

IN SEXTUPLICATE

DATED 23 FEBRUARY 2022

2021

**AGREEMENT UNDER SECTION 278 AND SECTION 38 OF THE
HIGHWAYS ACT 1980 RELATING TO LAND NORTH OF
STATION ROAD, CRAMLINGTON, NORTHUMBERLAND**

Between

NORTHUMBERLAND COUNTY COUNCIL

and

BELLWAY HOMES LIMITED and PERSIMMON HOMES LIMITED

and

LEEELL DEVELOPMENTS LIMITED

and

BERNICA GROUP

and

NATIONAL HOUSE-BUILDING COUNCIL

and

HCC INTERNATIONAL INSURANCE COMPANY PLC

Northumberland County Council
County Hall
Morpeth
Northumberland
NE61 2EF

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THIS AGREEMENT is dated ~~23 FEBRUARY 2022~~ 2024

PARTIES

- (1) **NORTHUMBERLAND COUNTY COUNCIL** of County Hall, Morpeth, Northumberland, NE61 2EF (**Council**).
- (2) **BELLWAY HOMES LIMITED** incorporated and registered in England and Wales with company number 00670176 whose registered office is at Woolsington House, Woolsington, Newcastle Upon Tyne, England, NE13 8BF and **PERSIMMON HOMES LIMITED** incorporated and registered in England and Wales with company number 04108747 whose registered office is at Persimmon House, Fulford, York, YO19 4FE (**Developers**).
- (3) **LEEBELL DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 2028460 whose registered office is at Persimmon House, Fulford, York, YO19 4FE (**Second Owner**)
- (4) **BERNICIA GROUP** an exempt charity and a Registered Society under the Co-Operative and Community Benefit Societies Act 2014 with registered number IP 7711 whose registered address is Oakwood Way, Ashwood Business Park, Ashington, Northumberland, NE63 0XF (**Third Owner**)
- (5) **NATIONAL HOUSE-BUILDING COUNCIL** incorporated and registered in England and Wales with company number 00320784 whose registered office is at NHBC House Davy Avenue, Knowlhill, Milton Keynes, Bucks, MK5 8FP (**First Surety**).
- (6) **HCC INTERNATIONAL INSURANCE COMPANY PLC** incorporated and registered in England and Wales with company number 01575839 whose registered office is at 1 Aldgate, London, EC3N 1RE (**Second Surety**).

BACKGROUND

- (A) The Council is the local highway authority for the purposes of the Highways Act 1980 for the Highway Land.
- (B) The Developers propose to undertake the Development in accordance with the Planning Permission.
- (C) The Planning Permission requires the Developers to enter into an agreement under section 278 of the Highways Act 1980 in respect of the Highway Works.

- (D) The Developers agree to meet the cost of the Highway Works.
- (E) The Council is satisfied that the Highway Works are of benefit to the public.
- (F) The Developers own part of the Road Land registered under title number ND193212 which includes part of the site of the proposed Road and all other land required for the Works.
- (G) The Second Owner owns part of the Road Land registered under title number ND73733 which includes part of the site of the proposed Road and all other land required for the Works.
- (H) The Third Owner owns part of the Road Land registered under title number ND202058 which includes part of the site of the proposed Road and all other land required for the Works.
- (I) The Developers and the Owners have requested that after the Works have been completed and maintained, the Council shall adopt the Road as highway maintainable at public expense, which the Council has agreed to do on the terms and condition so of this agreement.
- (J) The First Surety has agreed to enter into this agreement to guarantee the performance of Bellway Homes Limited's obligations in the sum of 50% of the Estimated Cost of Works.
- (K) The Second Surety has agreed to enter into this agreement to guarantee the performance of Persimmon Homes Limited's obligations in the sum of 50% of the Estimated Cost of Works.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Additional Design Check Fee: the reasonable costs incurred by the Council in approving any alterations to the Highway Works.

Additional Inspection Fee: the reasonable costs incurred by the Council in inspecting the construction of the Highway Works and Works (including any Statutory Undertakers' diversions, alterations and other works) to ensure that the Highway Works and Works comply with the Drawings, the detailed design for the Highway Works and Works, the Specification and the Method Statement to the extent that any such costs are not covered by the Estimated Inspection Fee.



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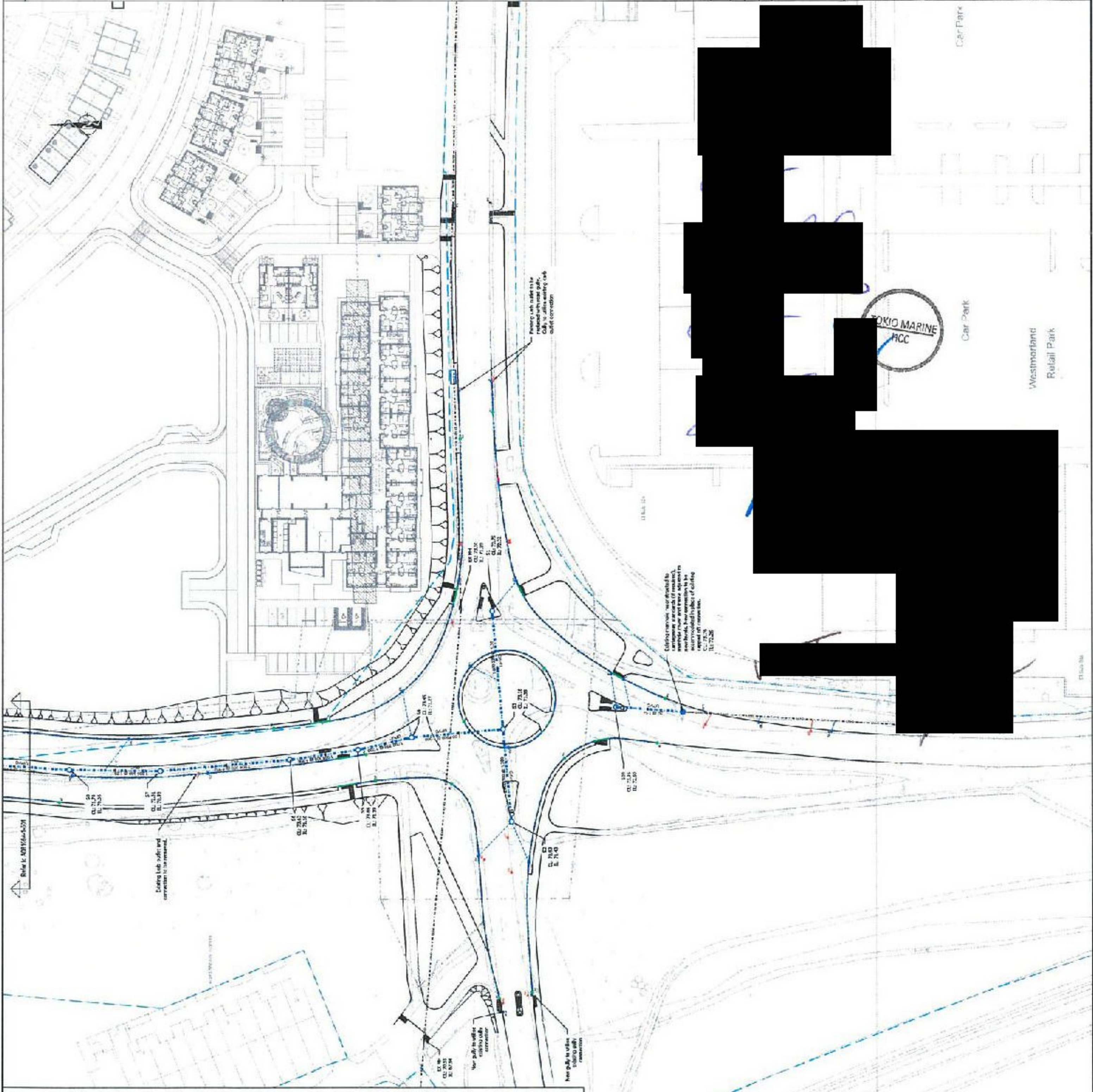
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- no above list is by no means exhaustive but it does highlight operators to watch out for. In fact, there are many more than you can count. Don't want a list, lin contractors and the general public.

