

**SCHEDULE PART 5**  
**DEED OF CONDITION**

DEED OF CONDITIONS

by

PARC CRAIGMILLAR LIMITED

and

BDW TRADING LIMITED

and

CITY OF EDINBURGH COUNCIL or such other party as may be the proprietor of the  
subjects defined as CEC Land with appropriate amendments hereto

Subjects: Land at Greendykes Road, Edinburgh,

Ref HS1.E.4750.7

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DEED OF CONDITIONS

by

PARC Craigmillar Limited,  
incorporated under the  
Companies Acts (Company  
Number SC234777) and  
having its Registered Office  
at 3 Cockburn Street,  
Edinburgh, EH1 1QB

and

BDW Trading Limited,  
incorporated under the  
Companies Acts (Company  
Number 3018173) and having  
their Registered Office at  
Barratt House, Cartwright  
Way, Forest Business Park,  
Bardon Hill, Coalville,  
Leicestershire

and

City of Edinburgh Council or  
such other party as may be  
the proprietor of the subjects  
defined as CEC Land with  
appropriate amendments  
hereto

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. In this deed the following words have the following meanings:

- 1.1.1. **"Access Road"** means the area shown white and hatched black on the Plan 1 within the BDW Site;
- 1.1.2. **"Access Road Works"** means the work to construct a new road on the Access Road in accordance with BDW's Planning Permission and the RCC all to Adoption Standard and to provide Services of gas, water and drainage with sufficient capacity to serve up to 38 Houses along the two routes shown partly pink and cross-hatched black and partly grey and cross-hatched black on the Plan 1 and within the PARC Site within the Access Road;
- 1.1.3. **"Adoption Standard"** means when the Access Road is complete and is entered into the list of public roads maintained by the relevant roads authority in terms of Section 1 of the Roads Act 1984 and/or where the SUDS Pond is taken over by Scottish Water, CEC, The Greenbelt Group Limited or a similar body for maintenance and **"Adoption"** and **"Adopted"** are similarly defined;
- 1.1.4. **"BDW"** means BDW Trading Limited, incorporated under the Companies Acts (Company Number 3018173) and having their Registered Office at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire;
- 1.1.5. **"BDW's Planning Permission"** means planning permission granted by City of Edinburgh Council dated 16 May 2016 with reference 15/04791/AMC and a copy of which is annexed hereto and any subsequent variation thereto;
- 1.1.6. **"BDW Site"** means All and Whole the subjects at Greendykes Road, Edinburgh shown outlined in red and coloured orange and white with black hatching on the

Plan 1 and comprising i) part and portion of the subjects registered in the Land Register of Scotland under Title Number MID168446, and (ii) part and portion on the subjects registered in the Land Register of Scotland under Title Number MID106281;

- 1.1.7. **"CEC"** means City of Edinburgh Council [or such other party as may be the proprietor of the subjects defined as CEC Site with appropriate amendments hereto];
- 1.1.8. **"CEC Site"** means those areas of ground owned by CEC comprising i) the North Park; ii) those two areas shown coloured red and light green on the Plan 1 forming part and portion of the subjects described in and disposed by Disposition by John Frederick Gretton and Others as Post Nuptial Trustees of Mr and Mrs John Andrew Wauchope and John Andrew Wauchope in favour of the Lord Provost Magistrates and Council of the City of Edinburgh dated 23 March 1946 and subsequent dates, and recorded in the General Register of Sasines for the County of Edinburgh on 13 April 1946; and iii) Greendykes South;
- 1.1.9. **"CEC Development Site"** means All and Whole the subjects shown coloured red on the Plan 1 forming part and portion of the CEC Site;
- 1.1.10. **"Condition"** means a condition of this Deed of Conditions;
- 1.1.11. **"Completed"** means practically completed as certified by the person employed to carry out supervision of the relevant works and **"Completion"** is similarly defined;
- 1.1.12. **"Construction Requirements"** means the work to complete the Access Road in accordance with BDW's

Planning Permission and the RCC all to Adoption Standard;

- 1.1.13. **"Culvert Maintenance"** means all works necessary to repair, inspect, maintain and, where necessary, renew, the Diverted Culvert;
- 1.1.14. **"Date of Entry"** means the date that BDW take entry to the BDW Site;
- 1.1.15. **"Diverted Culvert"** means the diverted underground culvert shown coloured blue on Plan 3;
- 1.1.16. **"Expert"** means a suitably qualified person (being a surveyor, engineer, architect or planning consultant as appropriate depending on the nature of the referral with not less than 10 years' experience of house building sites in central Scotland as is agreed between PARC and BDW failing which as appointed by the Chairman of the Scottish Branch of Chartered Surveyors or a senior office holder of a professional body in respect of the relevant discipline as the case may be);
- 1.1.17. **"Footpath Maintenance"** means work necessary to Maintain the Footpath to adoptable standard;
- 1.1.18. **"Footpath Maintenance Costs"** means all costs associated with the Footpath Maintenance;
- 1.1.19. **"Greendykes South"** means the area owned of the CEC Site shown coloured grey on Plan 1 which subjects comprise i) ALL and WHOLE the subjects registered in the Land Register of Scotland under Title Number MID127093, ii) ALL and WHOLE the subjects registered in the Land Register of Scotland under Title

Number MID123446; iii) PART and PORTION of the subjects registered in the Land Register of Scotland under Title Number MID168446 and iv) PART and PORTION of the subjects more described in and disposed by Disposition by John Frederick Gretton and Others as Post Nuptual Trustees of Mr and Mrs John Andrew Wauchope and John Andrew Wauchope in favour of the Lord Provost Magistrates and Council of the City of Edinburgh dated 23 March 1946 and subsequent dates, and recorded in the General Register of Sasines for the County of Edinburgh on 13 April 1946

- 1.1.20. **"Greendykes North"** means the PARC Site and the area of ground within the CEC Site shown coloured red on the Plan 1;
- 1.1.21. **"House"** means a completed residential dwelling building (including a flatted dwelling) and any ground pertaining to it as is registered in the Land Register of Scotland as a transfer of part from the BDW Site or the PARC Site and **"Houses"** means every House so transferred;
- 1.1.22. **"Incomplete Road Works"** means that part of the Access Road Works as is incomplete at the date of the relevant Step-In Notice;
- 1.1.23. **"Incomplete SUDS Works"** means that part of the SUDS Works as is incomplete at the date of the relevant Step In Notice;
- 1.1.24. **"Maintain"** means to maintain repair renew and reinstate and to keep in good operational order and repair and **"Maintaining"** is similarly defined;



