

Appendix H

DATED

201[]

[OWNER] (1)

and

SWINDON BOROUGH COUNCIL (2)

SECTION 278 HIGHWAYS AGREEMENT

under Sections 171, and 278 of the Highways Act 1980
relating to highway works on and in the vicinity of the
land at [], Swindon (AGR [])

S. Taylor
Director of Law and Democratic Services
Swindon Borough Council
Civic Offices
Swindon
SN1 2JH

BETWEEN

- (1) **[DEVELOPER]** (Co. No. []) whose registered office is at [] ("the Developer")
- (2) **SWINDON BOROUGH COUNCIL** of Civic Offices Swindon SN1 2JH ("the Council")

WHEREAS:

- (1) [The Developer is the registered proprietor with Freehold Title Absolute of the Development Land which is registered with the Land Registry under title number []]
- (2) The Developer has been granted planning permission under reference [] to carry out the Development and have applied to the Council under reference number AGR[] to carry out the works further described in this Agreement.
- (3) The Council is the local highway authority for the Borough of Swindon including the highway known as [], Swindon
- (4) The Council considers that certain works should be carried out to benefit the public which said works are indicated in outline on the Drawing.
- (5) The Developer accepts that the Development necessitates the carrying out of the works hereinbefore referred to and has agreed with the Council to carry them out in accordance with the covenants and the conditions which hereinafter appear.
- (6) The Mortgagee is the registered proprietor of the charge dated [] referred to in entry no [] of the charges register of each of Title number [] and has agreed to enter into this agreement to grant the consent contained in clause **Error! Reference source not found.**
- (7) The Covenants contained herein shall be of immediate effect.

1. Definitions

1.1 It is hereby agreed by the parties that in this Agreement the following expressions shall have the following meaning:

“Accommodation Works”	means any works determined by the Director that are required in order to facilitate the Works.
“Development”	means the Development Land
“Development Land”	means the land shown edged [and hatched edged red] on the Drawing and known [], Swindon and registered under title number []
“Director”	means the Head of Highways and Transport for the time being of the Council or any such person replacing the responsibilities held by this position
“Drawing”	means the drawing[s] numbered [] and attached hereto
“Final Works Completion Date”	means [] months from the date of issue of the Provisional Certificate
“Provisional Works Completion Date”	means [] months from the date of this Agreement
“Remedial Works”	means any such works as identified by the Director during any inspections
“Works”	means the works described generally in the First Schedule, the Second Schedule and indicated in outline on the Drawing

1.2 Where the approval or agreement of the Council is required for any purpose under or in connection with the terms hereof such approval or agreement shall not be unreasonably withheld or delayed and where reference is made within this Agreement

to any requirement, request or act by or of the Council there shall be implied on the Council an obligation to act reasonably.

- 1.3 Where in this Agreement reference is made to a clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Agreement or in the case of a plan a plan annexed to this Agreement.
- 1.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.5 Words importing masculine gender include the feminine and neuter genders and words denoting persons include companies corporations and firms and all such words shall be construed interchangeably in that matter.
- 1.6 Any reference to an Act of Parliament shall include any modification extension or re enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 1.7 Headings contained in this Agreement are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of this Agreement to which they relate.
- 1.8 The Council may at any time prior to the issue of the Provisional Certificate at the Developer's expense make such reasonable alterations to the Highway Works as it may consider desirable or necessary. Insofar as may be reasonably practicable the Council shall give the Developer an opportunity to comment on any alterations it proposes to make.

2. **Statutory Provisions**

NOW IN PURSUANCE of Section 111 of the Local Government Act 1972, Sections 171 and 278 of the Highways Act 1980 and Section 33 of the Local Government

(Miscellaneous Provisions) Act 1982 and all other powers enabling powers **IT IS HEREBY AGREED AND DECLARED** as follows

3. Inspections

- 3.1 The parties hereby agree that the Director shall only be responsible for a maximum of 1 inspections and 1 re-inspections and for any additional inspections that shall be required the Developer shall pay an additional charge in accordance with clause 21.
- 3.2 The Director shall only be obligated to carry out an inspection upon the Developer serving a written notice to the Director and upon receipt of this written notice then the Director shall carry out the inspection within a period of 14 days.

4. Obligations

- 4.1 The Developer hereby covenants with the Council:

(i) at its expense to carry out:

- (a) the Works
- (b) such other ancillary works as the Director may reasonably require
- (c) any Accommodation Works and
- (d) works which may as a consequence of (a), (b) or (c) be necessary to statutory undertakers' and telecommunications apparatus and all other equipment under in or over the highway

all which said Works are hereinafter referred to as "**the Highway Works**" and are to be carried out to the reasonable satisfaction of the Director and completed by the Provisional Works Completion Date.