800135

1. The drawing shall not be sold and only used for its intended purpose.
2. The drawing is to be used in a computer, not all other release drawings.
3. All drawings are to be used within 10 days of delivery.
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RESIDUAL DESIGN HAZARDS

[illegible]

RESIDUAL DESIGN HAZARDS

Underground services present in the works area¹

FOR APPROVAL		XS	LS	LB	66/07/21
K	Comps awarded to this proposal Financial return to be disclosed				
J	Following MCC Comments	709	LS	LB	66/05/20
I	Following MCC Comments	709	LS	LB	19/11/20
REV	DESCRIPTION	89	CH	MB	DATE

LEE BELL DEVELOPMENTS LTD



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 TRAFFORD PARK
 MANCHESTER
 M17 1HH
 TEL: +44 (0)161 872 3223
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Centrepoint, Crumlington

Drawing Title:
S278 WORKS
DRAINAGE PLAN
SHEET 1 OF 2

Scale @ A1 1:500	Drawn By BQ/0615	Date 13/10/16	Checked By BQ	Drawn Date 13/10/16	Approved By BQ/11/15
Project No. A081084-1		Sheet No. 27	Drawing No. A081084-1-500		Revision K

VIEWPORT 1

Refer to Viewport 2

VIEWPORT 2

DO NOT SCALE: CONTRACTOR TO CHECK ALL DIMENSIONS AND REPORT ANY OMISSIONS OR ERRORS



NOTES:

1. This drawing should not be used for any other purpose.
2. This drawing is for the use of the contractor only. All dimensions are given in meters.
3. All dimensions are given in meters unless stated otherwise.
4. Original topographical survey data should be made available to the contractor.
5. All work to be carried out by the contractor at the site of the project must be carried out in accordance with the relevant regulations.
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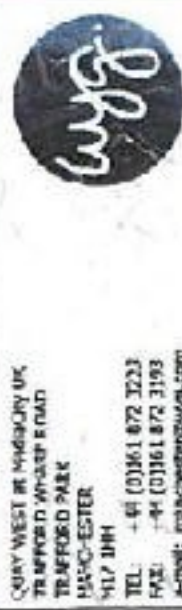
NOTES:

1. This drawing should not be used for any other purpose.
2. This drawing is for the use of the contractor only. All dimensions are given in meters.
3. All dimensions are given in meters unless stated otherwise.
4. Original topographical survey data should be made available to the contractor.
5. All work to be carried out by the contractor at the site of the project must be carried out in accordance with the relevant regulations.
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FOR APPROVAL

REV	DESCRIPTION	BY	CHK	APP	DATE
0	5278 works boundary adjusted	KS	LR	LR	17/01/2021
1	Following RCE Comments	KS	LR	LR	17/01/2021
2	Following RCE Comments	KS	LR	LR	17/01/2021
3	Following RCE Comments	KS	LR	LR	17/01/2021

LEBBELL DEVELOPMENTS LTD



CENTREPOINT, CRAWLINGTON

5278 WORKS	GENERAL ARRANGEMENT PLAN	Sheet 2 of 2
Scale: 1:500	Drawn: KS	Checked: LR
Project No: A081084-1-101	Project No: A081084-1-101	Project No: A081084-1-101



RESIDUAL DESIGN HAZARDS

Underground services present in the works area:

1. Gas
2. Electricity
3. Water
4. Sewer
5. Telecommunications
6. Other

By the use of the above regulations we are obliged to inform the Client of the possible risks that may be encountered in the construction of these works. Where possible we will take steps to avoid or minimize these risks, but we cannot guarantee that we will be able to do so. It is the responsibility of the Client to ensure that the works are carried out in a safe and sound manner.

1. Gas

2. Electricity

3. Water

4. Sewer

5. Telecommunications

6. Other

1. Gas

2. Electricity

3. Water

4. Sewer

5. Telecommunications

6. Other

1. Gas

2. Electricity

3. Water

4. Sewer

5. Telecommunications

6. Other

DO NOT SCALE. CONTINUATOR TO CHECK ALL DIMENSIONS AND REPORT ANY OMISSIONS OR ERRORS



Plan of proposed highway, in the context of the highway works, based on the information provided by the client. The plan is not to be used for any other purpose without the written consent of the client.

Legend:

- Blue: Proposed highway
- Red: Land to be released as highway

FOR APPROVAL

REV	DESCRIPTION	BY	CHK	DATE
E	Following RLC Comments	JW	LB	2021
D	Following RLC Comments	JW	LB	2021
C	Following RLC Comments	JW	LB	2021
B	Following RLC Comments	JW	LB	2021
A	Following RLC Comments	JW	LB	2021

Client: LEEBELL DEVELOPMENTS LTD

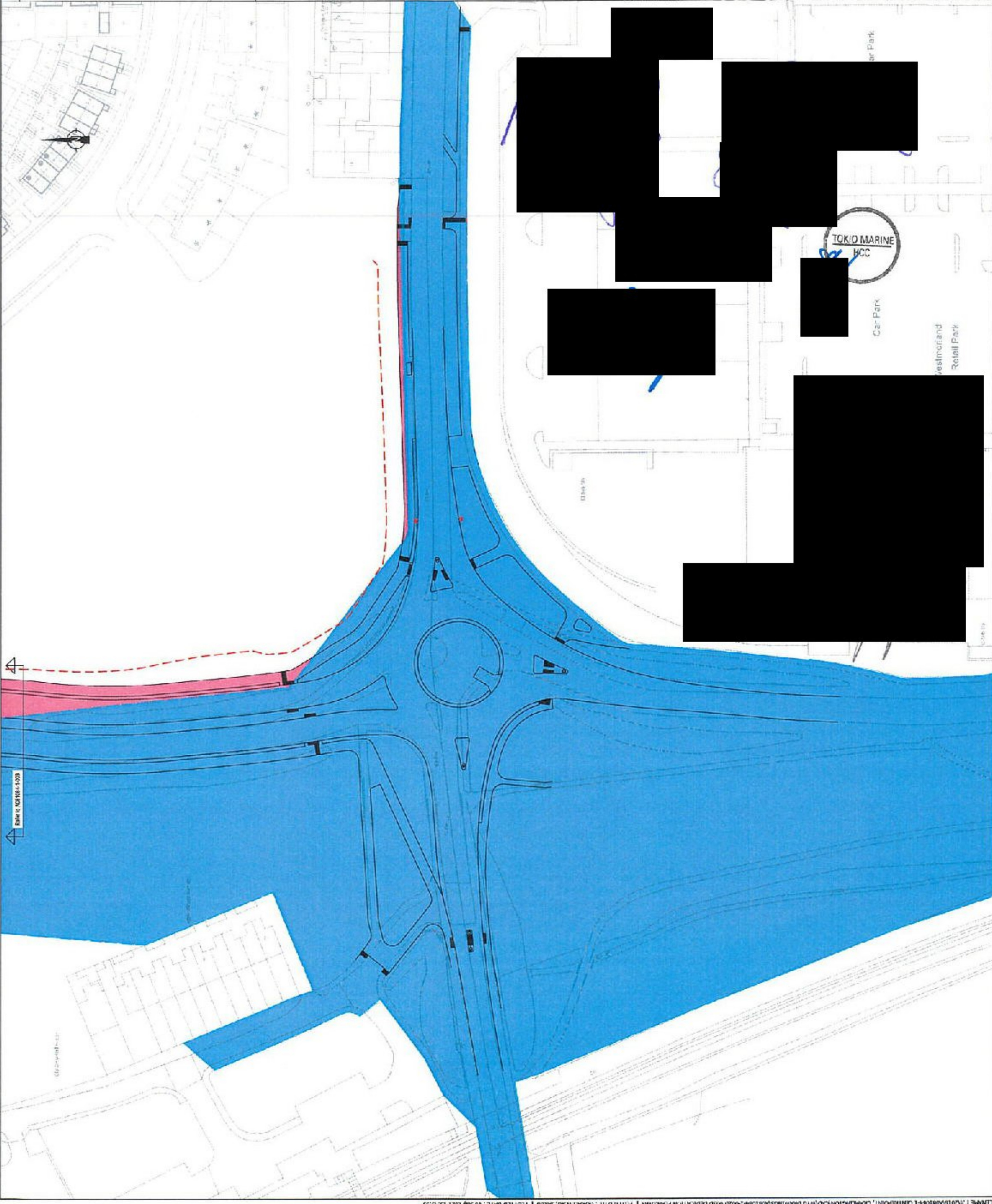
QUAY WEST at NORTON BR
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e-mail: info@leebell.co.uk