- 1.1.25. **"North Park"** means that part of the CEC Site shown coloured yellow on the Plan 1 and forming PART and PORTION of the subjects more particularly described in Disposition by John Frederick Gretton and Others as Post Nuptial Trustees of Mr and Mrs John Andrew Wauchope and John Andrew Wauchope in favour of the Lord Provost Magistrates and Council of the City of Edinburgh dated 23 March 1946 and subsequent dates, and recorded in the General Register of Sasines for the County of Edinburgh on 13 April 1946 on which landscaping works in accordance with clause 7.10 below will be carried out;
- 1.1.26. **"North Park Maintenance"** means works necessary to Maintain the North Park in a neat and tidy condition;
- 1.1.27. **"North Park Maintenance Costs"** means all costs associated with the North Park Maintenance;
- 1.1.28. **"North Park Underground Storage Area"** means the area of ground forming part of the North Park and shown hatched black and partly coloured yellow on the Plan;
- 1.1.29. **"PARC"** means PARC Craigmillar Limited, incorporated under the Companies Acts (Company Number SC234777) and having its Registered Office at 3 Cockburn Street, Edinburgh, EH1 1QB;
- 1.1.30. **"PARC Site"** means i) All and Whole the subjects at Greendykes Road, Edinburgh shown coloured light pink and partly pink and cross-hatched black and partly green and cross-hatched black and partly green and hatched black on the Plan 1 and comprising Part and Portion of the subjects registered in the Land Register of Scotland under Title Number MID168446; and ii) the South Park;



- 1.1.31. **"Park Land"** means the North Park and the South Park;
- 1.1.32. **"Plan 1"** means the plan marked Plan 1 annexed and signed as relative hereto;
- 1.1.33. **"Plan 2"** means the plan marked Plan 2 annexed and signed as relative hereto;
- 1.1.34. **"Plan 3"** means the plan marked Plan 3 annexed and signed as relative hereto;
- 1.1.35. **"Proprietor"** means the registered proprietor in terms of the Land Registration, etc (Scotland) Act 2012 and **"Proprietors"** is similarly defined;
- 1.1.36. **"Required Standard"** means that the Access Road Works are finished except that the road surface is completed to base coat level only and the roads authority acting in terms of the Roads Act has approved vehicular and pedestrian use of the Access Road;
- 1.1.37. **"RCC"** means the road construction consent pursuant to Section 21 of the Roads Act for the Access Road as has been granted to BDW;
- 1.1.38. **"Roads Act"** means the Roads (Scotland) Act 1984;
- 1.1.39. **"Scottish Water"** means Scottish Water and its successors as the body responsible for drainage for the area within which the BDW Site, the CEC Site and the PARC Site lie;
- 1.1.40. **"Services"** means service media for gas electricity water and telecommunications of a capacity to serve the BDW Site (which for this definition includes Houses)

and service media for gas water and drainage to serve the PARC Site;

- 1.1.41. **"Security Area"** means the area to be secured from time to time in terms of a Standard Security by BDW in favour of PARC
  
- 1.1.42. **"South Park"** means that part of the PARC Site shown coloured dark green and partly cross-hatched black and dark green and partly hatched black on the Plan 1 and forming part and portion of the subjects registered in the Land Register of Scotland under Title Number MID168446;
  
- 1.1.43. **"South Park Maintenance"** means all landscaping works necessary to Maintain the South Park in a neat and tidy condition;
  
- 1.1.44. **"South Park Maintenance"** means all costs associated with the South Park Maintenance;
  
- 1.1.45. **"Step-In Date"** means the date 10 Working Days after service of a Step-In Notice;
  
- 1.1.46. **"Step In Notice"** means a Notice or notices served by the Proprietor of the PARC Site to BDW in terms of Clauses 6.1 and/or 6.2;
  
- 1.1.47. **"Step-In Party"** means the party serving a Step-In Notice;
  
- 1.1.48. **"SUDs Apparatus"** means attenuation and storage structures, pipes, pumps, and other apparatus forming part of a Sustainable Urban Drainage System;

- 1.1.49. **"SUDS Area"** means that part of the South Park shown partly coloured green and cross hatched in back and partly coloured green and hatched in black on the Plan 1 including both the SUDs Basin and the SUDs Underground Storage;
- 1.1.50. **"SUDs Basin"** means that part of the SUDs Area shown coloured green and cross hatched in black on the Plan 1;
- 1.1.51. **"SUDs Basin Maintenance"** means to repair, renew and if required replace the SUDs Basin and relative SUDs Apparatus as to keep it in good operational order and in compliance with all statutory requirements;
- 1.1.52. **"SUDs Basin Maintenance Costs"** means all costs relative to the SUDs Basin Maintenance;
- 1.1.53. **"SUDS Underground Storage Maintenance"** means to maintain repair renew and if required replace the SUDS Underground Storage and SUDs Apparatus as to keep it in good operational order and in compliance with all statutory requirements;
- 1.1.54. **"SUDs Underground Storage Maintenance Costs"** means all costs relative to the SUDs Underground Storage Maintenance.
- 1.1.55. **"SUDs Underground Storage"** means the underground storage apparatus forming part of the SUDs Area shown coloured green and hatched black on the Plan 1;
- 1.1.56. **"SUDS Works"** means the work to construct the SUDS Underground Storage, SUDs Apparatus and SUDs Basin;

- 1.1.57. **“Third Anniversary”** means the date falling three years after the Date of Entry;
- 1.1.58. **“Vested”** means vested in Scottish Water in terms of the section 30 of the Water Act;
- 1.1.59. **“Water Act”** means The Water Environment and Water Services (Scotland) Act 2003;
- 1.1.60. **“Working Day”** means any day Monday to Friday inclusive but excluding any day which is a public holiday in Scotland and **“Working Days”** is similarly defined;
- 1.2. The rights and duties of PARC shall apply to PARC and in substitution for whom their successors as Proprietors of the PARC Site;
- 1.3. Any rights exercisable by the Proprietors of the PARC Site, the CEC Site, the CEC Development Site and the BDW Site to carry out any works in this Deed of Conditions may be exercised by any party acting on their behalf including its tenants, agents, contractors, sub-contractors and tradesmen subject to the Proprietors of the PARC Site, the CEC Site, the CEC Development Site and the BDW Site as the case may be indemnifying the Proprietor of the land on which such works are carried out against any damaged caused thereto due to the actions and omissions of such party.

