> <li>(b) an application pursuant to Section 288 of the Act arising from the grant of Satisfactory Planning Permission or a Planning Refusal by the Secretary of State including any appeal to a higher court following judgement at first instance</li> <li>(c) any reconsideration by the Authority, the Secretary of State or an Inspector (as the case may be) of a Planning Application or a Planning Appeal (as the case may be) following a previous Satisfactory Planning Permission or Planning Refusal being quashed pursuant to Planning Proceedings (within the meaning of paragraphs (a) or (b) of this definition) and the matter being remitted to the Authority or the Secretary of State or (if appropriate) an Inspector (as the case may be)</li> <li>(d) Planning Proceedings (within the meaning of paragraph (a) or (b) of this definition) arising from the grant of a Satisfactory Planning Permission or a Planning Refusal following a reconsideration of a Planning Application or a Planning Appeal by the Authority, the Secretary of State or (if appropriate) an Inspector as specified in paragraph (c) of this definition</li> </ul>
<b>“Planning Refusal”</b>	means refusal (including a deemed refusal) of a Planning Application or a Planning Appeal by the Authority, the Secretary of State or an Inspector (as the case may be)

<p><b>" Planning Submission"</b></p>	<p>an outline application or applications for Planning Permission in respect of the development of the Site (or any part or parts thereof) (if agreed between the Parties) a detailed application in respect of the Through Road to the Authority in the form agreed by the Parties as required to deliver the Objective</p>
<p><b>"Professional Team"</b></p>	<p>means :- such Professionals as were engaged in the Pre Planning Application Work and those to be engaged pursuant to this Agreement comprising:-</p> <p>Transport Consultants Master Planners Planning Consultants Environmental Statement Consultants to be appointed jointly by EOTN and TG in respect of the Planning Submission, the Through Road and the Shared Infrastructure together with such other consultants as may be jointly appointed by EOTN and TG from time to time.</p>
<p><b>"Project"</b></p>	<p>Means the pursuit of the Objective by: -</p> <ul style="list-style-type: none"> <li>(a) the submission of a Planning Application</li> <li>(b) obtaining a Satisfactory Planning Permission and all Consents</li> <li>(c) Agreement and implementation of a strategy for the delivery of Shared Infrastructure</li> <li>(d) Agreement and implementation of a strategy for the delivery of the Through Road</li> <li>(e) if appropriate delivery of the Through Road and Shared Infrastructure in accordance with a Satisfactory Planning Permission and;</li> <li>(f) such other steps or actions as may be reasonably required by the Parties (or any of them) to facilitate the sale of the TG Land and/or the Council Land (or part of parts thereof) as set out herein</li> </ul>
<p><b>"Promotion Costs"</b></p>	<p>means the reasonable and proper costs incurred in respect of the Pre Planning Application Works to the date hereof together with such reasonable and proper costs reasonably required to achieve Satisfactory Planning Permission agreed by the Parties pursuant to the terms of clause 13</p>
<p><b>"Representative"</b></p>	<p>means such person as the relevant Party shall from time to time advise in writing to the other parties nominate to be its representative for the purpose of this Agreement</p>

<b>“Satisfactory Planning Permission”</b>	means a Planning Permission granted pursuant to the Planning Submission lodged by EotN together with any ancillary Planning Agreement or Agreements which are in terms satisfactory to both the Council and TG (both acting reasonably).
<b>“Secretary of State”</b>	means the Secretary of State for Communities and Local Government or any successor to his functions under the Act
<b>“Service Media”</b>	all pipes, wires, cables, ducts, sewers, drains, channels, conduits, electricity substations, gas governors, balancing ponds and other service media, equipment, structures or installations for the transmission of Services
<b>“Services”</b>	means water foul drainage, surface water drainage electricity gas telecommunication services and all other necessary services and Utilities
<b>“Shared Infrastructure”</b>	Infrastructure which is agreed between the Parties in writing as necessary or desirable to serve both the TG Land and the Council Land
<b>“Shared Infrastructure Land”</b>	The land in through or over which the Shared Infrastructure as is reasonably required to be provided under or to implement the Satisfactory Planning Permission and any related Planning Agreement or the Consents
<b>“Site”</b>	means the land shown edged blue on the Plan and to include the addition of additional land agreed by the Parties and recorded as being included in the Site by a memorandum signed by a director of TG and a director of EotN and an authorised signatory of the Council and all necessary and appropriate highway improvements to connect the Through Road to London Road , Macclesfield
<b>“Subsidiary”</b>	shall have the meanings ascribed to that expression by Section 1159 of the Companies Act 2006
<b>“Term”</b>	means the period of five (5) years commencing on the date of this Agreement plus where at the end of the Term (subject to the provisions of Clause 14) there is an undetermined Planning Appeal or Planning Proceedings such additional period expiring on the expiry twelve months from the date of the end of the Challenge Period