Project: CENTREPOINT, CRAMINGTON

Drawing Title: S278 WORKS
LAND DEDICATION PLAN
SHEET 1 OF 2

Scale	At	Drawn	Date	Checked	Date	Approved	Date
1:500	1/10/20	JW	05/09/20	LB	05/09/20	LB	05/09/20
Project No.	A081084-1	27	C	A081084-1-002	E		

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Advance Warning Signs: public information signs that give advance notice to highway users of the commencement of the Highway Works and Works (or any part) or that communicates other relevant information.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

Certificate of Practical Completion: the certificate issued by the Proper Officer on Practical Completion of the Highway Works and Works.

Client: the client as defined by the CDM Regulations.

Commuted Sum: the sum of £327,037 (three hundred and twenty seven thousand and thirty seven pounds) as specified in the second column of Schedule 2 or such other sum as is agreed in writing by the Council at its absolute discretion.

Construction Contract: any contract for the construction of the Highway Works and Works or any relevant parts let by the Developer to the Contractor in accordance with the terms of this agreement.

Contractor: the contractor appointed by the Developers as the principal contractor under the CDM Regulations to carry out the Highway Works and Works.

CRC: the Carbon Reduction Commitment Energy Efficiency Scheme as defined in article 2(1) of the CRC Energy Efficiency Scheme Order 2010 (SI 2010/768).

CRC Costs: any costs, charges, fees, penalties or any other liability attributable to the participation by the Developers in the CRC and relating to the energy consumption of the Street Furniture.

Default Cost: both the:

- (a) cost of carrying out the Default Work; and
- (b) usual establishment charges of the Council.

the total sum of the Default Cost shall not exceed the Estimated Cost of Works and shall be apportioned as 50% payable by the First Surety and 50% payable by the Second Surety.

Default Event: any event specified in clause 24.

Default Work: work required to be carried out by or on behalf of the Surety following a Default Event to secure the performance of the Developers' covenants, obligations and liabilities contained in this agreement.

Design Check Fee : the sum of £5,000 being the costs and charges incurred by the Council in approving the details submitted by the Developers pursuant to clause 6.2 including the cost of any technical

advice that is required before any feature or structure proposed as part of the Highway Works and Works can be approved.

Development: the development permitted by the Planning Permission.

Development Land: means the land north of Station Road, Cramlington, Northumberland

Drawings: the Drawings numbered A081084-1-100 Rev P; A081084-1-101 Rev O; A081084-1-002 Rev E; A081084-1-003 Rev E; A081084-1-500 Rev K; and A081084-1-501 Rev L attached to this agreement and signed by or on behalf of the parties and such other drawings as may be approved from time to time by the Council acting reasonably either as amendments to the Drawings or as part of the detailed design for the Highway Works and Works.

Engineering Contract: the either ICC or NEC3 with such amendments as the Council and the Developers acting reasonably shall agree.

Estimated Cost of Works: the sum of £2,558,697.61 (two million five hundred and fifty eight thousand six hundred and ninety seven pounds and sixty one pence) that in the reasonable opinion of the Proper Officer is the estimated cost of carrying out and maintaining the Highway Works and Works in accordance with the terms of this agreement.

Estimated Inspection Fee: £232,608.87 (two hundred and thirty two thousand six hundred and eight pounds and eighty seven pence) being to be used by the Council to pay for the reasonable costs incurred in inspecting and administration of the construction of the Highway Works and Works and any works to Statutory Undertakers' plant or equipment to ensure that the Highway Works and Works comply with the Drawings, the detailed design for the Highway Works and Works, the Specification and the Method Statement.

Final Certificate: the certificate issued by the Council following the expiry of the Maintenance Period.

Health and Safety File: the file or other permanent record containing the information required by the CDM Regulations.

Health and Safety Plan: the plan that contains the pre-construction information and the construction phase plan both as defined in the CDM Regulations.

Highway Land: that part of the local highway network maintainable at the public expense shown coloured blue on drawings A081084-1-002 Rev E and A081084-1-003 Rev E on which the Highway Works are proposed to be carried out including all footpaths, Street Furniture, verges, service strips, service margins, vehicular crossings and road surface water drainage systems (if any).

Highway Works: the highway improvement works described generally in Part A of Schedule 1 and shown in principle on the Drawings and any

detailed design subsequently approved by the Council in accordance with this agreement.

Interest: interest at the rate of 2% per annum above the base rate from time to time of Barclays Bank plc.

Maintenance Period: a period of 12 months from and including the date of issue of the Certificate of Practical Completion or, if construction vehicles continue to travel along the Highway Land and Road Land, such longer period as the Proper Officer may reasonably determine unless at the end of that period the Proper Officer forms the view that the Final Certificate cannot be issued on the basis that the remedial works have not been completed in accordance with this agreement in which case the Maintenance Period shall include such further period as shall elapse until issue of the Final Certificate.

Method Statement: a written statement detailing the individual construction processes to be employed to carry out the Highway Works and Works and a signing strategy that adequately demonstrates that the safety of all highway users will be ensured at all times.

Owners: means the Second Owner and the Third Owner

Planning Permission: the planning permission issued by Northumberland County Council on 3 June 2016 with reference number 14/04099/OUT

Practical Completion: completion of the Highway Works and Works, including any works required to be carried out as a result of the Stage 3 Safety Audit Report, that enables the Highway Works and Works to be used for the purpose for which they were designed, save for any minor defects and **Practically Complete** shall be construed accordingly.

Programme: the programme(s) prepared by the Developers and agreed from time to time in writing by the Council for the carrying out of the Highway Works and Works showing the sequence in which the Highway Works are to be carried out with an estimate of time that will be spent in carrying out each stage of the Highway Works and Works.

Proper Officer: any suitably qualified Council officer for the time being appointed for the purposes of this agreement or of any provisions contained in this agreement.

Road: the carriageway and footway of the private road shown coloured pink on drawings A081084-1-002 Rev E and A081084-1-003 Rev E , including:

- (a) any off-site highway drainage shown on the Drawings;
- (b) the footpaths, street lighting, all verges, service strips, service margins, vehicular crossings, road surface water drainage system (if any); and

(c) all other ancillary items.

and **Roads** shall mean more than one of them

Road Land: the freehold land at the north side of Station Road, Cramlington comprising the Road which is registered at the Land Registry under part of title numbers ND202058; ND73733 and ND193212.

Road Safety Audits: safety audits of the Highway Works and Works to be carried out in accordance with the Highways England's Design Manual for Roads and Bridges Standard GG 199.