## **2. PURPOSE OF THIS DEED**

- 2.1. PARC are Proprietors of the PARC Site;
- 2.2. CEC are Proprietors of the CEC Site;
- 2.3. CEC are Proprietors of the CEC Development Site;
- 2.4. PARC have sold the BDW Site to BDW and BDW intend to carry out a residential development thereon;

- 2.5. CEC intend to develop or sell for development as a residential development the CEC Development Site;
- 2.6. PARC intend to develop or sell for development as a residential development the PARC Site;
- 2.7. The parties intend to construct certain facilities on the South Park including a SUDS Basin, SUDs Underground Storage, SUDs Apparatus and Park Land and to regulate use and Maintenance of the same;
- 2.8. PARC require BDW to construct a road to give access to the PARC Site and to the Security Area and to install services for gas water and drainage with sufficient capacity to benefit up to 38 Houses along the route shown partly pink and cross-hatched black and partly grey and cross-hatched black on the Plan 1 within the PARC Site and Greendykes South and the Security Area and require BDW to grant other rights over the BDW Site benefiting the PARC Site and the other parts of the BDW Site.

### 3. ROAD CONSTRUCTION OBLIGATIONS

- 3.1. BDW shall complete the Access Road Works before the Third Anniversary;
- 3.2. It is not a breach of Condition 3.1 if at the earlier of (a) completion of construction of Houses in terms of BDW's Planning Permission and (b) the date being three years after Date of Entry the Access Road Works have reached the Required Standard but notwithstanding same BDW must :-
  - 3.2.1. Complete the Access Road Works as soon as possible after the completion of the last House to be completed on the BDW Site;
  - 3.2.2. Use reasonable endeavours to have the relevant section of the Access Road Adopted and in so doing shall comply with all reasonable requirements of the relevant roads authority;



- 3.2.3. Maintain the Access Road Works but which obligation shall cease when the relevant section of the Access Road is Adopted.

**4. SUDS WORKS OBLIGATIONS**

- 4.1. BDW shall complete the SUDS works before the date falling 12 months after the Date of Entry.
- 4.2. In carrying out the SUDS Works BDW shall do so in good and proper manner and shall indemnify PARC as the Proprietor of the PARC Site or any part thereof for any damage caused to the PARC Site (which for this sub Condition only excludes the SUDS Area) caused by the SUDS Works;
- 4.3. BDW will send a copy of the completion certificate of the SUDS Works on the SUDS Area to PARC as the Proprietor of the PARC Site as soon as possible after such works is Complete and shall provide both PARC and CEC all relative collateral warranties reasonably required by PARC or CEC in relation to the design of the SUDS Underground Storage and SUDS Basin within 10 working days of the issue of the Completion certificate.

**5. RIGHTS IN RELATION TO THE ACCESS ROAD**

- 5.1. The Access Road shall be used as a road with a pavement and accommodating Services and car parking spaces and for no other purpose whatsoever.
- 5.2. The following servitudes are imposed on the BDW Site (including, for the avoidance of doubt, the Access Road) as the burdened property in favour of the PARC Site, the CEC Site and the Security Area as the benefitted property ("hereinafter referred to as the **"Benefitted Property"**):
- (i) a right of access over the BDW Site for pedestrian and vehicular traffic over the roads and footpaths to be constructed within the BDW Site (including the Access Road) together with the rights to construct and/or connect into the said roads and footpaths where necessary to

provide access for all purposes to the Benefited Property along the route of the Access Road or along such other routes as may be agreed between BDW and PARC and their successors in title, both parties acting reasonably (but not over any parts of the BDW Site on which houses, garages or other buildings and gardens have been or are to be erected in terms of an existing or future planning consents) , and which agreement shall not be withheld where such routes shall inter alia meet the approval of CEC as the local Planning and Roads Authorities;

- (ii) a right to lead Services under the BDW Site (including the Access Road) (but not over any parts of the BDW Site on which houses, garages or other buildings and gardens have been or are to be erected in terms of an existing or future planning consents) and to install, vary, upgrade, construct and lay Services and connect into Services as already exist or are installed within the BDW Site and a right to use such Services together with the right of access to the Services whenever necessary for the purpose of laying, inspecting, cleaning, repairing, renewing or replacing the Services or any of them;
- (iii) a servitude right of wayleave for all Services in favour of the relevant local or public authorities and statutory undertakers and other service providers serving the Benefited Property under, in, upon, along or across the BDW Site from time to time (but not over any parts of BDW Site on which houses, garages or other buildings and gardens have been or are to be erected in terms of existing or future planning consents). There are also reserved in favour of CEC as local authority, statutory undertakers and other service providers and the like all necessary rights of access for the installation, connection, repair, maintenance, cleaning and renewal of Services in, through and under the BDW Site (but not over any parts of BDW Site on which houses, garages or other buildings and gardens have been or are to be erected in terms of existing or future planning consents) provided that such rights may be exercised by any local or public authority or statutory undertaker or other service provider without any liability on the part of the BDW Site and



- 5.3. The Proprietors of the BDW Site accepts the servitudes in favour of the Benefited Property shall apply notwithstanding any change or intensification of use of the Benefited Property.
- 5.4. The Proprietors of the PARC Site, the CEC Site and the Security Area may exercise the servitude rights in Condition 5.2 subject always to the following conditions:-
- 5.4.1. the route or routes of the Services approved by the Proprietors of the BDW Site acting reasonably and without delay with rights being reserved to the Proprietor of the BDW Site to divert or relocate such route if necessary or appropriate, at its own expense provided always (i) such re-routing of Services shall be within the burdened property or any adopted highway, (ii) the works shall be carried out in accordance with all necessary statutory consents, permissions and requirements and in a good and workmanlike manner; (iii) the servitude rights contained in Condition 5.2 shall apply to the route or routes of any such re-routed Services serving the BDW Site;
  - 5.4.2. the Proprietor of the PARC Site, the CEC Site and the Security Area exercising the rights shall make good as soon as reasonably practicable any damage caused to the BDW Site and the buildings and other erections thereon in the exercise thereof to the reasonable satisfaction of the proprietor of the relevant burdened property;
  - 5.4.3. such rights shall be exercised at all times so as to cause as little disruption as is reasonably practicable and causing the minimum practicable inconvenience to the BDW Site and the proprietor of the relevant burdened property;
  - 5.4.4. such rights shall be exercised at the sole cost of the party exercising the rights;
  - 5.4.5. such rights shall be exercised in accordance with all necessary consents required and obtained therefor and,

where appropriate, the requirements of the relevant service provider or statutory undertaker;

- 5.4.6. the party or parties exercising such rights shall act reasonably and in good faith at all times.