<p><b>“Third Party Interest”</b></p>	<p>any of the following:</p> <ol style="list-style-type: none"> <li>1.any interests, rights, easements or covenants affecting the Shared Infrastructure Land and/or Through Road Land (but not further or otherwise any other Council Land or TG Land) acquired to achieve the Objective or for the benefit of the Project; or</li> <li>2.any interests, rights, easements or covenants affecting the Shared Infrastructure Land and/or Through Road Land (but not any other Council Land or TG Land) to be determined, released or varied for the benefit of the Project ;</li> <li>3. that the Parties in writing from time to time agree are reasonably required to achieve the Objective or facilitate the Project.</li> </ol>
<p><b>“Third Party Interest Documents”</b></p>	<p>any deeds or documents reasonably required to procure any Third Party Interest.</p>
<p><b>"TG Land"</b></p>	<p>The land included in title numbers CH629664, CH615565, CH615566, CH615567, CH615568, CH615569, CH615571,CH615573, CH295711, CH638055, CH636992 and CH164018 together with such other land as may be acquired by TG within the Site</p>
<p><b>"Through Road"</b></p>	<p>A road crossing the Site connecting Congleton Road in the west to Leek Road in the east to be constructed to an adoptable standard</p>
<p><b>“Through Road Land”</b></p>	<p>The land on which the Through Road will be constructed under the Satisfactory Planning Permission</p>
<p><b>“Turf Lane”</b></p>	<p>The land coloured pink on the Plan</p>
<p><b>“VAT”</b></p>	<p>means value added tax as provided for in the VATA and legislation supplemental to the same or replaying modifying or consolidating such legislation and any reference to “VAT” shall be construed accordingly</p>
<p><b>“VATA”</b></p>	<p>means Value Added Taxes Act 1994</p>

In this Agreement unless there is something in the subject or context inconsistent therewith: -

2.1. Words importing the masculine gender only shall include the feminine and neuter genders and words importing persons shall include firms companies and corporations and vice versa

2.1.2 Any reference to a clause or schedule shall be construed as a reference to a clause of or schedule to this Agreement

2.1.3 Any reference in this Agreement to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as amended re-enacted consolidated or applied by or under any other enactment and shall include all instruments, orders, plans, regulations, permissions, and directions made or issued thereunder or deriving validity therefrom

2.1.4. The headings to clauses and other parts of this Agreement shall not affect the meaning or construction thereof

2.1.5. Every obligation of the Parties in this Agreement to do specified acts or things shall include an obligation for the relevant Party to use reasonable endeavours to procure that they be done and every obligation of the Parties in this Agreement not to do specified things shall include an obligation for the relevant Party not to knowingly permit them to be done

### **3. OBJECTS**

3.1 The Parties under this Agreement agree to work together in collaboration to undertake the Project with the intention that the outcomes of the Project will be to the Parties respective benefits.

3.2 The Council and TG agree (to the extent that they are permitted by law) to make the land they own within the Site available for the Project in accordance with the provisions of this Agreement.

3.3 In the pursuit of the Objective and the management of the Project the Parties shall act reasonably to deliver best value on sound commercial principles so as to reasonably minimise the costs of the Project and enhance delivery and the value of the Project

### **4. CONDUCT**

4.1 The Parties shall work together for the delivery of the Project but TG and the Council shall each be exclusively and independently responsible in accordance with any Planning Permission obtained for the unfettered implementation of development upon the land in their respective ownerships within the Site save and except that neither party shall obstruct the provision of the Shared Infrastructure and TG shall have step in rights over the Council land (at their own expense and limited to the Through Road land as defined) in the provision of the Through Road to ensure delivery if the Council has not commenced construction within 2 years of the grant of Satisfactory Planning Permission and completed such construction within a reasonable time thereafter subject to 6 months notice in writing given within 5 years of the grant of Satisfactory Planning Permission Neither party shall fetter the land to be provided for the Through Road until adoption of it by the relevant Highways Authority. If the step in rights are exercised they shall not inhibit or obstruct the

development of the Council land and access to all or any part of that land at any time by the Council save as reasonably required to construct the Through Road.

4.2 To the extent permitted by law, acting as landowners each Party shall act in the best interests of the Project and promote the same and no Party shall do or fail to do any act matter or thing that shall conflict with such obligations and duties herein provided always that EotN shall be entitled to support and/or promote any development within the borough of Cheshire East whether or not the same will or might compete with any development of the Site.

4.3 In the event that during the currency of this Agreement EotN becomes insolvent or ceases to exist or TG is unable to enforce the obligations assumed by EotN under this Agreement for any other reason then the Council shall be liable to perform such obligations to the same extent as if they had been entered into directly by the Council rather than the EotN and in such circumstances the Parties shall mean (1) the Council and (2) TG for all purposes under this Agreement.

## **5. DUE DILIGENCE**

5.1 EotN shall use reasonable endeavours to provide to TG and the Council at all times warranties from the Professional Team as may reasonably be required in such form as shall be approved by TG and the Council respectively (such approval not to be unreasonably withheld) and containing non-exclusive, royalty free licences to use and reproduce for the purposes of the Project all designs, drawings, models, plans, specifications, reports, calculations, and other proprietary materials provided or prepared in relation to the Pre Planning Application Works) and being assignable no less than two times and within a reasonable time period following request by TG

5.2 All Professional Team appointments in respect of the Project shall be made by deed by EotN acting for and on behalf of the Council and TG.

