

Dated _____ 2023

(1) **SHOTWICK PARK ESTATE LIMITED**

- and -

(2) **CESHIRE WEST AND CHESTER BOROUGH
COUNCIL**

DEED OF COVENANT
restricting development on part of the Shotwick Park Estate

denney king

THIS DEED is made

2023

BETWEEN:

Owner: **SHOTWICK PARK ESTATE LIMITED** (CRN 14009366) whose registered office is at The Vicarage Church Road Saughall CH1 6EN

Council: **CHESHIRE WEST AND CHESTER BOROUGH COUNCIL** of 4 Civic Way, Ellesmere Port, Chester CH65 0BE

BACKGROUND:

- (A) The Council has transferred the Protected Area together with other property to the Owner pursuant to a transfer of the same date as this Deed.
- (B) The Owner has agreed to enter into a covenant not to build houses or other residential units on the Protected Area for a period of 80 years from the date of this Deed.
- (C) It is acknowledged by the Council that this covenant is intended to be a personal covenant, the benefit of which is to remain vested in the Council or any authority which has been created through any reorganisation of the Council and is not to run with, attach to, or otherwise be assigned to the Council's successors in title to the Council's Land.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

In this Deed:

1.1 The following definitions apply:

Business Day	any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday;
Council's Land	the land remaining comprised in title number CH350044 as at [date and time of OCE] excluding the Protected Area and the other property comprised in the Transfer to the Owner;
Covenant Period	Eighty (80) years from and including the date of this Deed and ending at 23:59 hours on { };
Deed of Covenant	a deed of covenant in the form of the draft set out in the Schedule;
Development Covenant	the covenant set out in clause 2 of this Deed;
Disponee	a person to whom a Disposal is made;
Disposal	any of the following: <ul style="list-style-type: none">(a) a disposal of any kind (by whatever means, whether directly or indirectly

and whether by one or more transactions) of any interest of the Owner in the Protected Area or of the capital value of its interest in the Protected Area being:

- (i) a conveyance or transfer (whether by sale or otherwise and including an exchange of the Protected Area for other property with or without equality money and a Disposal by a chargee or mortgagee in exercise of a power of sale);
- (ii) a lease or tenancy;
- (iii) a grant of a right to occupy;
- (iv) an assignment of a lease, tenancy or right to occupy; or
- (v) a grant, release or surrender of any interest.

together with an agreement to enter into, or an option to create, any of the above;

and for the purposes of this Deed a Disposal occurs on the earlier of the following:

- (a) the date of the instrument effecting the Disposal;
- (b) the payment or delivery of valuable consideration for the Disposal (other than the payment of a deposit of less than ten (10%) per cent) to the Owner a person at the direction of the Owner;

Excepted Disposal

any of the following in respect of the Protected Area:

- (a) the grant of a licence not exceeding six (6) months from and including its grant which does not (whether under its terms or by operation of law) entitle the licensee to remain in occupation at its end;
- (b) the grant of a tenancy for a term not exceeding ten (10) years from its grant and from which the provisions of sections 24 – 28 (inclusive) of the Landlord and Tenant Act 1954 have been validly excluded in relation to such tenancy;

- (c) a farm business tenancy or equivalent letting;
- (d) the grant of an easement over, or the giving of a covenant affecting, the Protected Area;
- (e) a mortgage or charge;
- (f) a licence to carry out works in connection with Permitted Development;
- (g) a transfer or grant of a wayleave or lease to a service provider or to the local authority or to the highways authority or other public body for the purpose of access, improvement or services or pursuant to an obligation or agreement lawfully required by such body or provider;
- (h) a transfer or lease to a management company in relation to common parts of the Protected Area or for other management purposes;
- (i) a compulsory purchase; or
- (j) a planning agreement or statutory obligation in relation to any development on any the Owner's property outside of the Protected Area.

Party	a party to this Deed (and Parties shall be construed accordingly);
Plan	the plan annexed to this Deed;
President	the President or next most senior available officer of the RICS;
Protected Area	part of the Shotwick Park Farms Estate shown edged and hatched pink on the Plan;
Residential Development	construction of any house, flat, maisonette or other unit (and its curtilage) intended for residential occupation;
Restriction	the restriction set out in clause 3.2.1;
RICS	the Royal Institution of Chartered Surveyors or any successor body;
Statutory Successors	an authority or any authoritarian body which has been created through the merger, takeover, separation, abolition or reorganisation of a

current local authority through local government reform;

Surveyor

a surveyor appointed pursuant to clause 5;

Transfer

the transfer of today's date of the Protected Area together with other property to the Owner;

- 1.2 If a Party comprises more than one person their obligations and liabilities are joint and several.
- 1.3 An obligation by a Party not to do something includes an obligation not to permit it to be done.
- 1.4 Headings are for ease of reference only.
- 1.5 References to a schedule are to a schedule to (and form part of) this Deed (unless expressly provided otherwise).
- 1.6 A provision of this Deed which is void or unenforceable shall be severed from all other provisions of this Deed and the remaining provisions shall continue to have effect.
- 1.7 Reference to a statute or statutory instrument includes all subordinate legislation made under it and any re-enactment, amendment or consolidation of it which is for the time being in force (unless expressly provided otherwise).
- 1.8 Any references to **includes**, **include** or **including** are deemed to be followed by the words "without limitation".