(ii) before commencing any part of the Highway Works to submit to the Director for approval:

- (a) such additional detailed drawings plans and specifications as the Director may reasonably require

- (b) a plan showing existing/additional highways including the route of any drains
- (c) the name and address of the contractor whom the Developer proposes to employ for carrying out the Highway Works
- (d) A completed Health & Safety Questionnaire from the Developer's appointed contractor
- (e) a programme for carrying out the Highway Works ("**the Programme**")
- (f) a completed Stage 2 Safety Audit [to HD19/15]

and the Developer is not to commence any part of the Highway Works until the Director has approved all such matters in writing ("**the Letter of Technical Approval**").

- (iii) not to permit any building constructed on the Development Land to be occupied or used for trading until the Director is satisfied that the Highways Works have been carried out to permit vehicular traffic to enter and leave the Development Land safely.
- (iv) not to permit any vehicular traffic to enter or leave the Development Land other than by way of the Highway Works save only that during construction of the Highway Works an alternative route agreed with the Director may be used.
- (v) to complete the Highway Works in accordance with the Drawing, the Programme, Letter of Technical Approval and any other plans drawings and specifications approved under Clause 4.1 and any reasonable instructions as to the materials or method of working given by the Director to his reasonable satisfaction and obtain his Provisional Certificate of such completion in accordance with clause 11 below and to obtain his Final Certificate in accordance with clause 12 below by the Final Works Completion Date save only that if completion by such dates becomes impossible by reason of circumstances beyond the control of the Developer the

date for completion shall be such later date as may be agreed between the Director and the Developer having regard to the circumstances.

- (vi) to employ the contractor approved under sub-clause 4.1(ii)(c) for carrying out the Highway Works.
- (vii) to provide wheel-cleaning facilities of a nature approved by the Director on the Development Land before commencing any part of the Highway Works and to ensure that during the period from the commencement of the Highway Works until the completion of the Highway Works under clause 12 hereof or such later date as the Director shall notify in writing to the Developer before leaving the Development Land the wheels of all vehicles are sufficiently cleaned to prevent mud from the Development Land being deposited on the highway **PROVIDED THAT** any later date notified by the Director as aforesaid shall not be later than such date as he considers that a stage of development on the Development Land will have been reached when there will no longer be a risk of mud being deposited on the highway in consequence of construction work being carried out on the Development Land.
- (viii) if required by the Director so to do to provide temporary traffic signal controls such controls to be of a type which meet Department for Transport requirements.
- (ix) to construct all surface water drains and sewers to an adoptable standard.
- (x) to comply with all other terms and conditions of this Agreement.

5. Before any part of the Highway Works is begun the Developer shall:

- (i) serve on the Director not less than 1 (one) weeks' notice subsequent to the issue of the Letter of Technical Approval of its intention to commence the Highway Works.
- (ii) deposit with the Council the sum of £[] ("**the Deposit**") no later than the date for commencement of the Highway Works for securing the performance of its

obligations hereunder and the Deposit shall be reduced by [75] % on issue of the Provisional Certificate and then fully repaid when the Highway Works have become maintainable at the public expense in accordance with this Agreement hereof.

OR

enter into and complete a bond in substantially the form annexed hereto (“**the Bond**”) in the sum of £25,000 no later than the date for commencement of the Highway Works for securing the performance of its obligations hereunder and the Bond may be reduced by 75% on issue of the relevant Provisional Certificate and then cancelled when the Highway Works or the relevant part have become maintainable at the public expense in accordance with this Agreement hereof.

- (iii) pay to the Director of Law and Democratic Services of the Council the sum referred to in clause 21 below.
 - (iv) make all necessary arrangements for carrying out the Highway Works including the service of any necessary notices under the provisions of the New Road and Street Works Act 1991 and in particular in relation to statutory undertakers' and telecommunications apparatus and all other equipment over or under the highway and for enabling it to comply with the provisions of this Agreement.
 - (v) deliver to the Director the Health and Safety File containing that information specified in the First Schedule, if applicable.
6. The Developer shall throughout the period from the commencement of the Highways Works until the issue of the Provisional Certificate or such later date as the Director shall reasonably notify in writing to the Developer ensure that:
- (i) adequate warning signs lights and cones are provided and maintained in good working order in accordance with chapter 8 of the Traffic Signs Manual published by her Majesty's Stationery Office (or any other replacement code agreed by the Council).