5.3 All designs, drawings, models, plans, specifications, reports, calculations, notes of meetings and all other materials provided or prepared in relation to the Project after the date hereof shall be shared between the Parties and belong to the Parties jointly and upon the termination or expiry of this Agreement at the written request and proper cost of TG EotN shall take such steps as may be reasonably required by TG to procure the assignment, transfer and delivery of such items to them as is reasonable and proportionate as soon as practically possible (the terms of which shall be approved by TG (acting reasonably))

5.4 The Council and TG shall provide the other with access onto their land within the Site (save identified for use as the Through Road Land, Shared Infrastructure Land or any land built upon and/or in the possession or occupation of any third party) subject to the necessary and reasonable licences being given for that purpose within 7 days of a request being made for all necessary invasive works and tests as may reasonably be required from the date hereof as may be appropriate to undertake such investigations and/or surveys as may be reasonably required to facilitate the Project upon reasonable written notice and for such periods as is reasonable. Each indemnifying the other for all third party liability arising as a result of their period of occupation for these purposes.

## **6. PLANNING**

6.1 EotN shall use reasonable endeavours to obtain all Satisfactory Planning Permissions from the Authority and shall:-

6.1.1. liaise with TG as soon as reasonably practicable after the signing of this Agreement and prepare a planning strategy in conjunction with TG

6.1.2 . prepare a draft Planning Submission for approval for the Site (or any part thereof) by TG (approval not to be unreasonably withheld or delayed) prior to 27 April 2016 or as soon as practically possible thereafter (TG's approval to which will be deemed granted unless TG makes a reasonable written objection in respect thereof within 21 days of receipt)

6.1.3. submit the Planning Submission as soon as reasonably practicable after approval (or deemed approval under Clause 6.1.2) in the joint names of EotN and TG

6.1.4. proceed with the Planning Submission as soon as is reasonably practicable and prudent ensuring there is appropriate consultation with TG as to progress (to include providing TG with copies of all correspondence and documentation).

6.1.5. provide TG with notice of and the opportunity to participate in any meeting to discuss the Planning Submission and any associated Planning Agreement.

6.1.6. negotiate the terms of any necessary Planning Agreements with the intent that the Council and TG shall each enter into such Agreements save that neither the Council nor TG shall each enter into such agreements which may require it to make any financial payment to a third party (save for proper legal costs and disbursements of the planning authority as a Third Party) prior to the implementation by it of the relevant Planning Permission on any parts of the Council Land or the TG Land.

6.1.7 Subject to the terms of clause 6.1.6 the Parties (to the extent that it is permitted by law) shall enter into any Planning Agreements and shall execute the same as soon as reasonably practicable

Provided that nothing in this Clause 6 shall oblige EotN to make any planning Appeal.

6.2 Provided always EotN and TG may agree to obtain in writing Leading Counsel's opinion and then (subject to agreeing the reasonable cost with and receipt of the agreed contribution to those costs by EotN from TG) then EotN shall obtain Leading Counsel's opinion on the prospects of success in respect of any Planning Refusal such opinion to be procured as soon as practically possible following any such refusal and EotN shall provide TG with a reasonable opportunity to consider and input into all instructions to Leading Counsel and to attend any conferences with Leading Counsel and shall provide TG with a copy of any written advice from such Leading Counsel (on the basis that this has legal privilege and is confidential and TG agrees not to circulate it other than to those of its advisors who ought to have sight of it and who agree to hold it in confidence) directly upon receipt.

6.2.1 In the event that either the EotN or TG wishes to pursue an Appeal then whichever of them wishes to appeal may do so (at their own expense) following reasonable consultation between the Parties

6.3 TG and EotN each agree with the other not to submit or vary amend or otherwise change any Planning Application without the prior written consent of each other (such consent not to be unreasonably withheld or delayed).

6.4 All the material actions in respect of matters set out in this Clause 6 shall be unanimously agreed between EotN and TG

6.5 Either EoTN or TG shall be able to make their own Planning Application at their own expense for their own land subject to the prior approval of the other party (such approval not to be unreasonably withheld or delayed) SAVE and EXCEPT FOR land reasonably required for the Through Road and the Shared Infrastructure as provided in a Satisfactory Planning Permission

## **7. Through Road**

7.1 TG and EotN shall use their reasonable endeavours to agree the route of the Through Road to be defined in the Satisfactory Planning Permission having regard to:-

7.1.1 land suitability

7.1.2 cost

7.1.3 technical constraints

7.1.4 performance and capacity of the proposed Through Road and the surrounding highway network

7.1.5 and to commencement of construction with 12 months of the date hereof

7.2 TG shall use reasonable endeavours to support the Council in its promotion and delivery of the Through Road

7.3 TG and EotN shall seek the stopping up, closure and/ or diversion and dedication of highways, footpaths and bridleways within the Site as may be reasonably required to deliver the Through Road and/or Shared Infrastructure

7.4 Subject to EoTN first agreeing and entering into the terms of the relevant licence (each party acting reasonably and in good faith) TG shall provide access to EoTN its contractors, consultants and agents for construction of the Through Road upon the TG Land (as reasonably required and provided that any such land has not been built upon and/or is in third party ownership) to implement the Satisfactory Planning Permission and such necessary works in accordance with the Objective and in particular to secure the delivery of the Through Road and or Shared Infrastructure insofar as it serves the Council Land.