## 6. STEP-IN RIGHTS

- 6.1. If the Access Road Works have not reached the Required Standard by the earlier of (a) completion of construction of Houses in terms of BDW's Planning Permission and (b) the date being three years after the Date of Entry PARC shall be entitled (but not bound) to serve written notice on BDW specifying the elements of the Access Road Works that are outstanding and giving a reasonable period of time for them to be completed. In the event that BDW fails to comply with any such notice, PARC may serve a Step-In Notice the effect of which is that with effect from the Step In Date

6.1.1. PARC may enter and make use of the Access Road and any part of the BDW Site as is reasonably required to carry out the Incomplete Road Works but shall make good any damage caused to the BDW Site in the exercise of the foregoing right.

6.1.2. The Purchaser must remove itself, its equipment, material and apparatus (or that of its contractors) from the Access Road as soon as possible after the service of the Step In Notice;

6.1.3. In carrying out the Incomplete Road Works PARC may recover the proper and reasonable costs incurred from BDW.

6.1.4. If PARC carry out the Incomplete Road Works the servitude right created in this Condition shall cease to apply with effect from the date of the adoption of the Access Road.

- 6.2. If the SUDs Works are not complete within 12 months of the date of Completion of the works by PARC which are required to divert the existing culvert situated within the BDW Site away from the BDW Site, PARC shall be entitled (but not bound) to serve written notice on BDW specifying the elements of the SUDs Works that are outstanding and giving a reasonable period of time for them to be completed. In the event that BDW fails to comply with any such notice, PARC may serve a Step-In Notice the affect of which is that with effect from the Step In Date;
- 6.2.1. PARC may enter and make use of the any part of the BDW Site as is reasonably required to carry out the Incomplete SUDs Works but shall make good any damage caused to the BDW Site in the exercise of the foregoing right
  - 6.2.2. The Purchaser must remove itself, it's equipment, material and apparatus (or that of it's contractors) from the SUDs Area as soon as possible after the service of the Step In Notice;
  - 6.2.3. In carrying out the Incomplete SUDs Works PARC may recover the proper and reasonable costs incurred from BDW;
  - 6.2.4. If PARC carry out the Incomplete SUDs Works the servitude right created in this Condition shall cease to apply with effect from completion of the SUDs Works.

**7. SUDS BASIN, SUDS UNDERGROUND STORAGE, SUDS APPARATUS, AND PARK LAND**

The rights in this Condition 7 are servitudes imposed on i) the North Park in favour of the BDW Site (including the Security Area) and the PARC Site; and ii) on the South Park in favour of the CEC Site and the BDW Site (including the Security Area).

- 7.1. The South Park shall be used as a public area of open space and landscaping incorporating the SUDs Basin, SUDs Underground Storage, and the SUDs Apparatus;

- 7.2. The North Park shall be used as a public area of open space and landscaping;
- 7.3. The North Park Underground Storage Area may be used for the construction, maintenance, inspection, repair and renewal of an underground storage facility for excess surface water.
- 7.3.1. The proprietors of the houses within the CEC Development Site will be liable for an equal share of the costs of the maintenance of the North Park Underground Storage Area ;
- 7.4. The SUDS Area shall be used for the SUDs Basin and the SUDs Underground Storage;
- 7.5. BDW may exercise a servitude right to enter onto the SUDS Area to carry out the SUDS Works and thereafter repair, maintain and make use of the SUDS Basin and SUDS Underground Storage and other apparatus relating thereto, but which right shall not be exercised until BDW has delivered to PARC not less than 20 Working Days written notice of its intention to enter the SUDS Area;
- 7.6. BDW may exercise a servitude right to drain surface water only from the BDW Site (which for this Condition 7.6 includes Houses) into the SUDS Area by way of connecting into the drainage system laid within the Access Road, but which right cannot be exercised until the SUDS Works are Completed;
- 7.7. PARC and CEC may exercise a servitude right to drain surface water only from the PARC Site and CEC Site (which for this Condition 7.7 includes Houses) into the SUDS Basin by way of connection into the drainage system laid within the Access Road but which right cannot be exercised until the SUDS Works are Completed;
- 7.8. PARC and CEC may exercise a servitude right to drain surface water only from the PARC Site and the CEC Site (for which this Condition 7.8 includes Houses) into the SUDS Underground Storage solely in the case of overflow of drainage capacity, for which there has been a provision made of 138 cubic metres in the SUDS Underground Storage;



- 7.9. BDW may exercise a servitude right to form the Footpath and thereafter a right of pedestrian access over the Footpath along with rights to repair and maintain the Footpath until such time, if any, that the Footpath is adopted.
- 7.9.1. For the avoidance of doubt BDW shall be obliged to construct the Footpath to adoptable standard and in accordance with any roads construction consent issued. BDW will thereafter use reasonable endeavours to have the Footpath adopted.
- 7.9.2. BDW, and agree to indemnify CEC against all claims arising from the construction, and thereafter the condition, of the Footpath to the extent to which BDW would in any event be liable in law.
- 7.10. PARC shall form the North Park in a proper and workmanlike manner, and in accordance with any planning permission issued by the City of Edinburgh Council, using good quality materials to the satisfaction of the Proprietor of the BDW Site and the CEC Development Site and within a period of 18 months from the Date of Entry and shall be entitled to take all necessary access to the BDW Site and the CEC Site if reasonably required to do so but shall make good all damage to the satisfaction of the Proprietor of the BDW Site and the CEC Development Site forthwith and such right of access shall not be over any parts of the BDW Site or CEC Development Site on which Houses, garages or other buildings or gardens have been or are to be erected in terms of an existing or future planning consents;
- 7.11. In the event that PARC have not completed the work to form the North Park in accordance with Condition 7.10 within a period of 18 months from the Date of Entry then BDW shall be entitled (but not bound) to serve written notice on PARC specifying the elements of the work that is outstanding and giving a reasonable period of time for it to be completed. In the event that PARC fails to comply with any such notice, BDW shall be entitled but not obliged to take all necessary access to the CEC Site to carry out those works not completed by PARC, and, BDW shall be entitled to recover all proper and reasonable costs and expenses associated therewith from PARC within 14 days of demand of the same, failing which interest shall run on said costs and expenses at the rate of 4% above Bank of Scotland plc base rate from the date of demand until payment in full is made. In the event that

BDW take access to the CEC Site in terms hereof, they shall make good any damage caused to the CEC Site.