Road Safety Audit Report: the report to be prepared by the Safety Auditor following the carrying out of the Road Safety Audits.

Safety Auditor: a suitably qualified highway or traffic engineer employed by the Council shall carry out the Road Safety Audits at the Developers' expense..

Sewer Adoption Agreement: an agreement made under section 104 of the Water Industry Act 1991.

Specification: the Specification for Highway Works dated March 1998 published by the Department for Transport and all subsequent amendments together with the Design and Construction of Roads and Accesses Developer Guidance dated March 2011 published by the Department for Transport and all subsequent amendments

Stage 2 Safety Audit Report: the Road Safety Audit Report relating to the detailed design of the Highway Works and Works to be carried out prior to commencement of the Highway Works and Works.

Stage 3 Safety Audit Report: the Road Safety Audit Report relating to the completed Highway Works and Works to be carried out prior to issue of the Certificate of Practical Completion.

Stage 4 Safety Audit Report: the Road Safety Audit Report relating to the completed Highway Works and Works to be carried out 11 months following the issue of the Certificate of Practical Completion.

Statutory Undertaker: any person, company, corporation, board or authority whose apparatus, at the date of this agreement, is already installed in, under, over or on the Highway Land pursuant to a statutory right or to a licence granted under section 50 of the New Roads and Street Works Act 1991.

Street Furniture: the street lighting, traffic lights and illuminated traffic signs installed or to be installed as part of the Highway Works on the Highway Land and Works on the Road Land.

Surety: means the First Surety and the Second Surety

Surety's Counter Notice: written notice of the Surety's intention to carry out the Default Work.

Traffic Management Plan: a plan which identifies temporary traffic management arrangements and controls to be implemented at the Developers' expense during the construction of the Highway Works and Works taking into account the relevant provisions of the Traffic Management Act 2004 including time restrictions, routes for heavy goods vehicles, parking and temporary pedestrian routes, details of any Traffic Regulation Order and the temporary diversions required to ensure that the best possible traffic flows are maintained on the Highway Land during the construction of the Highway Works and Works.

Traffic Regulation Order: any temporary or permanent order required to commence and carry out the construction of the Highway Works pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

Works: means the works described generally in Part B of Schedule 1 and shown in principle on the Drawings and any detailed design subsequently approved by the Council in accordance with this agreement.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** excludes fax and e-mail.
- 1.12 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.15 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

This agreement is made under section 278 and section 38 of the Highways Act 1980, section 111 of the Local Government Act 1972

section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and section 1 of the Localism Act 2011 and any other enabling powers.

3. DEVELOPERS' OBLIGATIONS

- 3.1 The Developers covenant with the Council to design, construct and complete the Highway Works in accordance with the terms of this agreement.
- 3.2 The Developers shall not interfere with the free flow of traffic on the existing highway or in any way obstruct the Highway Land without the express written permission of the Proper Officer and the bringing into force of any necessary Traffic Regulation Order.
- 3.3 The Developers shall maintain the Road until the date of issue of the Final Certificate.
- 3.4 The Developers shall pay the Council's legal costs and disbursements in the sum of £800.00 in connection with the preparation, completion and registration of this agreement on the date of this agreement.
- 3.5 The Developers covenant with the Council that, unless otherwise stated, if any sums payable under this agreement are unpaid on the due date then the Developers shall pay Interest on the sum outstanding from the due date until the actual date of payment.

4. DEVELOPERS' DECLARATION

The Developers declare and warrants to the Council that throughout the duration of this agreement the Developers have or will have full right, liberty and consent to carry out such works as may be necessary to connect the Road to a highway that is, or will be, maintainable at the public expense.

5. COUNCIL'S OBLIGATIONS

- 5.1 The Council covenants with the Developers that it will comply with its obligations contained in this agreement.
- 5.2 The Council appoints the Developers to act as its agent in relation to the Highway Works and gives the Developers and all those authorised by the Developers licence to enter the Highway Land with or without workmen, plant and machinery to enable the Developers to comply with

its obligations in this agreement. The Council agrees that the Developers are permitted to break open the surface of the Highway Land to the extent reasonably necessary for the carrying out of the Highway Works (subject to making good any damage).

- 5.3 The Council shall, as soon as practicable, use its powers to obtain any Traffic Regulation Orders at the request and cost of the Developers.
- 5.4 The Council shall disregard this agreement when considering any objections to any Traffic Regulation Order. If any objections are made, the Council shall have no duty or obligation to the Developers by reason of this agreement or otherwise to make the Traffic Regulation Order other than the duty it would have to all persons interested in the Traffic Regulation Order in its capacity as local highway authority. The Council shall use reasonable endeavours to resolve such objections as soon as reasonably possible.
- 5.5 If there are no objections to any Traffic Regulation Order and the Council resolves to make one or all of the Traffic Regulation Orders, any Traffic Regulation Order shall be made and the statutory formalities completed as soon as reasonably practicable.

6. RESTRICTIONS ON COMMENCEMENT OF THE HIGHWAY WORKS AND WORKS

- 6.1 The Developers shall not commence the Highway Works or Works:
 - (a) before obtaining all necessary consents and approvals; and
 - (b) until the Proper Officer has issued the pre-commencement certificate.
- 6.2 In order to obtain the pre-commencement certificate the Developers shall:
 - (a) obtain approval in writing from the Proper Officer for:
 - (i) the detailed design for the Highway Works and Works, the Specification, the Programme and the Method Statement;
 - (ii) the Estimated Cost of Works;
 - (iii) the Traffic Management Plan;
 - (iv) the name of the Contractor;
 - (v) the draft Construction Contract;
 - (vi) the Stage 2 Safety Audit Report;
 - (vii) the Health and Safety Plan;

- (viii) details of any diversion or alteration works required to be carried out to Statutory Undertakers' mains, services, plant or equipment necessitated by the Highway Works or Works;
 - (ix) the certificate of insurance cover;
 - (x) the location of car parking for site and construction personnel during the carrying out of the Highway Works and Works;
 - (xi) any other information that the Proper Officer shall reasonably require including any variation (whether by way of alteration, addition or omission) to the Highway Works and Works;
- (b) pay to the Council:
 - (i) the Design Check Fee;
 - (ii) the Estimated Inspection Fee;
 - (iii) all legal, administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new Traffic Regulation Orders arising as a consequence of the Highway Works and Works;
- (c) install the Advance Warning Signs in such locations as the Proper Officer advises and to the Proper Officer's reasonable satisfaction;
- (d) submit to the Council noise readings, supporting information, calculations and any other information or data that the Council may reasonably request for the purposes of ascertaining whether any properties are eligible for an offer of insulation works or a grant to cover the cost of such works pursuant to the Noise Insulation Regulations 1975 (*SI 1975/1763*);
- (e) consult with, place orders with and pay any costs to Statutory Undertakers in relation to any works to their mains, services, plant or equipment necessitated by the Highway Works and Works including any works required by the Statutory Undertakers to divert the services to the satisfaction of the Proper Officer;
- (f) provide to the Proper Officer the contact details of a representative for the duration of the construction of the Highway Works and Works and the Maintenance Period;
- (g) ensure that the Highway Works and Works are properly notified to the Health and Safety Executive in accordance with the CDM Regulations and give to the Council a copy of the notification and

any acknowledgement from the Health and Safety Executive;
and

- (h) secure any necessary Traffic Regulation Orders which may be required in order for the Highway Works and Works to commence.

6.3 At any time after receipt of the pre-commencement certificate the Developers shall give to the Council not less than 28 Working Days written notice of the proposed date of commencement of the Highway Works and Works.