7.5 Subject to first agreeing and entering into the terms of the relevant licence (each Party acting reasonably and in good faith) the Council shall provide access to TG (or its successors in title) together with their contractors, consultants and agents for the construction of the Through Road on the Council Land in accordance with the provisions of clause 9 and/or as may be reasonably required

to implement the Satisfactory Planning Permission and such necessary works in accordance with the Objective and/or to secure the delivery of the Shared Infrastructure to serve the TG Land

7.6 The Parties shall use reasonable endeavours to procure the adoption of the Through Road as soon as practicably possible including dedication of their respective land within the Through Road Land as highway maintainable at the public expense.

7.7 The Parties agree and covenant that pending adoption in no circumstances will they jointly or severally dispose or otherwise seek to encumber land to frustrate the delivery of the Through Road (other than in accordance with clause 17)

## **8. INFRASTRUCTURE**

As soon as practicably possible after the date of Satisfactory Planning Permission the Parties shall use their reasonable endeavours to work together to agree the delivery of the Shared Infrastructure having regard to the desire to reasonably maximise the value and/or the beneficial use of the Council Land and the value and/or beneficial use of the TG Land, and to minimise the cost of development and deliver the Project within a reasonably prudent and commercially sensible timeframe.

8.2 If agreed by the parties pursuant to clause 8.1 EotN and TG shall jointly instruct the Professional Team to design the Shared Infrastructure in a fair and reasonable manner to reflect the objective outlined in Clause 8.1.

8.3 The Council and TG shall be exclusively responsible for the provision of Infrastructure (other than Shared Infrastructure) upon the land they hold within the Site unless otherwise provided for herein.

8.4 TG shall provide access to EotN its contractors, consultants and agents for construction of the Shared Infrastructure and Infrastructure (as appropriate) upon the TG Land as reasonably required to implement the Satisfactory Planning Permission in accordance with the Objective.

8.5 The Council shall provide access to TG (or its successors in title) together with their contractors, consultants and agents for the construction of the Shared Infrastructure and Infrastructure (as appropriate) upon the Council Land as reasonably required to implement the Satisfactory Planning Permission in accordance with the Objective.

8.6 The Parties shall use reasonable endeavours to procure the adoption of Shared Infrastructure as soon as reasonably possible including entry into any adoption Agreements and/or Planning Agreements reasonably required by the relevant Services authorities.

## **9. STEP IN**

9.1 TG may by giving 6 months notice in writing to the Council step in and build or complete the Through Road and/or Shared Infrastructure or any part thereof (provided such land is not already built on) such notice to be given no earlier than 2 years nor later than 5 years after the determination of Satisfactory Planning Permission at its own cost such works to be commenced by TG within a period of 5 years from the expiry of the notice.

## **10. SATISFACTORY PLANNING PERMISSION (“SPP”)**

10.1 A Planning Permission shall be deemed a Satisfactory Planning Permission 14 days after the Permission Date unless any Party notifies the other Parties in writing that such Planning Permission is not a SPP.

10.2 In the event that any Party serves notice that a Planning Permission is not a SPP then the Parties shall meet as soon as reasonably possible thereafter to discuss the appropriate action to be taken to achieve the Objective to include the specification and construction of the Through Road and Shared Infrastructure.

## **11. THIRD PARTY OWNERS**

11.1 If reasonably required to achieve the Objective the Parties shall use reasonable endeavours to acquire any Third Party Interests Provided that no Party shall be obliged to acquire any Third Party Interests at a cost not acceptable to it (each offering the other the opportunity to acquire if they for their own part determine a price is too high)

11.2 The Parties shall agree in so far as they may be able to do so such reasonable steps as may be required to avoid any situation or to address any action that may be required to prevent any Third Party delaying or frustrating the Project and in particular the provision of the Infrastructure and Through Road

11.3 Subject to clauses 11.1 to 11.2 each Party shall enter into any Third Party Interest Document reasonably required.

## **12. DECISIONS**

12.1 All decisions and approvals concerning the Project shall be taken by the Parties acting reasonably (except as otherwise appears in this Agreement) and in the best interests of the Project and will require the unanimous Agreement of the Parties

12.2 TG and EotN shall assess decisions: -

12.2.1 in good faith

12.2.2 having regard to the Objective

12.2.3 having regard to the cost implications of making or not making the decision

12.2.4 having regard to the effect of making or not making the decision on the development programme