- 7.12. In the event that (i) PARC have not completed the work to form the North Park in accordance with Condition 7.10 within a period of 18 months from the Date of Entry; and (ii) BDW do not serve written notice on PARC in terms of clause 7.11 above, then CEC shall be entitled (but not bound) to serve written notice on PARC specifying the elements of the work that is outstanding and giving a reasonable period of time for it to be completed. In the event that PARC fails to comply with any such notice, CEC shall be entitled to carry out those works not completed by PARC, and, CEC shall be entitled to recover all proper and reasonable costs and expenses associated therewith from PARC within 14 days of demand of the same, failing which interest shall run on said costs and expenses at the rate of 4% above Bank of Scotland plc base rate from the date of demand until payment in full is made.
- 7.13. PARC shall form the South Park in a proper and workmanlike manner using good quality materials and in accordance with the relative planning permission issued by the City of Edinburgh Council reference 16/00973/FUL within a period of 3 years and six months from the Date of Entry and PARC shall be entitled to take all necessary access to the BDW Site and the CEC Site reasonably required to do so but shall make good all damage to the satisfaction of the Proprietor of the BDW Site and the CEC Development Site forthwith and such right of access shall not be over any parts of the BDW Site or CEC Development Site on which Houses, garages or other buildings or gardens have been or are to be erected in terms of an existing or future planning consents;
- 7.14. In the event that PARC have not completed the work to form the South Park in accordance with Condition 7.13 within a period of 3 years and six months from the Date of Entry then BDW shall be entitled (but not bound) to serve written notice on PARC specifying the elements of the work that is outstanding and giving a reasonable period of time for it to be completed. In the event that PARC fails to comply with any such notice, BDW shall be entitled but not obliged to take all necessary access to the CEC Site to carry out those works not completed by PARC, and, BDW shall be entitled to recover all proper and reasonable costs and expenses associated therewith from PARC within 14 days of demand of the same, failing which interest

shall run on said costs and expenses at the rate of 4% above Bank of Scotland plc base rate from the date of demand until payment in full is made. In the event that BDW take access to the CEC Site in terms hereof, they shall make good any damage caused to the CEC Site.

- 7.15. In the event that (i) PARC have not completed the work to form the South Park in accordance with Condition 7.13 within a period of 3 years and six months from the Date of Entry; and (ii) BDW do not serve written notice on PARC in terms of clause 7.14 above, then CEC shall be entitled (but not bound) to serve written notice on PARC specifying the elements of the work that is outstanding and giving a reasonable period of time for it to be completed. In the event that PARC fails to comply with any such notice, CEC shall be entitled to carry out those works not completed by PARC, and, CEC shall be entitled to recover all proper and reasonable costs and expenses associated therewith from PARC within 14 days of demand of the same, failing which interest shall run on said costs and expenses at the rate of 4% above Bank of Scotland plc base rate from the date of demand until payment in full is made.
- 7.16. PARC and CEC (for the avoidance of doubt, acting in its capacity as landowner only, and not in any other statutory capacity) shall not oppose any application by BDW for Adoption of the SUDS Basin, SUDS Underground Storage, and/or SUDS Apparatus and shall not unreasonably withhold consent to signing such documentation as is necessary to permit such Adoption and if required by Scottish Water or such other party Adopting the same shall grant a disposition of the SUDS Area and if required the means of passage thereto in terms of a contract and disposition approved by the proprietor of the SUDS Area acting reasonably;

The servitude rights created by this condition 7 and the real burdens created thereby shall cease to apply on the SUDs Basin or SUDs Underground Storage at the SUDs Area being vested.

#### **8. SUDs Pond and Park Land Maintenance**

The real burdens set out in Condition 7 and Condition 8 shall be and are hereby created as Community Burdens by the proprietors of each House as units in the Community (the Community being the BDW Site, Greendykes



North, and Greendykes South), in terms of section 27 of the 2003 Act and are enforceable by and against each Proprietor of the Houses.

- 8.1. The Proprietors of the Houses within the BDW Site shall be responsible for 75% of the SUDs Underground Storage Maintenance Costs and the Proprietors of the Houses within Greendykes North and Greendykes South shall be responsible for 25% of the SUDs Underground Storage Maintenance Costs; declaring however that where any damage has been caused in the exercise of the rights referred to in the foregoing Clause 7, the party who has caused the damage shall be solely responsible for repairing and making good any damage;
- 8.2. The Proprietors of the Houses within Greendykes North, Greendykes South and the BDW Site shall be responsible for an equal share of the SUDs Basin Maintenance declaring however that where any damage has been caused in the exercise of the rights referred to in the foregoing Clause 7, the party who has caused the damage shall be solely responsible for repairing and making good any damage;
- 8.3. The Proprietors of the Houses within Greendykes South, Greendykes North and the BDW Site shall be responsible for an equal share of the South Park Maintenance;
- 8.4. The Proprietors of the Houses within Greendykes North, Greendykes South and the BDW Site shall be responsible for an equal share of the North Park Maintenance;
- 8.5. The Proprietors of the Houses within the BDW Site shall be responsible for an equal share of the Footpath Maintenance until such time, if any, that it is adopted,
- 8.6. The Proprietors of the Houses within Greendykes North, Greendykes South, and the BDW Site shall be responsible for an equal share of the Culvert Maintenance;
- 8.7. Any dispute shall be referred to the Expert whose decision save in the case of manifest error will be final and binding on all relevant parties;
- 8.8. All sums due by Houses relative to the maintenance costs in this clause 8 will be paid within 10 Working Days of demand failing which with interest at the rate of 4 per centum per annum above the base lending rate of the Royal Bank of Scotland plc or in the absence of same a rate of interest being

charged for commercial lending to be paid from the date of demand until paid in full.

**9. FACTORS**

- 9.1. Whereas the initial factor shall be appointed by PARC in their joint capacity as Manager in accordance with Clause 9 hereof, the initial factor's appointment shall continue until the factor shall either be dismissed by the Manager or a majority of the Proprietors of the Houses within the BDW Site and the PARC Site or the factor has resigned.
- 9.2. The Proprietors of the Houses within the BDW Site, the CEC Site and the PARC Site shall be bound to appoint the factor for such period as they shall determine. The factor appointed as aforesaid shall be entitled to charge their usual professional remuneration for their services to which the Proprietors of the Houses within the BDW Site, the CEC Site and the PARC Site shall be bound to contribute an equal share. The factor, unless otherwise determined at a meeting of the Proprietors of the Houses within the BDW Site, the CEC Site and the PARC Site, shall have power during their appointment:
- 9.2.1. To order and arrange to be executed any maintenance and repairs of the Park Land and/or the SUDs Apparatus, SUDs Basin, and SUDs Underground Storage and the Footpath as they consider necessary to implement their obligations in terms hereof;
- 9.2.2. To exercise the whole rights and powers which may be competently exercised by them;
- 9.2.3. To decide on, take out and maintain any required insurance policy or policies;
- 9.2.4. To collect annually, in advance, from the Proprietors of the Houses within the BDW Site, the CEC Site and the PARC Site their respective share of:
- 9.2.4.1. the costs incurred by the factor in maintaining, repairing and where necessary renewing the Park Land and/or the SUDs Apparatus, SUDs Basin, and SUDs Underground Storage and the Footpath;
- 9.2.4.2. the premiums in respect of the insurance policy or policies;
- 9.2.4.3. the remuneration of the factor payable in respect of the performance of the factor's functions;