7. CONSTRUCTION OF THE HIGHWAY WORKS AND WORKS

7.1 The Developers shall, at its own cost, carry out and complete the Highway Works and Works:

- (a) in a good and workmanlike manner;
- (b) using only good quality materials approved by the Proper Officer;
- (c) in accordance with the details approved by the Council pursuant to clause 6.2(a) (or as otherwise agreed in writing with the Council);
- (d) in compliance with all relevant British Standards, codes of practice and good building practice;
- (e) to the Proper Officer's satisfaction; and
- (f) within 18 calendar months following the date of this agreement unless otherwise agreed in writing by the Council and provided always that the Developers shall commence the Highway Works and Works within 3 calendar months of the date of this agreement;

7.2 The Developers shall provide the Council with not less than 20 Working Days' notice (or such lesser period as may be agreed by the Council) of the commencement of any works to Statutory Undertakers' mains or services, plant or equipment necessitated by the Highway Works and shall at no cost to the Council carry out or procure the carrying out of such works in accordance with the details approved by the Council, the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004.

7.3 The Developers shall, as far as is practicable, lay under the Highway Land at no cost to the Council:

- (a) any new drains, sewers, gas mains, water mains, pipes, electric cables and telecommunication cables together with all necessary connections from them to the boundary of the Highway Land (where appropriate in ducting) before the foundations of the Highway Works are laid;
- (b) any connections from the electric cables to the street lamps before the paving of any footways comprised in the Highway Works is carried out.

7.4 During the carrying out of the Highway Works and Works the Developers shall comply with the:

- (a) Traffic Management Plan;
- (b) provisions of Chapter Eight of the Traffic Signs Manual (published by the Department for Transport) as amended;
- (c) directions of the police and the Proper Officer in respect of lighting and signing of the Highway Works and any diversion routes.

7.5 During the carrying out of any part of the Highway Works, if requested by the Proper Officer, the Developers shall remove any existing Street Furniture and relocate or deliver them for local storage.

7.6 Before applying for the Certificate of Practical Completion the Developers shall commission the Council to prepare and complete a Stage 3 Safety Audit Report and the Developers shall carry out and complete at its own expense any additional works, alterations or amendments to the Highway Works and Works reasonably required by the Proper Officer within such reasonable period as the Proper Officer shall allow.

8. CERTIFICATE OF PRACTICAL COMPLETION

8.1 Following completion of the Highway Works and Works, the Developers shall apply to the Proper Officer in writing for a Certificate of Practical Completion.

8.2 Within 10 Working Days following receipt of a written application for the issue of a Certificate of Practical Completion the Proper Officer shall:

- (a) inspect the Highway Works and Works to which the application relates; and
- (b) provide the Developers (where necessary) with a definitive written list of any further works required to be carried out in order

to achieve Practical Completion of the Highway Works and Works and any remedial works required as a result of the Stage 3 Safety Audit Report (Additional Works).

- 8.3 The Developers must carry out at its own cost any Additional Works within 3 months of receipt of a written list pursuant to clause 8.2(b) above.
- 8.4 The Additional Works shall be subject to the same inspection procedure set out in clause 8.2(a) until such time as the Highway Works and Works are Practically Complete to the reasonable satisfaction of the Proper Officer and safe and fit for the type of traffic expected to use the Highway Works and Works.
- 8.5 Within 20 Working Days of a satisfactory inspection, the Certificate of Practical Completion shall be issued to the Developers provided that:
- (a) the maintenance period of any sewer constructed on or under the Highway Land and/or Road Land in accordance with a Sewer Adoption Agreement is currently running; and
 - (b) the Developers have paid the Commuted Sum to the Council
- 8.6 From and including the date of issue of the Certificate of Practical Completion the Highways Land (together with the Highways Works) and the Road shall be available for use by vehicles and pedestrians.

9. THE MAINTENANCE PERIOD

- 9.1 During the Maintenance Period the Developers shall, at its own cost and to the satisfaction of the Proper Officer:
- (a) maintain the Highway Works and Works including all grassed and planted areas; and
 - (b) remedy and make good any damage or defect in the Highway Works and Works.
- 9.2 During the Maintenance Period the Developers shall, at its own cost:
- (a) carry out routine maintenance of the Highway Land and Road such as sweeping and cleaning as may be required to facilitate the use of the Highway Land and Road by vehicles and pedestrians;
 - (b) undertake routine maintenance of all Street Furniture; and

- (c) be responsible for, the supply of energy and all associated costs including any CRC Costs for all the Street Furniture.

9.3 Before applying for a Final Certificate the Developers shall commission the Council to prepare and complete a Stage 4 Safety Audit Report on the Developers' behalf and the Developers shall carry out and complete at its own cost any additional works, alterations or amendments to the Highway Works reasonably required by the Proper Officer as a result of the Stage 4 Safety Audit Report within such reasonable period as the Proper Officer shall allow.

10. FINAL CERTIFICATE

10.1 After the expiry of the Maintenance Period the Developers must apply to the Proper Officer in writing for a Final Certificate.

10.2 Within 10 Working Days following receipt of a written application for the issue of a Final Certificate the Proper Officer shall:

- (a) inspect the Highway Works and Works to which the application relates; and
- (b) provide the Developers (where necessary) with a definitive written list of any further works required to be carried out in order to remedy and make good any defect or damage to the Highway Works and Works which may have arisen during the Maintenance Period (including any defect in, or damage to, the road surface water drainage system) and any remedial works reasonably required as a result of the Stage 4 Safety Audit Report (Further Works).

10.3 The Developers must carry out any Further Works at its own cost and within 3 months of receipt of the written list issued pursuant to clause 9.2(b) above.

10.4 The Further Works shall be subject to the same inspection procedure detailed in clause 10.2(a) until such time as the Developers have remedied or made good any such defect or damage to the satisfaction of the Proper Officer.

10.5 Within 20 Working Days of a satisfactory inspection the Proper Officer shall issue the Final Certificate to the Developers provided that:

- (a) the Developers have paid to the Council all amounts due to the Council under this agreement including the:

- (i) Additional Inspection Fee; and
- (ii) Additional Design Check Fee.

The payment shall be made within 10 Working Days of receipt by the Developers of notification from the Proper Officer of any sum due.

- (b) the Developers have delivered to the Proper Officer each of the following:
 - (i) One electronic copy of coloured drawings showing to a scale of 1:500 the Highway Works and Works as constructed, in a format specified by the Proper Officer; and
 - (ii) One electronic copy of the Health and Safety File and the final Health and Safety Plan.
- (c) The Developers have at its own cost provided the Proper Officer with verification that any sewers constructed on or under the Highway Land, in accordance with a Sewer Adoption Agreement, have been adopted by a sewer authority.

11. ADOPTION AND DEDICATION

- 11.1 From the date of issue of the Final Certificate the Highway Works shall become part of the Highway Land maintainable at the public expense.
- 11.2 From and including the date of issue of the Final Certificate the Developers and the Owners hereby dedicate the Road or any part of the Road as public highway, as the case may be, and the Council hereby adopts the Road or such part of the Road so that they shall become highway maintainable at the public expense.
- 11.3 Save for the obligations at Clause 11.2 and 25.2 of this Deed, the Owners shall have no further liability whatsoever in respect of any other obligation in this agreement

12. MINOR ALTERATIONS

- 12.1 If the Developers wish to amend the design or revise the proposals for implementation of the Highway Works or Works, including the Programme or Method Statement, it shall submit details in writing to the Council. No amendments or revisions shall be implemented without the prior written approval of the Proper Officer.

12.2 If the Proper Officer considers it necessary and reasonable the Developers may be required to incorporate minor alterations or additions to the design or construction of the Highway Works and Works.

12.3 The terms and provisions of this agreement shall apply to any such amended or revised works as they apply to the Highway Works and Works as originally designed.