2. DEVELOPMENT COVENANT

The Owner covenants with the Council so as to bind the Protected Area for the Covenant Period not to undertake any Residential Development on any part of the Protected Area, nor permit or suffer anyone under its control to do so.

3. DISPOSALS AND RESTRICTIONS

3.1 The Owner shall not:

- 3.1.1 assign, charge or otherwise deal with its interest under this Deed; or
- 3.1.2 enter into a Disposal (other than an Excepted Disposal)

without in each case delivering to the Council a Deed of Covenant in accordance with clause 3.3.

3.2 The Owner covenants with the Council:

- 3.2.1 to apply to H.M. Land Registry within five (5) Business Days of the date of this Deed for a restriction to be entered against the title to the Protected Area in the form of the restriction set out below:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Cheshire West and Chester Borough Council of 4 Civic Way, Ellesmere Port, Chester CH65 0BE or a conveyancer that the provisions of clause 3.3 of a deed dated { } 2023 made between

(1) Cheshire West and Chester Borough Council and (2) Shotwick Park Estate Limited have been complied with or that they do not apply to the disposition.”

- 3.2.2 to ensure that any requisitions raised by H.M. Land Registry in connection with any application for such registration are dealt with promptly and properly; and
 - 3.2.3 to provide to the Council official copy register entries in respect of the title to the Protected Area showing the restriction as soon as reasonably practicable after completion of the Owner’s registration as the proprietor of the Protected Area.
- 3.3 The Owner covenants with the Council upon any Disposal within the Covenant Period (other than an Excepted Disposal), to procure at its own expense that the Disponee:
- 3.3.1 delivers to the Council a Deed of Covenant executed by the Disponee; and
 - 3.3.2 (if the restriction referred to in clause 3.2.1 is to be removed from the title at H.M. Land Registry as a result of a Disposal or is not carried over to any new title created) applies for a restriction to be entered against the title to the Protected Area (or of the title created as a result of the Disposal if applicable) at H.M. Land Registry in substantially the same terms as the restriction in clause 3.2.1 and ensures that:
 - 3.3.2.1 any requisitions raised by H.M. Land Registry in connection with any application for such registration are dealt with promptly and properly; and
 - 3.3.2.2 evidence of such registration is delivered to the Council's conveyancer within one (1) month of completion of the registration.
- 3.4 Where the Council consents to a Disposal, it shall also consent to it for the purposes of a Restriction.
- 3.5 The Council shall not assign its interest in this Deed or the benefit of the Development Covenant to anyone without the Owner’s consent PROVIDED that the Owner’s consent is not required to an assignment to a Statutory Successor of the Council.
- 3.6 Subject to clause 3.5, if the Council validly assigns the benefit of the Development Covenant then the Council shall provide to the Owner a deed of covenant under which the assignee covenants with the Owner to observe and perform all of the obligations of the Council under this Deed (such deed of covenant to be in such form as the Owner may reasonably require).

4. DURATION OF OBLIGATIONS

On the expiry of the Covenant Period or if earlier release of the Development Covenant:-

- 4.1 the Owner will be released from its obligations under this Deed and the Development Covenant; and
- 4.2 the Council shall apply to the Chief Land Registrar for any Restriction to be cancelled and removed from the title to the Protected Area; and
- 4.3 on written request from the Owner, the Council shall do and execute such matters and documents as may reasonably be required by the Owner to discharge the Protected

Area (or such part(s) of the Protected Area as may still be subject to it) from the Development Covenant.