12.2.5 having regard to whether making or not making the decision would require TG and Engine of the North to make any additional planning applications

12.2.6 (in the case of TG) having regard to its best commercial interests

12.2.7 (in the case of the EotN ) having regard to the economic, social and environmental wellbeing of persons resident in the borough of Cheshire East

12.3 TG and EotN each agree that its consent may for the purposes of this Agreement to any action or process be given by its Representative and no consent shall be binding on either Party unless given in writing by its Representative properly so appointed

### **13. PLANNING COSTS AND EXPENSES**

13.1 The Parties shall agree a budget for the Promotion Costs and shall update that budget as and when required.

13.2 EotN shall pay all reasonable and proper Promotion Costs reasonably required to achieve a Satisfactory Planning Permission in accordance with the agreed budget on behalf of the landowners [subject to receipt of the relevant contribution from TG in the agreed proportions set out in clause 13.3](#) .

13.3 TG will pay a contribution towards the Promotion Costs equivalent to 75% (seventy five percent) of the Promotion Costs properly incurred by EotN under the terms of this Agreement (subject to EotN providing TG with an appropriate purchase order and VAT invoice and TG having raised a purchase order of EotN to authorise such expenditure prior to it's commission) up to an agreed budget for total Promotion Costs of £503,000 (five hundred and three thousand pounds). Such sum shall be paid by way of invoice drawn by EotN and shall be paid within 28 days of delivery of an invoice to the paying party. Any increased budget for Promotion Costs may be agreed from time to time by the Parties (each acting at their complete discretion).

13.4 Pending payment of any sums to EotN in accordance with clause 13.3 TG will pay £375,000 (three hundred and seventy five thousand pounds) to its Solicitors (Freeths LLP) upon the signing of this Agreement to be held in client account pending payment in accordance with the Solicitors Undertaking be agreed between TG's Solicitors (Freeths LLP) and The Director of Legal Services for The Council within 14 days of the signing of this Agreement

### **14. DETERMINATION OF DISPUTE**

14.1 For the purposes of this Clause 14: -

14.1.1 Dispute means a dispute issue difference question or claim as between the Parties relating to or arising out of this Agreement including whether or not a Party is acting reasonably (where they are specifically required to do so under the terms of this Agreement)

14.1.2 Specialist means a person qualified to act as an independent expert or an arbitrator in relation to the Dispute having experience in the profession in which he practises for the period of at least ten (10) years immediately preceding the date of referral

14.1.3 Senior Representative means a representative of each Party who insufficiently senior and authorised to make decisions on behalf of a Party to resolve a Dispute, the initial Senior Representatives being: -

- (i) in the case of the Council; the Executive Director of Economic Growth and Prosperity
- (ii) in the case of EotN, its Managing Director
- (iii) in the case of TG; a director of TG

or such other representative as may be notified by any party in substitution thereof

## 14.2 Escalation Procedure

14.2.1 Before a Party refers a Dispute to a Court (other than in the case of interlocutory proceedings) or to a Specialist under this Clause, a Party shall give the other Parties a notice ("Escalation Notice") requiring the other Parties to attempt in good faith to resolve the Dispute under this Clause 14

14.2.2 If a Party gives the other Parties an Escalation Notice, the Parties shall procure that Senior Representatives of each Party meet (either in person or by way of telephone conference) within ten (10) working days of the Escalation Notice being received and attempt in good faith to resolve the Dispute

14.2.3 If the Senior Representatives resolve the Dispute, the Senior Representatives shall (within five (5) working days of resolving the Dispute) make a written note of the resolution and each Senior Representative shall sign the note

14.3.4 If a Dispute is not resolved within five (5) working days of the meeting under Clause 12.1, then the other provisions of this Clause 12 shall apply to the Dispute

## 14.3 Referral to Specialist

14.3.1 Subject to Clause 14.2, any Party may give to the others a notice ("Dispute Notice") requiring a Dispute to be referred to a Specialist. Except in the case of Disputes regarding legal interpretation (in which case the Specialist will be a lawyer), the Specialist shall be an independent expert and not an arbitrator who has been professionally qualified in respect of the subject matter of the Dispute for not less than ten (10) years and who is a specialist in relation to such subject matter

14.3.2 Unless the Parties agree or are deemed to agree the appropriate Specialist within ten (10) working days of service of a Dispute Notice: -

14.3.2.1 in the case of Disputes as to valuation, the Specialist shall be agreed by the Parties or in default of such Agreement shall be such suitably qualified valuer appointed by the President for the time being of the Royal Institution of Chartered Surveyors (at the request of any Party)

14.3.2.2 in all other cases of Dispute the Specialist shall be appointed on the application of any of the Parties by whichever of the following is appropriate taking account of the nature of the Dispute: -

14.3.2.2.1 the President for the time being of the Royal Institution of Chartered Surveyors

14.3.2.2.2 the President for the time being of the Royal Institution of British Architects

14.3.2.2.3 the President for the time being of the Institute of Chartered Accountants in England and Wales