- (ii) any mud from the Development or the Highway Works which may be deposited on the highway maintainable at the public expense by vehicles leaving the Development Land or the Highway Works is removed at the end of each working day.
 - (iii) any temporary traffic signal controls required by the Director under clause 4.1(viii) are maintained in proper working order.
- 7. If at any time the Developer fails to provide adequate warning signs lights or cones or any such provided are not in good working order or mud is deposited on the highway maintainable at the public expense and not removed or such other circumstance as the Director considers requires remedy as follows then the Director may take such action as he reasonably considers necessary to remedy the failure and the Developer shall be responsible for the reasonable costs of the Director in taking and fully implementing such action
- 8. Until the issue of the Final Certificate pursuant to clause 12 the Developer hereby grants to the Council its servants and agents:
 - (i) free access to every part of the Highway Works for the purposes of inspecting the same as they proceed and inspecting and testing all materials used or intended to be used therein and the cost of reasonable analysis and test in connection therewith shall be at the expense of the Developer.
 - (ii) the right to enter upon such parts of the Development Land as it is necessary so to do in furtherance of the terms of this Agreement.
- 9. The Council hereby licenses the Developer to enter upon such part of the highway as is reasonably required and do such works to the highway as are necessary in carrying out the terms of this Agreement.
- 10. The Developer shall comply with the reasonable timescales set by the Director to complete any Remedial Works (such timescales are to be a maximum of Three months) prior to the issue of the Provisional Certificate and Final Certificate

11. When the Highway Works have been completed in accordance with this Agreement (to be determined by way of a formal inspection of all items including CCTV of the highway drainage and completion of remedials) the Director will issue his provisional certificate of completion ("**the Provisional Certificate**") and thereafter the Developer shall continue to maintain the Highway Works until the final certificate of completion is issued in accordance with clause 12 below ("**the Final Certificate**"). If the Works are constructed in phases the Director may authorise the phasing of the issuing of the Provisional Certificate (and subsequently the Final Certificate) with appropriate reductions in the Bond which the Director may agree.
12. The Final Certificate shall be issued by the Director when the following conditions have been satisfied:
- (i) 3 (three) months at least shall have elapsed since the date of the issue of the Provisional Certificate ("**the Maintenance Period**").
 - (ii) all defects that may have become apparent during the Maintenance Period (to be determined by way of a formal inspection of all items including CCTV of highway drainage) have been remedied and made good by the Developer at its own expense and to the reasonable satisfaction of the Director such defects to include damage or excessive wear caused to the Highway Works during the Maintenance Period.
 - (iii) the cleansing of all sewers gullies catchpits and manholes and the sweeping of the carriageway and footpaths and the cutting of grass to the reasonable satisfaction of the Director.
 - (iv) the Highway Works have been directly connected to a carriageway which is a highway maintainable at the public expense.
 - (v) the Highway Works have been provided with proper traffic signs road markings and street name plates and furniture to the reasonable satisfaction of the Director.

- (vi) where the surface water sewers other than gullies and connections draining the Highway Works are to be vested in and under the control of a council other than the Council or the Water Authority in accordance with the provisions of the Water Industry Act 1991 written confirmation has been received by the Council from the appropriate authority that the sewers have been constructed to their satisfaction and have been adopted by that authority.
 - (vii) the Developer has delivered to the Director drawings which the Director agrees (such agreement not to be unreasonably withheld) show the Highway Works as constructed in accordance with this Agreement.
 - (viii) the Developer has delivered to the Council the Construction Design and Management file in relation to the Highway Works in accordance with the Construction (Design and Management) Regulations 2015 containing those matters set out in the Second Schedule hereto, if applicable.
13. The Council shall from the date of the Final Certificate maintain that part of the Highway Works which constitute alterations and additions to the existing publicly maintainable highway.
14. Without prejudice to any other remedy of the Council in the event of any default by the Developer in preparing for or carrying out the Highway Works or any failure by the Developer to comply with any requirement of the Council as set out in this Agreement in relation to such works the Council may do all such things including the preparation of plans drawings and specifications and the carrying out of or remedying defects in works as it may deem necessary to secure proper construction of the Highway Works and the Developer shall pay to the Council the full cost of taking such action including all design supervision construction and administrative costs **PROVIDED ALWAYS** that before taking any such action as aforesaid the Council shall give to the Developer written notice of the matter in default and shall take no action thereon until 28 (twenty eight) days from the date of such notice or such longer period as is agreed by the

Council shall have elapsed without the Developer or its successors in title remedying fully the matter in respect of which the default has arisen.

15. This Agreement does not authorise interference with statutory undertakers' apparatus or works without their consent nor the installation or use of telecommunication apparatus without the consent of the owner nor entry upon nor doing works to or on any land other than the highway.
16. If the parking facilities provided as part of the Development prove insufficient (as shall be conclusively proved by the parking of vehicles associated with the use of the Development on the public highway) then the Developer shall pay on demand the sum of £6,000 (one thousand pounds) towards the Council's costs in advertising, associated signs, lines and advertising and implementing a traffic regulation order restricting the waiting of vehicles on the new road to be constructed as part of the Highway Works.

17. **Workmanship**

The Developer shall use all reasonable endeavours to diligently carry out and complete the Highway Works at no cost to the Council in a good and workmanlike manner with good quality materials of their respective kinds and in accordance in all respects with the Programme, the specification the drawings and the Developer's obligations hereunder and for that purpose shall procure that the design of the Highway Works including the selection of any specification for any kinds and standards of materials and goods and workmanship to be used in the construction of the Highway Works so far as not described or stated herein are all carried out with reasonable care and skill.