5. DISPUTES

- 5.1 For the purpose of this clause 5 "**Expert**" shall mean:
- 5.1.1 (where a dispute or difference is on a point of law or relates to the construction of a document, including this Deed) a barrister of not less than ten (10) years' call, suitably experienced in the matters the subject of the proposed reference to such barrister, appointed by the Parties jointly within five (5) Business Days of the proposed reference or, failing such joint appointment, appointed by the President (or other acting senior officer) for the time being of The Bar Council at the request of either Party; or
- 5.1.2 (where a dispute or difference is on a point of planning or value) a Chartered Surveyor with no less than ten (10) years' relevant experience and having experience in development land of the same type and in a similar location as the Protected Area and in dealing with disputes of a like kind to those which may be referred to him/her under this Deed, appointed by the Parties jointly within five (5) Business Days of the proposed reference or, failing such joint appointment, appointed the President (or other acting senior officer) for the time being of The Royal Institution of Chartered Surveyors at the request of either Party.
- 5.2 Unless this Deed provides to the contrary any disputes under this Deed are to be determined by an Expert.
- 5.3 The Expert shall act as an expert and not an arbitrator.
- 5.4 The Expert shall determine the dispute referred to him/her in accordance with the following timetable calculated from the date of his appointment (save where the provisions of this Deed provide for a different timetable) but if the timetable is not adhered to this will not affect the validity or enforceability of the Expert's determination:
- 5.4.1 the Parties shall submit written representations and evidence to the Expert within ten (10) Business Days (such representations and evidence to be copied by the Party submitting it simultaneously to the other Party);
- 5.4.2 within ten (10) Business Days afterwards, the Parties shall submit written counter-representations and evidence to the Expert (copied in the same manner);
- 5.4.3 at 12 noon on the tenth (10th) Business Day after the Expert's appointment (or at such other time and on such other date as may be convenient to the Expert, provided that such other date is no more than five (5) Business Days later) the Parties may each make oral representations to him/her in such order as he/she shall determine;
- 5.4.4 within five (5) Business Days of hearing such oral representations, the Expert shall make his/her decision in writing.
- 5.5 The fees and expenses of the Expert including the cost of his nomination shall be borne equally by the Parties or as he/she directs.
- 5.6 The Parties shall bear their own costs relating to the determination of the issue by the Expert.

- 5.7 The determination of the Expert will be conclusive and bind the Parties save in the case of manifest error.
- 5.8 The terms of the Expert's appointment shall require the Expert to keep the terms of this Deed confidential save to the extent that he is obliged by law to disclose any information or this Deed but where possible he shall first advise the Parties.
- 5.9 If the Expert relinquishes his/her appointment or dies or if it becomes apparent that for any reason he/she will be unable to complete his/her duties under this Deed then either Party may apply to the appropriate President (or other acting senior officer) of The Bar Council or The Royal Institution of Chartered Surveyors for a substitute to be appointed in his/her place.

6. ENTIRE AGREEMENT

This Deed constitutes the entire agreement between the Parties.

7. SERVICE OF NOTICES

7.1 Any notice given under this Deed shall be in writing (but not by e-mail) and shall be signed by or on behalf of the Party giving it.

7.2 To be effective, any notice shall be sent or delivered by any one or more of the following methods:

7.2.1 recorded delivery (first class post);

7.2.2 special delivery; or

7.2.3 hand

to the relevant Party as follows:

7.2.4 sent or delivered to the Council at:

4 Civic Way, Ellesmere Port, Chester CH65 0BE

marked for the attention of the County Land Agent for the Council

or at such other address as has been specified in a notice to, and acknowledged by, the Owner before service;

7.2.5 sent or delivered to the Owner at:

[The Old Vicarage, Church Road, Saughall]

marked for the attention of Alexander David Greensill

or at such other address as has been specified in a notice to, and acknowledged by, the Council before service.

7.3 A notice is deemed to be received:

7.3.1 where sent by recorded delivery (first class post), on the first working day after posting;

7.3.2 where sent by special delivery, on the guaranteed delivery date;

7.3.3 where delivered by hand, at the time of delivery.

8. THIRD PARTY RIGHTS

It is not intended that any person will be entitled to enforce any provisions of this Deed (including approvals and consents) who would not have been so entitled but for the enactment of the Contracts (Rights of Third Parties) Act 1999.

9. GOVERNING LAW AND JURISDICTION

This Deed shall be governed by and construed in accordance with the laws of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

This Deed has been executed as a deed and is delivered and takes effect on the date set out at its beginning.

**THE SCHEDULE
Deed of Covenant**

This Deed of Covenant is made
BETWEEN

Covenantee: **CHESHIRE WEST AND CHESTER BOROUGH COUNCIL** of

Covenantor: { } {whose registered office is at} {of} { }
(Company Registration number: { })

Now this Deed witnesses as follows:

1. This Deed is supplemental to a deed dated { } between (1) SHOTWICK PARK ESTATE LIMITED (the "**Original Covenantor**") and (2) the Covenantee relating to part of the Shotwick Park Farms Estate (the "**Deed of Covenant**").
2. The Covenantor has {taken the grant of a lease} {taken a transfer} of { } and such document is dated { } and is made between (1) { } and (2) { }.
3. The Covenantor covenants with the Covenantee that it will observe and perform all of the obligations on the part of the Original Covenantor under the Deed of Covenant as if they were set out in full in this Deed but made applicable to the property comprised in the deed or document referred to in clause 2.