14.3.2.2.4 the President for the time being of the Law Society

14.4 Whenever the Specialist to be appointed under this Clause shall act as an expert, then the following provisions shall have effect: -

14.4.1 the Specialist shall act as an expert and not as an arbitrator and his or her decision shall be final and binding upon the Parties

14.4.2 the Specialist shall consider (inter alia) any written representations made on behalf of any party (if made reasonably promptly) but shall not be bound by them

14.4.3 the Parties shall use all reasonable endeavours to procure that the Specialist shall give his or her decision as speedily as possible

14.4.4 the costs of appointing the Specialist and his or her costs and disbursements in connection with his or her duties under this Agreement shall be shared between the Parties to the dispute in such proportions as the Specialist in their absolute discretion shall determine. For the avoidance of doubt each Party shall bear its own costs and disbursements incurred in respect of the determination of the Dispute prior to the appointment of the Specialist

14.4.5 if the Specialist shall be or become unable or unwilling to act then the above procedure for the appointment of an expert may be repeated as often as necessary until a decision is obtained

14.4.6 the Specialist shall be appointed jointly by the Parties

14.4.7 the Specialist shall determine the Dispute having regard to the objects set out in Clause 3.1 of this Agreement the best commercial interests of the Parties and (where appropriate) the market conditions at the time.

14.4.8 the Specialist shall be required to provide his decision in writing together with reasons for having reached his decision

14.4.9 the determination of the Specialist, except in the case of manifest error or error at law is to be final and binding on the Parties

## **15. THIS AGREEMENT NOT TO CONSTITUTE A PARTNERSHIP**

15.1 The arrangements contained within this Agreement do not constitute a joint venture nor a partnership Agreement as to the development of the Site

15.2 None of the Parties will enter into any arrangement or contract with any third party as agent or representative for another without express authority in writing given for that purpose

15.3 The arrangements contained within this Agreement do not and are not intended to transfer any land or any beneficial interest in land and do not constitute or amount to any contract for the transfer of any land or any beneficial interest in land. Save as mentioned herein

## **16 . DURATION**

16.1 If: -

16.1.1 a Satisfactory Planning Permission is not granted in respect of the Site within the Term or such longer period as EotN and TG may agree, or

16.1.2 Leading Counsel is of the opinion and determines on the application of either EotN or TG after a Planning Refusal that the prospects of obtaining a Satisfactory Planning Permission in respect of the Site within the Term are less than 50%

16.1.3 then subject to the provision of Clause 16.2 below this Agreement shall be determined by any Party giving the other Parties not less than 21 days notice in writing but without prejudice to the rights or remedies of any Party in respect of any antecedent breach of the obligations hereunder or the liability of TG to make payments as required under Clause 13.3

16.2 If during the Term there is in existence a Satisfactory Planning Permission in respect of the Site then this Agreement shall continue in full force and effect until the date which is 10 years from and including the Planning Date

16.3 If at the date that this Agreement is determined by any Party pursuant to Clause 16.1.3 either party has called upon the other to grant rights and/or easements pursuant to Clause 22 (Rights and Easements) then this Agreement shall continue to be in force until such rights and easements shall have been granted.

## **17. SALE OF LAND WITHIN THE SITE**

17.1 Should either the Council or TG seek to dispose of all or part of their land within the Site then the Other Party shall mean whichever of TG or the Council is not so disposing and save in respect of an Excluded Disposal (in respect of which these provisions shall not apply) :-

17.1.1 the Other Party shall enter into a Deed in such a form as may reasonably be required to grant Rights and Easements in the form set out in clause 22 of this Agreement to facilitate the development of the land to be disposed of to the donee and/or its successors in title

17.1.2 the disposing Party shall procure that its donee shall covenant by Deed (on behalf of itself and so as to bind its successors in title) in such a form as may reasonably be required to grant Rights

and Easements in the form set out in clause 22 of this Agreement to facilitate the development of the Other Party's land.

17.1.3 if required by the Other Party the disposing party shall procure that its disponee shall enter into a Deed of Covenant in a form agreed by TG and the Council whereby the disponee agrees to be bound by the terms of this Agreement (in so far as relevant).

17.2 Should TG and the Council agree that all or any part of the Site should be sold or marketed for sale and such sale to include both TG Land and Council Land then:-

17.2.1 TG and the Council shall formulate a disposal strategy

17.2.2 any sale shall only be effected if TG and the Council are unanimous and both acting reasonably provide for the continued delivery of the Through Road and Shared infrastructure in line with the spirit and intendment of the Agreement

17.2.3 whichever of TG or the Council has the greater share of the land to be jointly disposed of (by reference to Net Developable Area) shall have conduct of the sale but shall keep the other Party fully informed as to the progress of the sale

17.2.4 the sale proceeds shall be divided between TG and the Council in accordance with their percentage shares in the land sold by reference to Net Developable Area

17.2.5 TG and the Council shall share the costs associated with the sale of the whole Site (to be reasonably agreed between them) and in default of Agreement in accordance with their percentage shares of the land sold by reference to Net Developable Area

17.2.6 the transfer of the land to be sold shall contain the reservation of such easements and rights as may be required by TG and/or the Council in respect of the future development and/or sale of the TG land and/or the Council Land or part or parts thereof to include access support erection of scaffolding and oversails for construction of buildings and services including rights of entry for the purposes of constructing any necessary roads and services and connecting into the same and for the maintenance repair inspection, cleansing and renewal of the same.