18. **Compensation**

19. The Developer hereby undertakes and agrees with the Council that in the event of any claim for compensation or costs or charges arising in connection with or incidental to or in consequence of the carrying out of the Highway Works including any such whether mandatory or discretionary which may be incurred by virtue of any enactment or statutory instrument and not otherwise hereby provided it will hold the Council fully

indemnified from and against all claims costs charges and expenses in connection therewith or arising therefrom **PROVIDED ALWAYS THAT** the Council shall:

- (i) notify the Developer immediately upon receipt of any claims costs charges and expenses in respect of which it intends to make a claim on the Developer under this clause
- (ii) at all times after that date keep the Developer fully informed
- (iii) permit the Developer to make such investigations and/or tests as the Developer may reasonably deem necessary to verify such claims costs charges and expenses and
- (iv) not accept or settle any claims costs charges and expenses to which this clause relates without the prior approval of the Developer as to their validity and as to the amount of the settlement

PROVIDED FURTHER THAT the Developer shall not be liable under this clause in respect of any claims costs charges and expenses attributable to the negligence of the Council or its servants or agents.

20. **VAT**

20.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax ("**VAT**") properly payable in respect thereof.

20.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

21. **Costs**

21.1 The Developer shall pay to the Council:

- (i) upon the completion of this Agreement the legal costs of the Council in connection with the preparation and completion of this Agreement.
- (ii) before any part of the Highway Works are begin the sum of £2,500 to cover the administrative and technical expenses incurred by the Council, including the cost of supervising and inspecting the Highway Works as they proceed and the issue of the Provisional Certificate and the Final Certificate.
- (iii) to pay the Director's reasonable costs of £500 per additional inspection that is beyond the obligations of the Director under this agreement as determined by the Director such decision shall be final
- (iv) to pay the Director's fees relating to any additional design checking or any other matters that are beyond the obligations of the Director under this agreement or have arisen as a result of any unforeseen changes as determined by the Director acting reasonably such decision shall be final
- (v) any sums that become payable under clause 16 or any other provisions in this Agreement

22. Effect of invalidity illegality or enforceability

If any provision in the Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.

23. Ownership

The Developer covenants with the Council that as at the date of this Agreement no person other than itself has any interest in the Development Land.

24. Dispute Resolution

Any dispute under or arising out of the operation of this Agreement may be referred to a single expert if all parties to the dispute shall agree such expert or in default of agreement to be nominated (upon the application of any party to the dispute) by the

President for the time being of the Royal Institute of Chartered Surveyors ("**the Expert**") and the following provisions shall apply:

- (i) the charges and expenses of the Expert shall be borne equally between the parties to the dispute unless the Expert shall otherwise direct
- (ii) the Expert shall give the parties to the dispute an opportunity to make representations and counter representations to him before making his decision
- (iii) the Expert shall be entitled to obtain opinions from others if he so wishes
- (iv) the Expert shall make his decision within the range of any representations made by the parties to the dispute
- (v) the Expert shall comply with any time limit or other directions agreed by the parties to the dispute on or before his appointment.

25. Notices

25.1 Where under this Agreement the Council or the Director is required to agree to approve or to express satisfaction with or to give notice of any matter such agreement approval satisfaction or notice shall be deemed to have not been given or expressed unless given or expressed in writing

25.2 The address for service of any such notice or consent or approval as aforesaid shall in the case of service upon the Council be upon the Council at its address aforesaid and marked for the attention of the Director of Law and Democratic Services or such other address for service as shall have been previously notified to the Developer and service upon the Developer shall be upon the Developer at its address aforesaid or such other address for service as shall have been previously notified to the Council.

25.3 Any notice consent or approval under this Agreement shall be deemed to have been served as follows:

- (i) if personally delivered at the time of delivery.

- (ii) if posted at the expiration of 48 (forty eight) hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom.
- (iii) if sent by facsimile transmission at the time of successful transmission and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope or that the facsimile was successfully transmitted on a tested line as the case may be.

26. Termination of Agreement

26.1 At any time 14 (fourteen) days prior to the physical commencement of the Highway Works the Developer may terminate this Agreement by giving written notice to the Council that it does not wish the Highway Works to be carried out.

26.2 On any termination under this clause the Council shall give the Developer an account of all abortive costs incurred by the Council in respect of this Agreement within 28 (twenty eight) days from the date of that account and:

- (i) if that account shows that the payments made by the Developer under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess.
- (ii) if that account shows that those costs exceed the payments made by the Developer under the foregoing provisions of this Agreement the Developer shall pay to the Council a sum equal to that excess

27. Assignment

The rights and liabilities of the Developer under this Agreement are not assignable except with the consent of the Council.