- 9.2.4.4. any other remunerations, outlays, charges, expenses and fees and of any other sums for which the Proprietors of the Houses within the BDW Site, the CEC Site and the PARC Site or any of them may become liable in terms of or in furtherance of the provisions herein contained.
- 9.2.5. The factor shall be entitled to make payment of the said premiums, remunerations, outlays, charges, expenses, fees or other sums payable in respect of any of the Park Land and/or the SUDs Apparatus, SUDs Basin, and SUDs Underground Storage and the Footpath to whomsoever is entitled to receive payments therefor; Any balance of the charges not expended in any year shall be carried forward and applied for the foregoing purposes in ensuing years;
- 9.2.6. In the event of any of the Proprietors of the Houses within the BDW Site, the CEC Site and the PARC Site failing to make payment of their respective proportion of said premiums, remunerations, outlays, charges, expenses, fees, costs and other sums for which they may become liable in terms hereof within one month after demand, the factor shall be entitled to sue for and recover the same in their own name from the Proprietor or Proprietors concerned together with all expenses incurred in connection therewith and in the event of the factor being unable to recover such sums from any Proprietor or Proprietors, then such sums as aforesaid and any reasonable legal fees and expenses incurred in trying to recover same shall become a debt due by the other Proprietors.
- 9.2.7. The decision of the factor with regard to the apportionment of the SUDS and Park Land Maintenance Costs and the Footpath Maintenance Costs and the insurance premiums and others shall be final except in the case of manifest error.
- 9.3. The Proprietors of the Houses within the BDW Site, the CEC Site and the PARC Site shall be bound to intimate any change of ownership to the factor within 5 Working Days of such change of ownership and the factor shall be entitled to apportion all sums due by the Proprietors hereunder as at the date of change of ownership.

10. **NOTICES**

- 10.1. Any notice or requirement to be served on BDW under this Deed of Conditions must be in writing and served on BDW at Telford House, 3 Mid-New Cultins, Edinburgh EH11 4DG (for the attention of Graeme Dunlop) or such other address which may be notified in writing to PARC from time to time. Any notice or requirement to be served on PARC under this Deed of Conditions must be in writing and served at their registered address. Any notice or requirement to be served on CEC under this Deed of Conditions must be in writing and served at Council Headquarters, Waverley Court 4 East Market Street Edinburgh EH8 8BG.
- 10.2. Any such notice or requirement shall be sufficiently served if sent by recorded delivery post or delivered by hand.
- 10.3. Any notice or requirement sent by recorded delivery post
- 10.3.1. is duly served upon the expiry of 2 Working Days after the date of posting if the envelope containing the notice or requirement was duly addressed to PARC, CEC or BDW or their respective solicitors as the case may be and was posted to the place to which it was addressed.
- 10.3.2. Any notice sent by facsimile is deemed to be served on the day on which it was sent, if sent between 9am and 5pm on a Working Day, and which failing on the next Working Day, and in proving service it shall be sufficient to exhibit the transmission slip with the date and time of transmission on it.

## 11. PAYMENTS

Any payment sum or cost due hereunder

- 11.1. is payable within 10 Working Days of a written demand;
- 11.2. is payable with Value Added Tax at the then current rate if so required by the Seller and in return for a Value Added Tax invoice;



- 11.3. if unpaid after 10 Working Days of demand shall be paid with Interest at 4 per centum per annum above the base lending rate of The Royal Bank of Scotland plc (or in the absence of same a rate generally accepted in the United Kingdom for commercial lending) from the date of demand until paid in full.

**12. EXPERT**

In the event of disagreement on any matter as between the parties such matter may, at the instance of either party, be referred to the Expert. The Expert shall act as an expert and not as an arbitrator but shall be entitled to appoint a man or men of skill to advise him on matters outside his own professional expertise and shall be required to use reasonable endeavours to reach a decision as soon as practicable and in any event within 15 working days of being appointed. The parties shall require to cooperate in all regards with the Expert and do such things and supply such information as is reasonably requested by the Expert with a view to permitting the Expert to issue his decision timeously. The decision of the Expert shall be final and binding. The costs of such referral shall be borne equally between the parties unless the person so appointed shall decide that one party has acted unreasonably, in which case he shall have discretion as to costs. The Expert shall not be entitled to state a case for the Court in terms of Section 3 of the Administration of Justice (Scotland) Act 1972.

**13. ENFORCEMENT**

Where this Deed of Conditions is to any extent invalid or unenforceable the remainder of it will be unaffected and enforceable to the full extent as permitted by law.

**14. APPLICABLE LAW**

- 14.1. This deed is interpreted in accordance with the Law of Scotland

- 14.2. Any dispute, difference or question between the parties in terms of this Deed of Conditions shall be determined by the Court of Session, Edinburgh and/or the Sheriff Court of Lothian and Borders at Edinburgh.

**15. RESTRICTION AND APPLICATION FOR VARIATION/DISCHARGE**

- 15.1. Section 92 of the Title Conditions (Scotland) Act 2003 applies to this Deed of Conditions
- 15.2. No application to the Lands Tribunal of Scotland is competent under Section 90(1) (a) (i) or 91(1) of that Act for of five years from the date of registration of this Deed of Conditions in the Land Register of Scotland.

## 16. REGISTRATION

We consent to registration hereof for preservation execution and publication:  
 IN WITNESS WHEREOF these presents consisting of this and the twenty  
 six preceding pages, together with the three plans annexed as relative  
 hereto, are executed as follows:

For BDW Trading Limited
 .....  
 Director/Secretary/Authorised Signatory

 .....  
 Director/Secretary/Authorised  
 Signatory/Witness

 .....  
 Full name of party signing

 .....  
 Full name of party signing

 .....  
 Date of signing

 .....  
 Place of signing (Town)

 .....  
 Address of Witness
For PARC Craigmillar Limited
 .....  
 Director/Secretary/Authorised Signatory

 .....  
 Director/Secretary/Authorised  
 Signatory/Witness

 .....  
 Full name of party signing

 .....  
 Full name of party signing

 .....  
 Date of signing

 .....  
 Place of signing (Town)

 .....  
 Address of Witness



For City of Edinburgh Council

H. J. Ross  
.....  
Proper Officer

Hannah Ross  
.....  
Full name of party signing

16 August 2016  
.....  
Date of signing

Edinburgh  
.....  
Place of signing (Town)