This Deed has been executed as a deed and is delivered and takes effect on the date set out at its beginning.

{Appropriate execution as a Deed by the Covenantor}

EXECUTED AS A DEED by affixing
THE COMMON SEAL of **CHESHIRE
WEST AND CHESTER BOROUGH
COUNCIL**

in the presence of:

Authorised Signatory

.....

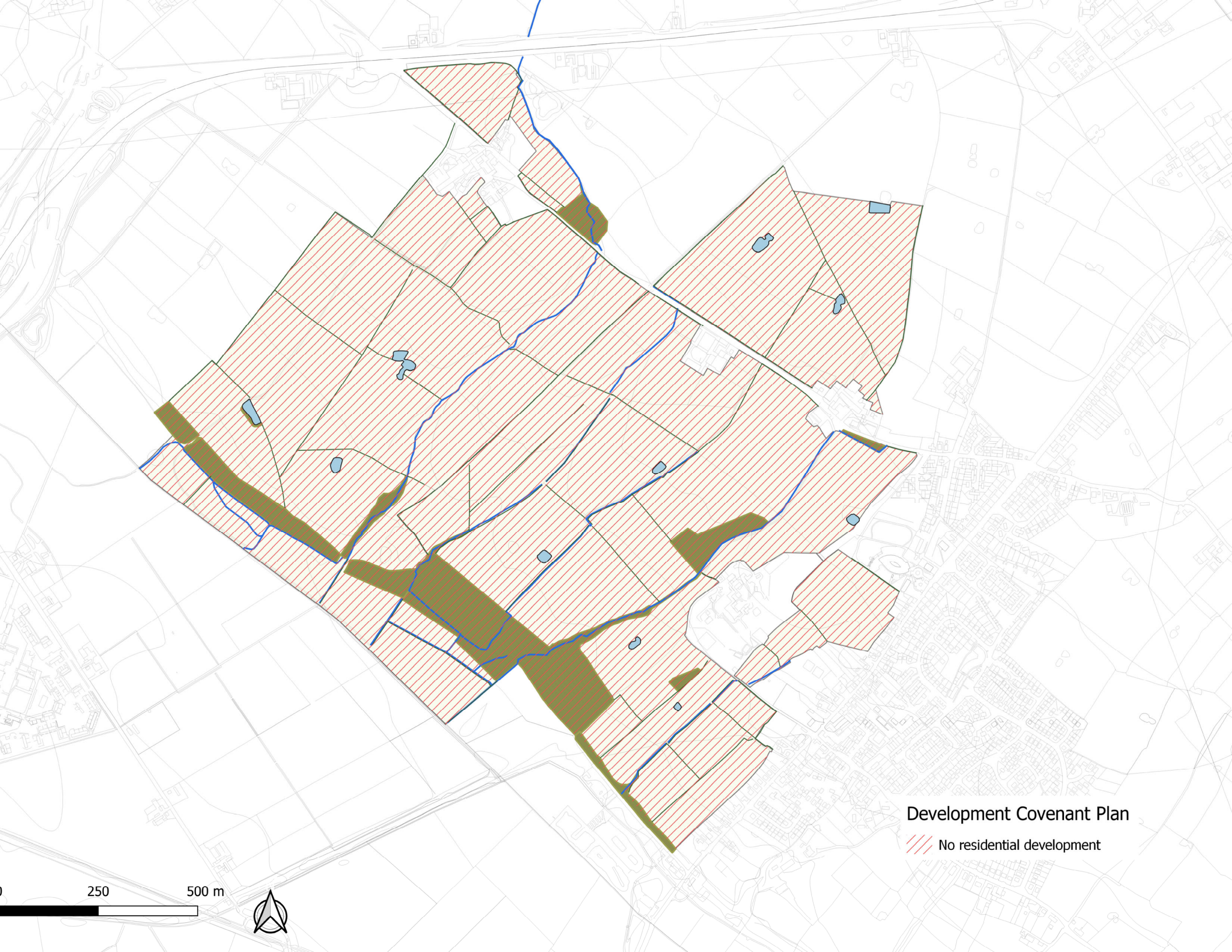
EXECUTED AS A DEED by **ALEXANDER DAVID
GREENSILL**, a Director of **SHOTWICK PARK
ESTATE LIMITED** in the presence of:

Signature of witness

Name (in BLOCK CAPITALS)

Address

ANNEXURE 1
Protected Area Plan



Development Covenant Plan

 No residential development

250 500 m