28. Interest

If any payment due under any of the provisions of this Agreement is not made on or before the date on which it is due ("**the Due Date**"), except in the case of manifest error in calculating the amount of the payment the party from whom it was due shall at the same time as making the payment pay interest to the other party at the rate of 4 (four) per cent above the Cooperative Bank plc base rate as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is made.

29. **Copyright**

The Developer hereby grants to the Council an irrevocable non exclusive royalty free licence to use and to reproduce all details plans specifications and calculations prepared or provided by the Developer in connection with the Highway Works (whether now or hereafter at any time in existence) and any works or designs of the Developer incorporated in or referred to therein provided always that such licence is granted only for any legitimate purpose related to the Highway Works.

30. **Registration**

This Agreement shall be registerable as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

31. **Contracts (Rights of Third Parties) Act 1999**

Except in relation to successor bodies and successors in title and assigns to the parties to this Agreement, it is agreed that nothing in this Agreement entitles a person who is not a party to this Agreement to enforce any of the terms of this Agreement

32. **Jurisdiction**

This Agreement is governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof the Developer and the Council have executed this deed the day and year first before written

FIRST SCHEDULE

Health and Safety file

1. A method statement from the main highway contractor
2. References as reasonably deemed necessary by the Director
3. Details of Public Liability Insurance for up to £5 million for any one single claim
4. Certificates of Competency required under the New Roads and Street Works Act 1991
5. Completed Council health and safety questionnaire to the reasonable satisfaction of the Director
6. A copy of the main highway contractor's health and safety policy
7. Any other matters which the Director or site manager considers should be contained within the Health and Safety File.

SECOND SCHEDULE

Construction Design and Management File

1. Construction details of the Road or Roads or highway
2. As built plans showing the position of services within the Road or Roads or highway including connections up to the back edge of the footway edging to be based on Topo Survey during the Maintenance Period and overlaid onto OS map
3. As built plans showing the surface water drainage for the Road or Roads or highway to be based on Topo Survey during the Maintenance Period and overlaid onto OS map
4. As built plans showing the position of street lighting columns and the associated service cables to be based on Topo Survey during the Maintenance Period and overlaid onto OS map

5. Items encountered in the Road or Roads or highways during construction and whether removed or left in situ
6. Stage 3 Road Safety Audit, exception response and works programme in line with HD19/15 and any updates.

EXECUTED as a deed by
(signature of Director)

[DEVELOPER – corporate]

acting by

..... a director,
(name of Director)

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

EXECUTED as a deed by
(signature of [Developer])

[DEVELOPER – individual]

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

EXECUTED as a deed by
(signature of Director)

[MORTGAGEE]

acting by

..... a director,
(name of Director)

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

The **COMMON SEAL** of)
SWINDON BOROUGH COUNCIL)
was hereunto affixed in the presence of:)

ANNEX

BY THIS BOND

- (1) **[DEVELOPER]** (Co. No. []) whose registered office is at [] (“the Developer”); and
- (2) **[SURETY]** (Co. No. []) whose registered office is situate [] (“the Surety”)

and their respective successors in title and assigns are bound jointly and severally to **SWINDON BOROUGH COUNCIL** of Civic Offices Swindon SN1 2JH ("the Council") for the payment to them of the sum of []

EXECUTED AS A DEED this _____ day of _____

WHEREAS

1. By an agreement dated [] relating to [] and highway works in the vicinity and made between the Developer and Swindon Borough Council ("the Agreement") the Developer covenanted with the Council to carry out the Highway Works as defined and referred to in the Agreement
2. It is intended that this Bond shall be construed as one with the Agreement
3. The Developer is to carry out the Highway Works as detailed in the Agreement and this Bond is in respect of those Highway Works only as detailed
4. At the time of entering into this Bond and on the faith thereof the Surety has agreed to concur with the Developer in this Bond for the due performance and fulfilment of the Highway Works by the Developer as defined and referred to in the Agreement
5. The Developer and the Surety are jointly and severally bound to the Council in the sum of [] ("the Bond Figure") [split as to [£]] in respect of the Highway Works
6. Without prejudice to the right of the Council to exercise any of its rights and powers (including without limitation rights and powers under the Town and Country Planning

Act 1990 or the Highways Act 1980) the Surety irrevocably and unconditionally guarantees to the Council that in the event of any breach or non-observance of any of the terms or covenants imposed on the Developer by the Agreement relating to the construction of the Highways Works the Surety shall subject to the conditions of this Bond pay to the Council on the Council's first written demand served on the Surety by post such sum of money as the Director (as that term is defined in the Agreement) ("the Director") may certify to be necessary to perform the obligations of the Developer relating to the construction of the Highway Works ("the Damages") under the Agreement up to a maximum liability of the Bond Figure PROVIDED ALWAYS that before the Council makes a written demand under this Bond it shall give the Developer written notice of the matter of default and shall take no action thereon until 28 (twenty eight) days from the date of such notice or such longer period as is agreed by the Council without the Developer remedying fully the matter in respect of which the default has arisen