Lisa McPhail  
LISA MCPHAIL

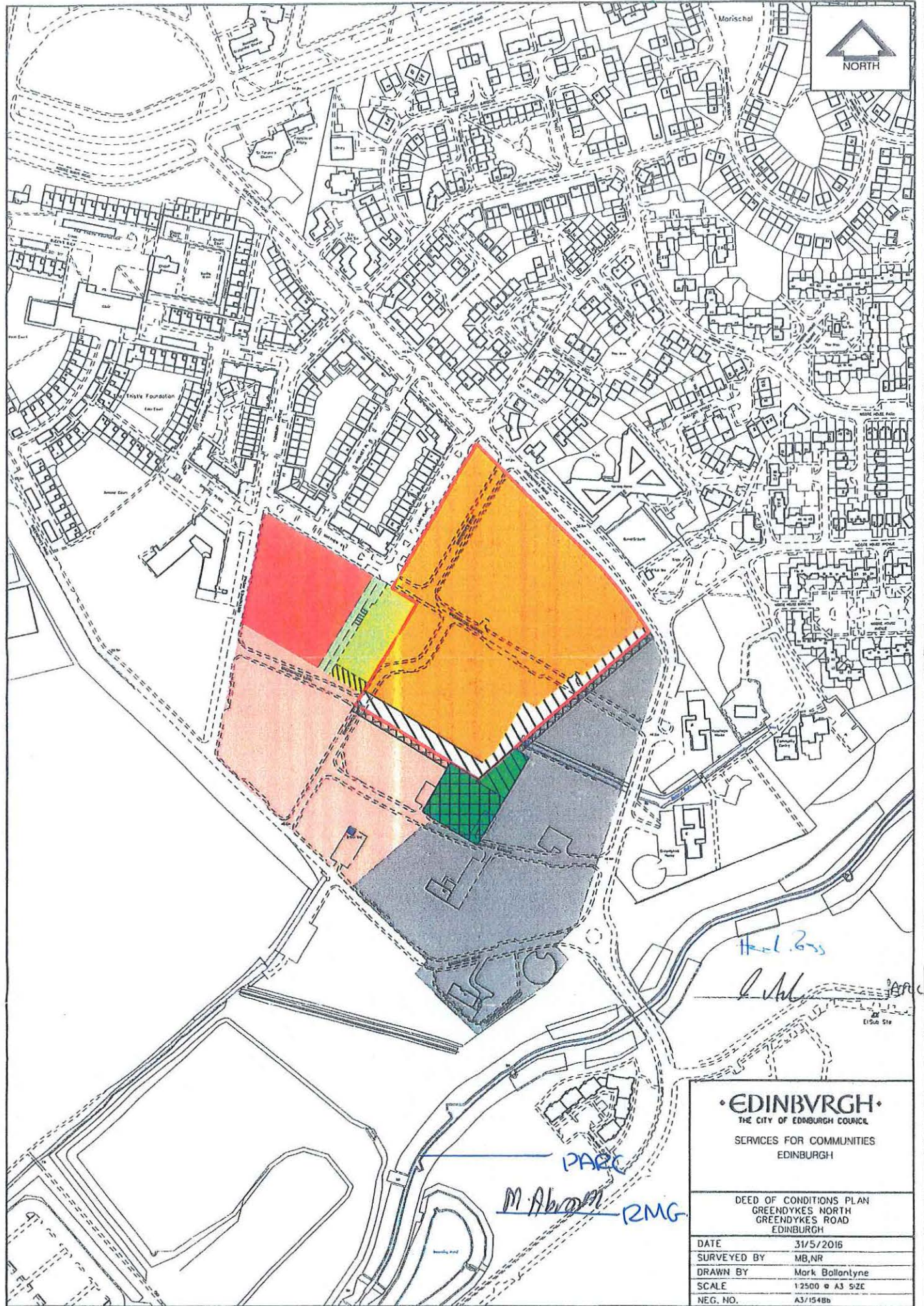
WINDRUST COURT 4  
END, WINDRUST ST  
EDINBURGH  
.....  
Address of Witness