17.2.7 if required by TG and the Council the buyer shall enter into a Deed of Covenant whereby the buyer shall agree to be bound by the provisions of clause 17 herein and in default of such a clause being secured each party has the consent of the other to register the easements rights and restrictions contained herein in the Schedule over the others land on or before completion of the sale

## **18. WAIVER, FORBEARANCE AND VARIATION**

18.1 The rights of any Party shall not be prejudiced or restricted by any indulgence or forbearance extended to any other Party and no waiver by any Party in respect of any breach shall operate as a waiver in respect of any subsequent breach

18.2 This Agreement shall not be amended varied or cancelled unless such amendment variation or cancellation shall be executed by each Party

## **19. NOTICES**

Any notice or other document to be given or sent hereunder shall be in writing and may be delivered personally or sent by first class registered post to the Party to be served (at that Party's address appearing in this Agreement or such other address as that Party shall notify in writing to the other). Any such notice or document shall be deemed to have been served if: -

19.1 delivered, at the time of delivery

19.2 posted, at the expiration of 48 hours after the envelope containing the same shall have been put in the post

19.3 in proving such service it shall be sufficient to prove (as the case may be) that delivery was made or that the envelope containing such notice or document was properly addressed and posted as a prepaid first class letter

## **20. ASSIGNMENT**

No Party shall assign or novate this Agreement without the written consent of the other Parties the giving (or not) of which shall be within each Parties absolute discretion save that such consent shall not be unreasonably withheld by the Council and/or EotN in circumstances where:

20.1 TG is disposing of the entirety of its land within the Site to a party of sufficient financial strength to discharge the obligations it would incur under this Agreement pursuant to assignment or novation; and

20.2 such party has entered into a Deed of Covenant with both the Council and EOTN in a form acceptable to the Council and EOTN (each acting reasonably) to comply with all of TG's obligations pursuant to this Agreement

## **21. CONFIDENTIALITY**

21.1 Save as provided in Clause 21.2 (or as is necessary to enforce any of the provisions hereof) no Party shall without the prior written consent of the other disclose or publish any details of this Agreement or its existence

21.2 Clause 21.1 of this Agreement shall not prohibit the disclosure of information to the extent such disclosure is required:

21.2.1 by law including, in particular, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004; or

21.2.2 by a governmental, regulatory or other authority with relevant powers.

21.2.3. any party to whom a Party has a bona fide intention to assign or novate this Agreement to

21.3 Notwithstanding Clause 22.2:

21.3.1 before the Council or EotN discloses any information under Clause 21.2.1 the Council or EotN (as relevant) must (to the extent practicable and so far as permitted by law):

21.3.1.1 inform TG via its Representative of the circumstances of the disclosure and the information that will be disclosed and take all such steps as may be reasonable and practicable in the circumstances to agree the contents of such disclosure with TG before making the same; and

21.3.1.2 consult with TG as to possible steps to avoid or limit disclosure

21.4 If the Council/ EotN is unable to inform TG before any information is disclosed, the Council/ EotN will (to the extent permitted by law) inform TG immediately after the disclosure of the circumstances of the disclosure and the information that has been disclosed.

21.5 At all times it is accepted that the sole arbiter of when and what to disclose under any application to disclose or report shall be the Council

## **22. RIGHTS AND EASEMENTS**

It is acknowledged by the Parties that in carrying out any future development on their land or future sale for development on their land they may require rights and easements over each others land within the Site (whether or not a Satisfactory Planning Permission is obtained) and the Parties agree that:-

22.1 If called upon so to do grant to another party, its successors in title and all others authorised by it for the benefit of another Party's land within the Site such of the rights and easements set out in Schedule 1 hereto (and with such modifications) as are reasonably required with appropriate protection for development of their own land and reinstatement following the carrying out of any works.

22.2 In respect of the grant of the said rights and easements the relevant Parties agree to enter into a deed (if any Party shall require the same) embodying the grant of the said rights and easements and the other matters referred to in Schedule 1.limited as stated in paragraph 22.1

22.3 In relation to any deed to be entered into under Clause 22.2:-

22.3.1 The relevant grantor shall in the said deed grant with full title guarantee;

22.3.2 The grantor shall (if required) deduce a good and marketable title to the relevant land and shall procure that all persons with an interest therein join in the deed to confirm the grant of the easement

## **23. VAT**

23.1 Each amount stated to be payable by TG to EotN under or pursuant to this Agreement is exclusive of VAT.

23.2 If any VAT is chargeable on any supply made by EotN to TG TG will on receipt of a valid VAT invoice pay to EotN an amount equal to that VAT.