7. The Surety shall be entitled to accept the Council's first written demand and any documents appended to it as conclusive evidence that the Damages as specified therein are properly due to the Council and shall be under no obligation to carry out any investigation into the same
8. The maximum aggregate liability of the Surety under this Bond shall not exceed the Bond Figure but subject to such limitation and to clause 5 the liability of the Surety to pay the Bond Figure shall be co-extensive with the liability of the Developer under the Agreement
9. The Surety shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Agreement which may be agreed between the Council and the Developer and no allowance or forbearance by the Council under or in respect of the Agreement shall in any way release reduce or affect the liability of the Surety under this Bond

10. This Bond is a continuing guarantee and shall remain in force until released and discharged in accordance with this clause 6. Whether or not this Bond shall be returned to the Surety the obligations of the Surety under this Bond shall be released and discharged absolutely upon the issue by the Director to the Developer of the Final Certificate referred to at clause 12 of the Agreement and the amount of the Bond shall be reduced by 75% upon the issue by the Director of the Provisional Certificate referred to at clause 11 of the Agreement. This discharge and reduction is at the discretion of the Director in accordance with clause 7. If this Bond is not released within 2 (two) years of the date hereof, if required to do so by the Council, a further Bond shall be entered into for a revised amount being the amount estimated by the Director (acting reasonably) to be the cost of the portion of the Highways Works which then remain to be constructed and at the date that the further Bond is provided this Bond shall be released
11. In the event that the Developer has failed to meet its obligations under the Agreement or has failed to comply with any reasonable requests from the Director relating to the obligations under the Agreement or any subsequent related matters such as remedial repairs then the Director shall be entitled to continue to hold the Bond Figure until such time that compliance has taken place.
12. The Developer having requested the execution of this Bond by the Surety undertakes to the Surety (without limitation of any other rights and remedies of the Council or the Surety under this Bond) to perform and discharge the obligations relating to the Highway Works set out in the Agreement
13. This Bond and the benefits thereof shall not be transferred or assigned without the prior written consent of the Surety and the Developer
14. This Bond shall be governed by and construed in accordance with the laws of England and Wales and only the Courts of England and Wales shall have jurisdiction hereunder

IN WITNESS whereof the Developer the Surety and the Council have today executed and delivered this Bond as a Deed

EXECUTED as a deed by
[DEVELOPER – corporate] (signature of Director)

acting by

..... a director,
(name of Director)

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

EXECUTED as a deed by
[DEVELOPER – individual] (signature of [Developer])

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

EXECUTED as a deed by
(signature of Director)

[SURETY]

acting by

..... a director,
(name of Director)

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

The **COMMON SEAL** of)
SWINDON BOROUGH COUNCIL)
was hereunto affixed in the presence of:)

DATED

201[]

[OWNER] (1)

and

[MORTGAGEE] (2)

and

SWINDON BOROUGH COUNCIL (2)

SECTION 278 HIGHWAYS AGREEMENT

under Sections 38, 171, 251 and 278 of the Highways Act 1980
relating to highway works on and in the vicinity of the
land at [], Swindon (AGR [])

S. Taylor
Director of Law and Democratic Services
Swindon Borough Council
Civic Offices
Swindon
SN1 2JH

BETWEEN

- (1) **[DEVELOPER]** (Co. No. []) whose registered office is at [] ("the Developer")
- (2) **[[MORTGAGEE]** (Co. No. []) whose registered office is at [] ("the Mortgagee")]
- (3) **SWINDON BOROUGH COUNCIL** of Civic Offices Euclid Street Swindon SN1 2JH ("the Council")

WHEREAS:

- (1) The Developer is the registered proprietor with Freehold Title Absolute of the Development Land which is registered with the Land Registry under title number []
- (2) The Developer has been granted planning permission under reference [] to carry out the Development and have applied to the Council under reference number AGR[] to carry out the works further described in this Agreement
- (3) The Council is the local highway authority for the Borough of Swindon including the highway known as [], Swindon
- (4) The Council considers that certain works should be carried out to benefit the public which said works are indicated in outline on the Drawing and described generally in the First Schedule
- (5) The Developer accepts that the Development necessitates the carrying out of the works hereinbefore referred to and has agreed with the Council to carry them out in accordance with the covenants and the conditions which hereinafter appear
- (6) [The Mortgagee is the registered proprietor of the charge dated [] referred to in entry no [] of the charges register of each of Title number [] and has agreed to enter into this agreement to grant the consent contained in clause 4]
- (7) The Covenants contained herein shall be of immediate effect

1. Definitions

- 1.1 It is hereby agreed by the parties that in this Agreement the following expressions shall have the following meaning:

“Accommodation Works”	means any works determined by the Director that are required in order to facilitate the Works.
["Dedication Land"]	means the land shown on the Drawing coloured pink or such other area of land as is agreed by the Council]
“Development”	means the development of the Development Land
“Development Land”	means the land shown edged [and hatched edged red] on the Drawing and known [], Swindon and registered under title number []
“Director”	means the Head of Highways and Transport for the time being of the Council or any such person replacing the responsibilities held by this position
“Drawing”	means the drawing[s] numbered [] and attached hereto
“Final Works Completion Date”	means [] months from the date of issue of the Provisional Certificate
“Force Majeure Event”	means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic;

- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors, and
- (i) interruption or failure of utility service

“the Key Stages”

means the 10 stages of the development listed at clause 6.1 below

“Additional Council’s Costs”

means a sum calculated and falling due in accordance with clause **Error! Reference source not found.** being a sum arising from the Developer’s delay and not a penalty

“Provisional Works Completion Date”	means [] months from the date of this Agreement
“Remedial Works”	means any such works as identified by the Director during any inspections
“Rate of Additional Council’s Costs”	means the sum of £[] per [month/week] such sum being a conclusive and agreed estimate between the parties of the damages likely to be suffered by the Council if the whole of the Works or Remedial Works are not completed within a reasonable time as determined by the Director acting reasonably
“Works”	means the works described generally in the First Schedule, the Second Schedule, indicated in outline on the Drawing and the Key Stages, where applicable

- 1.2 Where the approval or agreement of the Council is required for any purpose under or in connection with the terms hereof such approval or agreement shall not be unreasonably withheld or delayed and where reference is made within this Agreement to any requirement, request or act by or of the Council there shall be implied on the Council an obligation to act reasonably.
- 1.3 Where in this Agreement reference is made to a clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Agreement or in the case of a plan a plan annexed to this Agreement.
- 1.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 1.5 Words importing masculine gender include the feminine and neuter genders and words denoting persons include companies corporations and firms and all such words shall be construed interchangeably in that matter.
- 1.6 Any reference to an Act of Parliament shall include any modification extension or re enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 1.7 Headings contained in this Agreement are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of this Agreement to which they relate.
- 1.8 The Council may at any time prior to the issue of the Provisional Certificate at the Developer's expense make such reasonable alterations to the Highway Works as it may consider desirable or necessary. Insofar as may be reasonably practicable the Council shall give the Developer an opportunity to comment on any alterations it proposes to make.

2. **Statutory Provisions**

NOW IN PURSUANCE of Section 111 of the Local Government Act 1972, Sections 38, 171, 251 and 278 of the Highways Act 1980 as amended and Section 106 of the Town and Country Planning Act 1990 as amended and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other powers enabling powers **IT IS HEREBY AGREED AND DECLARED** as follows

3. **[Dedication**

The Developer on the issue of the Final Certificate dedicates the Dedication Land to the public to the intent that the same shall become public highway maintainable at public expense.]

4. **[Mortgagee's Consent**

The Mortgagee consents to the terms of this agreement but without liability save in the event that the Mortgagee becomes successor in title to the Developer at any time before the Developer has fully performed all its obligations contained in this agreement.]

5. Inspections

- 5.1 The parties hereby agree that the Director shall only be responsible for a maximum of 3 inspections and 3 re-inspections, which are not Key Stage Inspections, and for any additional inspections that shall be required the Developer shall pay an additional charge in accordance with clause 25.
- 5.2 The Director shall only be obligated to carry out an inspection, which is not a Key Stage Inspection, upon the Developer serving a written notice to the Director and upon receipt of this written notice then the Director shall carry out the inspection within a period of 28 days.

6. The Key Stages

- 6.1 The key stages of a development in accordance with this agreement are:
- (i) highway drainage;
 - (ii) site investigation/formation/earthworks;
 - (iii) carriageway sub base;
 - (iv) kerbs & channels;
 - (v) carriageway base & binder;
 - (vi) footways & edgings;
 - (vii) block paved areas;
 - (viii) carriageway surface course;
 - (ix) Provisional Certificate, and
 - (x) Final Certificate

- 6.2 The Developer is to name a representative (“the Representative”) to act as point of contact on behalf of the Developer in relation to the administration of the Key Stages process on, or as soon as reasonably practicable after, the date of this Agreement
- 6.3 The Director will provide the Representative the relevant Key Stages documentation, as may vary from time to time
- 6.4 The Developer or the Representative must inform the Director in writing within 5 days from the completion of any of the Key Stages (“the Key Stage Completion Date”) notifying the Director of the completion of the Key Stage completed, and invite the Director to the Land to inspect and review the completion of the works relating to that Key Stage (Key Stage Inspection)
- 6.5 The Key Stage Inspection shall be carried out following a minimum period of 5 working days from the date the Director is notified by the Developer or the Representative of the Key Stage Completion Date.
- 6.6 Following the Key Stage Inspection, the Director may:
- (i) if the Director deems it satisfactory, sign off the applicable Key Stage (“the Key Stage Sign Off”) and confirm this to the Developer or Representative; or
 - (ii) if the Director deems it unsatisfactory, give notice to the Developer or Representative of any failure of the relevant Key Stage (“the Failure Notice”), which shall contain reasons for the failure and the works required to obtain the Key Stage Sign Off.
- 6.7 Following a Key Stage Sign Off, the Developer shall begin works in relation to the next consecutive Key Stage that is applicable in accordance with clause 6, forthwith, and ensure the requirements of clauses 6.4 and 6.5 are complied with every time works in relation to a Key Stage are completed.
- 6.8 Upon the receipt of the Failure Notice by the Developer or Representative, the Developer shall carry out the works required in accordance with the Failure Notice and,