\_\_\_\_\_  
M. Abram  
RMC

\_\_\_\_\_  
M. Allan  
PARC

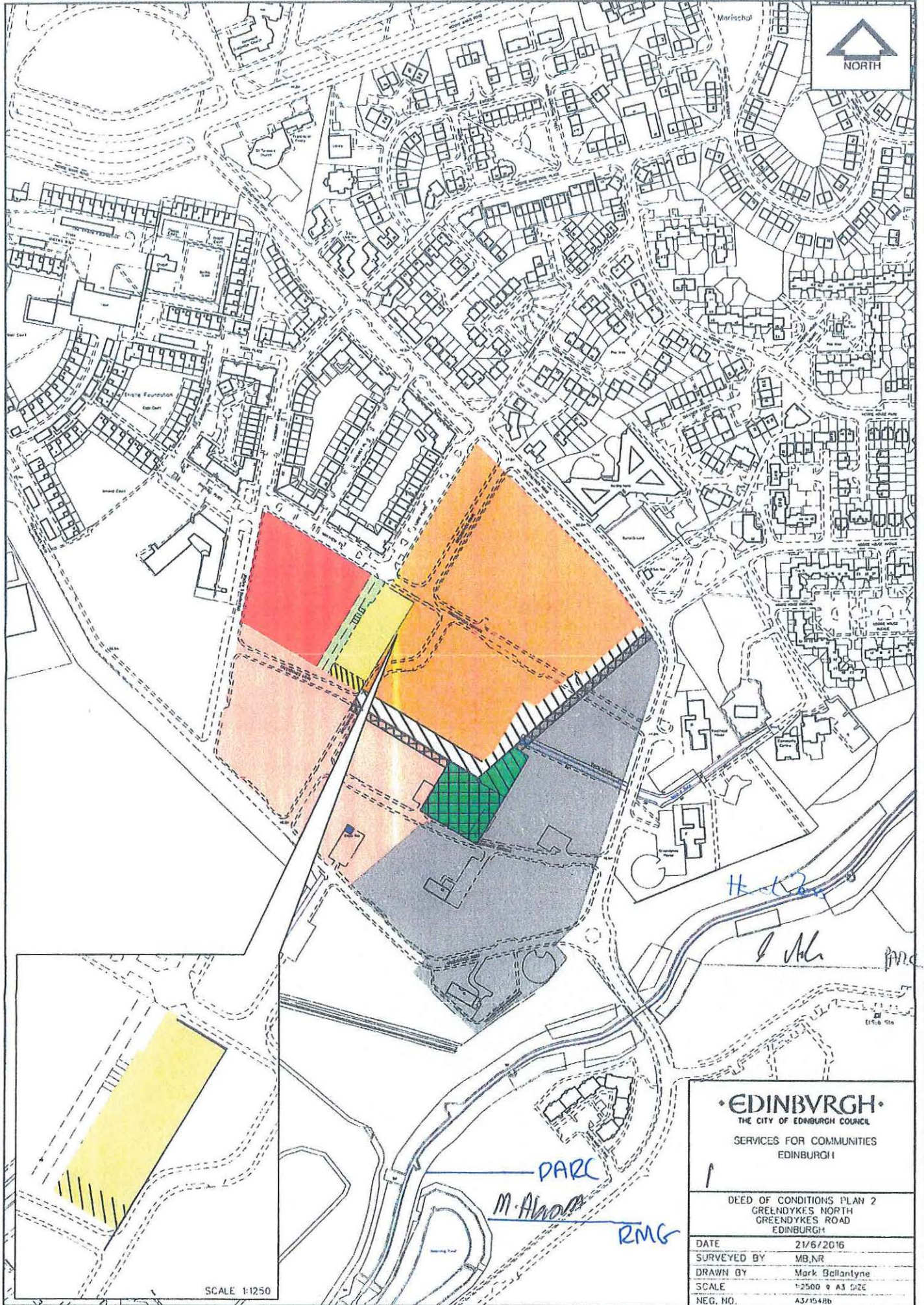


THIS IS PLAN 1 REFERRED TO IN THE FOREGOING DEED OF CONDITIONS BY PARC COMMUNALE LIMITED, BOIS TRADING LIMITED, AND CITY OF EDINBURGH COUNCIL

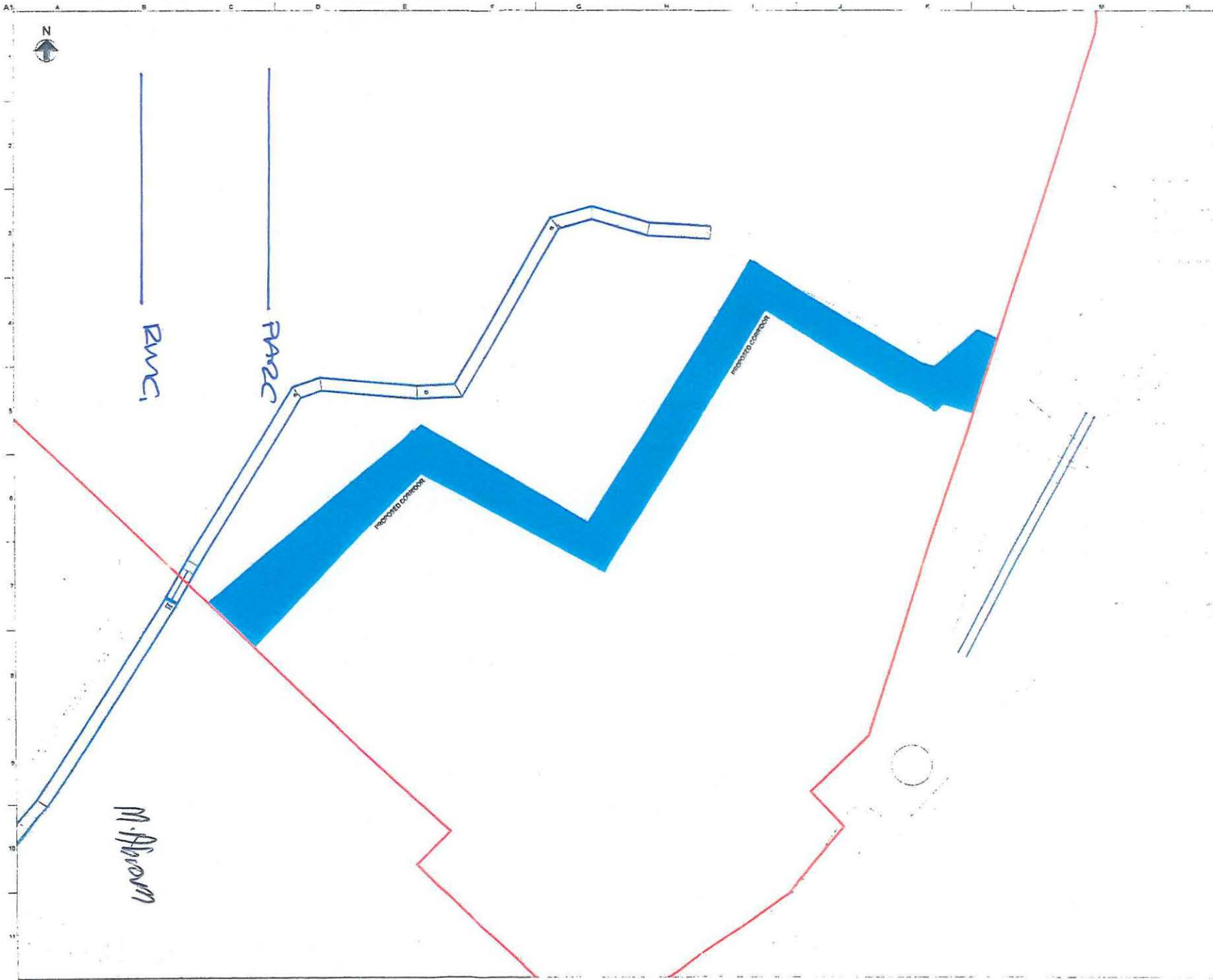




THIS IS PLAN 2 REFERRED TO IN THE FOREGOING DEED OF CONDITIONS BY  
 PARC COMMERCIAL LIMITED, SON TRADING LIMITED, AND CITY OF EDINBURGH COUNCIL







Notes  
 1. The corridor is based upon a 1m centreline to building edge wherever in accordance with Section 10 of Scotland 2002 Edition.

- Legend
- Existing Curves
  - Proposed Culvert Corridor
  - Watercourse Boundary

THIS IS PLAN 5 REFERRED TO IN THE FOLLOWING DECISION OF CONDITIONS BY PARC CRAIGMILLAR LIMITED, SD TRADING LIMITED, AND CITY OF EDINBURGH COUNCIL.

*Handwritten signature*

*Handwritten signature* PARC

IT	110716	DR	FM	FK
Rev Information				
Rev	Rev	By	Date	App

**ARUP**

Services: Water, Sewer, Gas, Electricity, Telecommunications, etc.  
 100, Market Street, Edinburgh, Scotland, EH1 1DE  
 T: +44 (0)131 528 2000 F: +44 (0)131 528 2001

PARC Craigmillar

Greendykes Culvert Diversion

Proposed Culvert Corridor

Scale: 1:500  
 Project: CR1

For Information  
 233020-00 | DR-CD-0105 | 11