## **26. NON FETTER**

The Council enters into this Agreement in its capacity as landowner only and nothing contained in this Agreement shall prejudice or affect all or any of the statutory rights, powers, obligations and/or duties from time to time vested in the Council as a Local Authority and as a statutory body all such rights, powers, obligations and duties shall be enforceable and exercisable in relation to the Site notwithstanding the existence of this Agreement

## **27. ENTIRE AGREEMENT**

This Agreement and all the documents annexed to it from time to time constitutes the entire Agreement and understanding of the parties and supersedes any previous Agreement or understanding between them relating to the subject matter of this Agreement. Save that the parties may amend the terms and provisions of this Agreement in writing by Deed.

## **28. GOOD FAITH**

The Parties agree that they will act reasonably and in good faith towards each other in relation to the Project and the achievement of the Objective and will assist with any reasonable request which any party may make to another party where co-operation or assistance is required including (without limitation) any land dedication, boundary revisions, land consents, grant of rights, entry into any wayleaves, easements or similar provisions.

## **29. COSTS**

The parties shall bear their own legal and other professional costs in respect of their negotiation of this Agreement.

**IN WITNESS** of which the parties have sealed this instrument as a deed and have delivered it upon dating it

## **Schedule 1**

### **Rights and Easements Granted pursuant to this memorandum of Agreement from the date of each relevant planning permission authorising development**

1. A right of way at all times and for all reasonable purposes for the Parties with or without workmen and with all necessary vehicles and equipment to construct and maintain until adoption the Through Road
2. A right of way at all times and for all reasonable purposes over the roads and footpaths, bridleways and/or cycleways now constructed or to be constructed on the Site pursuant to the relevant planning permission or any Consents.
3. A right to the free and uninterrupted running of foul and surface water and gas, water, telephone, telecommunications and electricity services through the media and watercourses now constructed or to be constructed within the Site pursuant to any Consents.
4. Subject to the terms of any relevant licence granted for that purpose (each Party acting reasonably and in good faith) a right to enter upon the other's respective land for the purpose of constructing and retaining roads, footpaths, bridleways, cycleways and balancing ponds and laying foul and surface water sewers and gas, water, telephone, telecommunications and electricity services and connecting to, inspecting, maintaining, repairing, renewing or relocating the roads, footpaths, bridleways, cycleways and services hereinbefore referred to pursuant to the relevant planning permission and the Consents the person exercising such rights causing as little damage as reasonably possible and forthwith making good any damage so caused and paying compensation for any losses.
5. Such rights of support for the other Party's land (for the land and buildings on the other party's land) as may be reasonably necessary for the development of the other Party's land pursuant to the relevant planning permission.
6. A right of entry onto its land from the other Party's land for the purpose of temporarily erecting scaffolding or temporarily projecting the same and for the provision of any oversails in order to facilitate the development of the other party's land pursuant to the relevant planning permission.
7. All such other easements, rights or privileges as may reasonably be required by the other Party over that Party's land as may be reasonably necessary for the reasonable and proper development of the land within the Site owned by the Party or any parts thereof pursuant to the relevant planning permission or for implementing any Agreement or complying with any covenant contained in the Consents.

PROVIDED ALWAYS that:

- (a) the exercise of the rights referred to above shall be subject however to:
  - (i) the party intending to exercise the right (the "Dominant Owner") serving on the party over whose party's land the right is intended to be exercised (the "Servient

Owner”) 30 working days’ written notice that the Dominant Owner wishes to exercise such right (except in an emergency); and

- (ii) the Servient Owner and the Dominant Owner agreeing the position of the subject matter of the exercise of the proposed right if the same is not clearly ascertainable from the relevant planning permission and/or the Necessary Agreements provided that in the event of any dispute in relation thereto such dispute shall be referred for determination in accordance with the provisions contained in Clause 14 above; and
- (b) the exercise of any right referred to above is subject to the Dominant Owner:
- (i) paying a fair proportionate part of the expense of the repair, maintenance and renewal of all such roads, footpaths, sewers, drains, wires, cables and mains and other services as and when used having due and proper regard to the obligations contained in paragraph 17 herein;
  - (ii) making good all damage occasioned thereby as soon as reasonably possible to the reasonable satisfaction of the Servient Owner;
  - (iii) causing as little inconvenience or disturbance as possible to the remainder of the Servient Owner’s land;
  - (iv) giving due consideration to the proposals for the development of the remainder of the Servient Owner’s land.
  - (v) not exercising any right or carrying out any act which could frustrate the independent development of the Council Land or the TG Land or unreasonably make the development more difficult or expensive for either the Council or TG save as reasonably required by the Objective and any planning permission obtained pursuant to this Agreement

The common seal of )  
Cheshire East Borough Council was )  
Hereto affixed in the presence of )  
Authorised Signatory

Signed as a deed by East )  
Cheshire Engine of the North Limited )  
acting by two directors or )  
one director and its secretary )  
Signature of director  
Signature of director/secretary

Signed as a deed by )  
TG Limited )  
acting by two directors or )  
one director and its secretary )  
Signature of director  
Signature of director/secretary

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