13. ACCESS TO AND OPENING OF THE HIGHWAY WORKS

13.1 During construction of the Highway Works upon reasonable request, the Developers shall give to or procure for the Proper Officer and any other person or persons authorised by the Proper Officer free access to every part of the Highway Works and Works and the site for the purpose of inspecting the Highway Works and Works and all materials used, or intended to be used, for the Highway Works and Works. The Developers shall give effect to any requirements made or direction given by the Proper Officer so that the Highway Works and Works conform to the Drawings, the detailed design for the Highway Works and Works and the Specification.

13.2 While carrying out any inspection under this clause, the Proper Officer and any other authorised person shall comply with any reasonable health and safety requirements notified to them by the Developers.

13.3 Unless otherwise directed by the Proper Officer, the Developers shall not cover up or put out of view any works without the approval of the Proper Officer. The Developers shall give at least 5 Working Days written notice to the Proper Officer whenever any works or foundations are ready or about to be ready for examination. The Developers shall give the Proper Officer full opportunity to examine any works about to be covered up or put out of view and to examine foundations before any permanent work is placed on top.

13.4 During construction of the Highway Works and Works and prior to the issue of the Certificate of Practical Completion, the Proper Officer may require the Developers to open up or expose any of the Highway Works or Works that have been covered up without previously being notified to the Proper Officer. If the Developers fails to comply with any such instructions the Council may take up or expose the relevant part of the works. The Developers shall pay the Council's reasonable and proper costs of such taking up, exposure and reinstatement.

14. MATERIALS SAMPLING AND TESTING

- 14.1 The Developers shall, if requested by the Proper Officer, make all necessary arrangements for an independent accredited testing facility, approved by the Council, to test the materials proposed to be used in connection with the Highway Works and Works. The Developers shall bear the full cost of such testing and give to the Proper Officer, at no expense to the Council, copies of all material testing certificates.
- 14.2 Any material rejected by the Proper Officer, acting reasonably, as a result of the tests carried out shall not be used by the Developers for any of the Highway Works or Works.

15. NEW ROADS AND STREET WORKS ACT 1991

Until the date of issue of the Final Certificate, the Developers shall:

- (a) appoint a supervisor qualified in accordance with the provisions of section 67 of the New Roads and Street Works Act 1991; and
- (b) remain the street manager of the Road under section 49(4) of the New Roads and Street Works Act 1991.

16. KEEPING THE HIGHWAY CLEAN AND TIDY

- 16.1 The Developers shall:
- (a) before commencing the Highway Works and Works provide suitable vehicle and wheel cleaning apparatus on the Land; and
 - (b) during construction of the Highway Works and Works ensure the cleaning apparatus is well maintained and used by all vehicles immediately before leaving the Land to prevent mud and other materials being deposited on the highway.
- 16.2 All roads, footpaths, rights of way and other means of passage that lead to, from or cross the site of the Highway Works and Works and are available for use by the public during the carrying out of the Highway Works and Works shall be kept free from mud or other substances deposited through the construction operations of the Highway Works and Works and any such substance deposited by the Developers or the Contractor shall be promptly removed at no cost to the Council.
- 16.3 If such substances are not promptly and adequately removed the Council may close any associated crossings, entrances and exits and in the event of there being a danger to highway users may arrange for the substances to be removed by its own employees or contractors and may

recover its reasonable and proper costs from the Developers. On removal of the substances the Council shall allow such crossings, entrances and exits to be reopened. Any losses or expenses incurred as a result of these measures shall be borne by the Developers.

- 16.4 On completion of the Highway Works and Works the Developers shall clear away and remove from the Highway Land all construction plant, surplus material, rubbish and temporary works and leave the site of the Highway Works and Works in a good and workmanlike condition.

17. EXTENSION OF TIME TO COMPLETE THE HIGHWAY WORKS AND WORKS

- 17.1 Without prejudice to any remedy of the Council, the Proper Officer may in its absolute discretion give written notice to the Developers subject only to any objections by the Surety granting an extension of time to complete the Highway Works and Works. The Proper Officer may grant more than one such extension.
- 17.2 If, by any impediment, prevention or default, whether by act or omission by the Council (except to the extent caused or contributed to by any default, whether by act or omission of the Developers), the Council delays the carrying out and completion of the Highway Works and Works the Proper Officer shall grant an extension of time to complete the Highway Works and Works for a further period or periods, by giving written notice to the Developers. Such extension shall be commensurate with the delay suffered by the Developers that was caused by such impediment, prevention or default.

18. SUSPENSION OF THE HIGHWAY WORKS AND WORKS

- 18.1 If the Developers intends to suspend construction of the Highway Works and Works for a period of more than 5 Working Days, the Developers shall notify the Proper Officer in writing of:
- (a) the intended suspension not less than 10 Working Days before the start of the suspension; and
 - (b) the Developers' intention to re-commence construction of the Highway Works and Works not less than 10 Working Days before such re-commencement.
- 18.2 If the Developers fails to notify the Proper Officer the Estimated Inspection Fee shall be increased by such amount as the Proper Officer, exercising absolute discretion, sees fit to reimburse the Council any

additional cost incurred in inspecting the Highway Works and Works because of such failure.

19. GRANT OF EASEMENTS

19.1 Before the Proper Officer issues a Final Certificate, the Developers shall, without cost to the Council, execute and complete or procure the execution and completion of:

- (a) any deeds of easement that are in the opinion of the Council necessary to secure for the Council full drainage rights to such parts of the surface water drainage system of the Road Land that are not within the Road Land;
- (b) any other deeds of easement required by the Council for the future maintenance by the Council of any street furniture not within the Road Land;
- (c) full drainage rights in respect of any surface water drainage system of the Highway Works; and
- (d) all necessary wayleaves in respect of any system of lighting comprised in the Highway Works to include but not limited to a right to inspect, maintain, adjust, repair or alter the said apparatus.

PROVIDED THAT the Council shall not be liable for the payment of compensation or legal or other costs and fees arising on account of the execution of any such deeds (which for the avoidance of doubt shall be the liability of the Developers).

19.2 The Developers shall pay the Council's proper and reasonable legal costs and disbursements in connection with the grant of any deeds of easement.

19.3 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the completion of any deeds of easement referred to in clause 19.1 or due to the subsequent use of the easement.

20. CDM REGULATIONS

20.1 The Developers and the Council agree that, to the extent that the Council may be a Client for the purposes of the CDM Regulations, the Developers is to be treated as the only Client in respect of the Highways Works and Works for the purposes of the CDM Regulations.

- 20.2 The Developers agree to undertake all the obligations of a Client and to use all reasonable endeavours to ensure that the Highway Works and Works are carried out in accordance with the CDM Regulations.
- 20.3 The Developers shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.
- 20.4 The Developers warrants it has taken or shall take all reasonable steps to be satisfied that all contractors (including the Contractor) engaged on the Highway Works and Works are suitable and competent having regard to their responsibilities in relation to the Highway Works and Works and the CDM Regulations.
- 20.5 The Developers shall indemnify and keep the Council indemnified against any breach of the Developers' obligations under this clause 19.

21. INDEMNITIES

- 21.1 The Developers shall indemnify the Council against any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance by the Developers of its obligations in this agreement or at any time in connection with or incidental to the carrying out or use of the Highway Works and Works (including without limitation any negligent or defective design or construction of the Highway Works and Works) including (but not limited to):
- (a) third party claims for death, personal injury or damage to property;
 - (b) statutory or other liability for the safety or security of the working methods, employment practices, protection of the environment and control of pollution; and
 - (c) third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.

This indemnity shall not apply in respect of any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any act, neglect, default or liability of the Council.

- 21.2 The Developers shall subject to clause 21.4 indemnify the Council in respect of any claims under Section 10 of the Compulsory Purchase Act 1965, Part I of the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 (SI

1975/1763) arising out of, in connection with or incidental to, the carrying out of the Highway Works and Works and their subsequent use, other than those arising out of or in consequence of any negligent act, default or omission of the Council.

21.3 The indemnification referred to in clause 21.2 includes:

- (a) all fees incurred by claimants which the Council is obliged to pay, and those of the Council or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- (b) statutory interest payments to claimants and their professional advisors; and
- (c) the Council's reasonable and proper legal costs in making the compensation, fees and interest payments under clause 21.2.

21.4 The Developers shall only be required to indemnify the Council in accordance with this agreement if:

- (a) the Council notifies the Developers as soon as reasonably practicable upon becoming aware of any matter which becomes the subject of a claim for indemnity; and
- (b) the Council keeps the Developers reasonably informed of all progress of which it is, or becomes, aware of in connection with that matter.
- (c) the Council gives the Developers the opportunity to take advice from the Developers' own independent consultant and make representations to the Council in relation to any proposed settlement;
- (d) the Council has proper regard to any representation made by the Developers and/or its independent consultant in accordance with clause 21.4(c) above;

22. INSURANCE

22.1 From and including the date of this agreement until the date of issue of the Final Certificate, the Developers shall maintain public liability insurance for a sum of not less than £10,000,000 in respect of any single claim, the number of claims being unlimited, in the Developers' own name to cover claims for injury to, or death of, any person or loss or damage to any real or personal property arising out of the execution and use of the Highway Works and Works.

22.2 The Developers shall ensure that the Council's interests under this agreement are endorsed on the insurance policy.

22.3 Before commencing the Highway Works and Works the Developers shall provide the Council with a certificate of insurance cover and shall supply the Council (if requested) with a copy of the insurance policy as proof that it is in force and any such other information relating to the policy as the Council shall reasonably require.

23. SECURITY FOR PERFORMANCE OF THE DEVELOPERS' OBLIGATIONS

23.1 If any Default Event occurs, the Council may, without affecting any statutory rights or powers or any other right, claim, or remedy under this agreement for such non-performance or non-observance, give to the Surety a default notice:

- (a) specifying the Default Work;
- (b) containing an estimate by the Proper Officer of the Default Cost; and
- (c) specifying the 50% (fifty percent) proportion of the Default Cost due to be paid by both the First Surety and the Second Surety

23.2 Within 20 Working Days following the date of receipt of the default notice, the Surety shall:

- (a) pay the Default Cost in full to the Council; or
- (b) send the Surety's Counter Notice to the Council.

PROVIDED always that the Developer and the Surety shall not withhold or delay payment to the Council as a result of any dispute arising between the Developer and Surety.

23.3 If the Surety, having sent the Surety's Counter Notice to the Council, fails to start the Default Work within 20 Working Days from and including the date of service of the Surety's Counter Notice, the Surety shall without delay, pay the Default Cost to the Council together with Interest calculated from and including the date on which the default notice was sent to the Surety to and including the date the payment is made.

23.4 If the Surety, having sent the Surety's Counter Notice to the Council, starts the Default Work, and the Default Work is not completed within 6 calendar months from and including the date of service of the Surety's Counter Notice, or within such further period or periods as may be agreed by the Proper Officer, the Surety shall on demand, pay to the Council:

- (a) such sum as the Proper Officer may determine as being the cost of carrying out any Default Work not carried out by the Surety or the cost of maintaining the Highway Works and Works for a period of 12 calendar months before the Highway Works and Works become part of the Highway Land and Road becomes maintainable at public expense (or the cost of both); and
- (b) the amount determined by the Proper Officer as representing the usual establishment charges of the Council.

23.5 The sum payable under clause 23.4 shall not exceed the Default Cost.

23.6 Following the issue of a Final Certificate the Surety shall be released from all liability under this agreement.

23.7 The Council covenants with the Developers and the Surety for the benefit of each and every building plot fronting, adjoining, abutting, or having access to the Highway Land or Road:

- (a) to use all reasonable endeavours in consultation with the Surety to mitigate any loss or damage sustained because of any default by the Developers, by taking such reasonable steps as the Council thinks fit;
- (b) to use all monies received from the Surety to secure the performance of the Developers' covenants and obligations contained in this agreement in accordance with the terms of this agreement including but not limited to carrying out or completing the Highway Works and Works and maintaining and making good all defects for a period of 12 calendar months after completion of the Highway Works and Works;
- (c) if the sum paid by the Surety to the Council exceeds the cost of carrying out or completing the Highway Works and Works and maintaining and making good all defects as set out in this agreement (together with the amount of the Council's usual establishment charges) to repay to the Surety within 20 Working Days following the date of the Final Certificate, the amount of any excess; and
- (d) on the issue of the Final Certificate to give such notices and do whatever else may be required for securing that the Highway Works become part of the highway maintainable at public expense and the Road or any part thereof, as the case may be, shall become a highway maintainable at public expense.

24. DEFAULT EVENTS

The Council may terminate this agreement immediately by written notice to the Developers without prejudice to any other rights the Council may have, if any of the following events occur:

- (a) the Developers are in fundamental breach of any of its obligations and liabilities in this agreement; or
- (b) the Developers are in substantial breach of any of its obligations and liabilities in this agreement and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Council; or
- (c) where the Developers are a corporation:
 - (i) has an administrative receiver or receiver appointed over the whole or part of the Developers' assets or suffers the appointment of an administrator; or
 - (ii) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developers; or
 - (iii) an application is made for an administration order in relation to the Developers; or
 - (iv) an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice is given of an intention to appoint an administrator by the Developers or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - (v) a receiver or manager is appointed in relation to any property or income of the Developers; or
 - (vi) a liquidator is appointed in respect of the Developers; or
 - (vii) a voluntary winding-up of the Developers is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
 - (viii) a petition is made for a winding-up order for the Developers; or
 - (ix) the Developers are struck-off from the Register of Companies; or
 - (x) the Developers otherwise ceases to exist.
- (d) Where the Developers are an individual:

- (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developers; or
- (ii) the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developers.

25. COUNCIL'S POWER TO EXECUTE HIGHWAY WORKS AND WORKS IN DEFAULT

25.1 If the Developers fail to carry out or complete the Highway Works and Works in accordance with the Developers' obligations under this agreement, the Council after giving not less than 20 Working Days written notice or (in the event of there being a significant danger to users of the Highway Land such lesser period as may be reasonable in the circumstances), to the Developers and the Surety, shall be entitled to carry out or complete the Highway Works and Works in default, using the Council's own employees, or by contractors or otherwise and to recover from the Developers or Surety the cost of carrying out or completing the Highway Works and Works as certified by the Proper Officer.

25.2 The Owners hereby grants to the Council and the Council's agents, contractors and employees full right and licence to enter onto and remain on the Road Land together with all machinery plant and materials in order to carry out or complete the Works and remedy any defects or damage to the Road pursuant to clause 25.1

26. MAKING UP OF PRIVATE STREETS

If the Developers fail to perform any of its obligations under this agreement, nothing in this agreement shall prevent or restrict the Council from exercising its powers under the Private Street Works Code contained in Part XI of the Highways Act 1980 or any other statutory provision.

27. DELEGATION OF DEVELOPERS' OBLIGATIONS

The performance of the Developers' obligations to carry out the Highway Works on behalf of the Council may be delegated to the Contractor or sub contractor(s) provided that:

- (a) the Developers shall remain liable to the Council for the due performance and observance of this agreement;
- (b) the Construction Contract by which the obligations contained in this agreement are delegated shall incorporate the Engineering

Contract or such other conditions disclosed to and approved by the Proper Officer prior to the date of this agreement but shall in any event contain terms and conditions no less stringent than the terms and conditions contained in this agreement and shall incorporate the Specification, the Drawings, the detailed design for the Highway Works, the Method Statement and the Programme;

- (c) the Developers shall give the Council the opportunity and reasonable time to comment upon the documentation for the Construction Contract and shall have regard to any reasonable representations made before letting the Construction Contract; and
- (d) the Developers shall ensure that for the purposes of the Construction Contract the amount of insurance cover against losses and claims for injuries or damage to persons or property arising out of or in consequence of the Highway Works shall be not less than £10,000,000 in respect of any one claim or such other sum as may be specified by the Council in writing.

28. ASSIGNMENT

The Developers may not assign this agreement without the prior written consent of the Council such consent not to be unreasonably withheld.

29. LOCAL LAND CHARGES REGISTER

As soon as practicable, following the date of completion of this agreement, the Council shall enter this agreement and its terms and conditions in the local land charges register.

30. LAPSE OF AGREEMENT

If the Planning Permission lapses without having been implemented or is varied without the consent of the Developers or is revoked and construction of the Highway Works and Works has not commenced, then this agreement shall lapse and be of no further effect provided that the Developers agrees to pay to the Council any costs properly incurred by the Council prior to the lapse of the Planning Permission and an agreed proportion of the Design Check Fee and Inspection Fee.

31. DISPUTES

Any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence,

validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Institution of Civil Engineers;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- (d) the seat of the arbitration shall be London.

32. NOTICES

32.1 A notice to be given under this agreement must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

32.2 Any notice to be given under this agreement must be sent to the relevant party as follows:

- (a) to the Council at: County Hall, Morpeth, Northumberland, NE61 2EF marked for the attention of Legal Services
- (b) to the Developers at Bellway House, Kingsway, Team Valley, Gateshead, NE11 0JH and at 2 Esh Plaza, Sir Bobby Robson Way, Great Park, Newcastle upon Tyne, NE13 9BA
- (c) to the Second Owner at Persimmon House, Fulford, York, YO19 4FE
- (d) to the Third Owner at Oakwood Way, Ashwood Business Park, Ashington, Northumberland, NE63 0XF
- (e) to the First Surety at: NHBC House, Davy Avenue, Milton Keynes, MK5 8FP
- (f) to the Second Surety at: The Grange, Rearsby, Leicester, LE7 4FY

or as otherwise specified by the relevant party by notice in writing to each other party.

32.3 Any notice given in accordance with clause 32.1 and clause 32.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

32.4 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

32.5 This clause does not apply to the service of any proceedings or other documents in any legal action.

33. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

34. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 The Highway Works and Works

Part A – Highway Works

- Enlargement of existing roundabout at A1171/Station Road/Westmorland Way;
- Construction of roundabout at Nelson Village junction/A1171;
- Provision of dual carriageway between Station Road roundabout and Nelson Village junction on A1171;
- Provision of priority estate road junction on A1171, including carriageway widening of A1171 to provide ghost right turn lane facility, together with localised widening, pedestrian/cyclist refuges and associated works;
- Planing off of carriageway surface and resurfacing;
- Provision of new 3m wide shared footway/cycleway routes, as well as widening and resurfacing of footways to provide shared cycleway/footway routes, including new kerbing, dropped kerb crossing points; tactile corduroy paving;
- Installation of Toucan crossing facilities on A1171 and Station Road;
- Relocation of 2 x bus laybys, bus stops, shelters, together with associated works;
- Extension of 30/40mph limits along the A1171, together with associated works;
- Associated street lighting, drainage; signage; road markings;
- Tree felling and replacement tree planting and landscape planting areas

Part B – Works

- Part construction of roundabout at Nelson Village junction/A1171, including splitter islands;
- Carriageway construction;
- Shared footway/cycleway and footway construction;
- Bus Stop shelter base and shelter;

- Associated street lighting, drainage, kerbing, tactile/corduroy paving, signage, road/cycleway markings, formation of embankment/cutting and landscaping.

Schedule 2 Commuted sum

Item	Commuted Sum
Planing off and resurfacing of new3 carriageway areas x 2; Planning off and resurfacing of new footway and footway/cycleways areas x 1; Maintenance of Toucan crossing facilities; Street lighting; Drainage; and Tree planting and landscaping.	£327,037 (three hundred and twenty seven thousand and thirty seven pounds) or such other sum as is agreed in writing by the Council at its absolute discretion.

THE COMMON SEAL of
NORTHUMBERLAND COUNTY
COUNCIL was
hereunto affixed in
the presence of:-

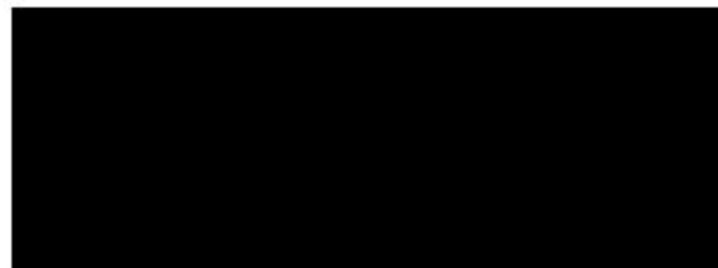


Duly Authorised Officer



23926

Executed as a Deed on behalf
of **Bellway Homes Limited**
by _____ and



Ryan Linedon

In exercise of the powers
conferred on them by the
Power of Attorney dated
2021
1 October 2020 in the
presence of



MILES CROSSLEY



BECKY RITCHIE
DESIGN ENGINEER

C/O BELLWAY HOMES LTD
BELLWAY HOUSE
KINGS PARK
KINGSWAY NORTH
TEAM VALLEY
GATESHEAD
NE11 0JH

**EXECUTED as a DEED by
PERSIMMON HOMES LIMITED**

acting by its first attorney:

RICHARD TINDALE

In the presence of:

ANGELA PATRICK

Persimmon Homes North East

Persimmon House

Roseden Way

Newcastle upon Tyne

NE13 9EA

acting by its second attorney:

STUART CRIMES

in the presence of: *ANGELA PATRICK*

Persimmon Homes North East

Persimmon House

Roseden Way

Newcastle upon Tyne

NE13 9EA

**EXECUTED AS A DEED by
LEEBELL DEVELOPMENTS LIMITED**

acting by its first attorney:

RICHARD TINDALE

in the presence:

ANGELA PATRICK

Persimmon Homes North East

Persimmon House

Roseden Way

Newcastle upon Tyne

NE13 9EA

acting by its second attorney:

STUART CRIMES

in the presence of: *ANGELA PATRICK*

Persimmon Homes North East

Persimmon House

Roseden Way

Newcastle upon Tyne

NE13 9EA

Executed as a Deed

by **BERNICIA GROUP**

acting by two authorised signatories:

Name of authorised signatory

J. Johnston

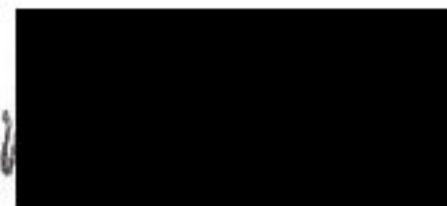
Signature of authorised signatory



Name of authorised signatory

M. FARE

Signature of authorised signatory



Signed as a deed by *ALYCE LALE* and
Claire Smith as attorneys for
National House-Building Council under a
Power of Attorney dated 13th October 2021

.....~~Underwriting Team Leader - Road and Sewer bonds~~
As attorney for National House-Building Council

.....**Senior Project Underwriter**
As attorney for National House-Building Council

EXECUTED AS A DEED by

JASON DAVID WATTS

as Attorney for and on behalf of

HCC INTERNATIONAL INSURANCE COMPANY PLC

in the presence of:

Witness: *AUSON SIMMONDS*

Occupation: *SENIOR BOND ADMINISTRATOR*

Bond No: *BY/MA/00001*