as soon as the works identified in the Failure Notice have been complied with, arrange a Key Stage Inspection in accordance with clauses 6.4 and 6.5.

- 6.9 Should the Developer receive a Failure Notice on two occasions for the same Key Stage, the Developer shall be liable to pay an additional charge in accordance with the Council's policy or as identified in this Agreement.
- 6.10 The Developer shall not start any works in relation to a Key Stage until it has a Key Stage Sign Off for the preceding applicable Key Stage at clause 6.1 PROVIDED THAT should the Developer make a request to the Director for retrospective inspections, where a Key Stage Sign Off has not been achieved before commencing works in relation to the next consecutive Key Stage that is applicable, the Developer shall be liable for the payment of all costs incurred by the Director following such retrospective request up to the issuing of a Key Stage Sign Off.
- 6.11 In addition and irrespective of any retrospective Key Stage Inspections or the outcome of such inspections, should the Developer fail to obtain the relevant Key Stage Sign Off before commencing the next consecutive Key Stage that is applicable, the Director will require the Developer to pay a sum (as calculated in accordance with the Key Stage documentation) to the Council to cover possible future risk to the Council associated with the lack of inspection and/or testing at the correct stage.
- 6.12 The Developer is responsible for ensuring that each Key Stage Sign Off is achieved at the appropriate time.

7. Obligations

7.1 The Developer hereby covenants with the Council:

- (i) at its expense to carry out:
 - (a) the Works
 - (b) such other ancillary works as the Director may reasonably require
 - (c) any accommodation works and

- (d) works which may as a consequence of (a), (b) or (c) be necessary to statutory undertakers' and telecommunications apparatus and all other equipment under in or over the highway

all which said Works are hereinafter referred to as "**the Highway Works**" and are to be carried out to the reasonable satisfaction of the Director and completed (subject only to a Force Majeure Event, or to other delays occasioned by circumstances beyond the Developer's control) by the Provisional Works Completion Date.

- (ii) before commencing any part of the Highway Works to submit to the Director for approval:

- (a) such additional detailed drawings plans and specifications as the Director may reasonably require
- (b) a plan showing existing/additional highways including the route of any drains
- (c) the name and address of the contractor whom the Developer proposes to employ for carrying out the Highway Works
- (d) A completed Health & Safety Questionnaire from the Developer's appointed contractor
- (e) a programme for carrying out the Highway Works ("**the Programme**")
- (f) a completed Stage 1 and Stage 2 Safety Audit [to HD19/15]

and the Developer is not to commence any part of the Highway Works until the Director has approved all such matters in writing ("**the Letter of Technical Approval**").

- (iii) not to permit any building constructed on the Development Land to be occupied or used for trading until the matters contained in the Second Schedule hereto

have been carried out to permit vehicular traffic to enter and leave the Development Land safely.

- (iv) not to permit any vehicular traffic to enter or leave the Development Land other than by way of the Highway Works save only that during construction of the Highway Works an alternative route agreed with the Director may be used.
- (v) to complete the Highway Works in accordance with the Drawing, the Programme, Letter of Technical Approval and any other plans drawings and specifications approved under Clause 7.1 and any reasonable instructions as to the materials or method of working given by the Director to his reasonable satisfaction and obtain his Provisional Certificate of such completion in accordance with clause 14 below and to obtain his Final Certificate in accordance with clause 15 below by the Final Works Completion Date save only that if completion by such dates becomes impossible by reason of circumstances beyond the control of the Developer the date for completion shall be such later date as may be agreed between the Director and the Developer having regard to the circumstances.
- (vi) to employ the contractor approved under sub-clause 7.1(ii)(c) for carrying out the Highway Works.
- (vii) to provide wheel-cleaning facilities of a nature approved by the Director on the Development Land before commencing any part of the Highway Works and to ensure that during the period from the commencement of the Highway Works until the completion of the Highway Works under clause 15 hereof or such later date as the Director shall notify in writing to the Developer before leaving the Development Land the wheels of all vehicles are sufficiently cleaned to prevent mud from the Development Land being deposited on the highway **PROVIDED THAT** any later date notified by the Director as aforesaid shall not be later than such date as he considers that a stage of development on the Development Land will have been reached when there will no longer be a risk of mud being

deposited on the highway in consequence of construction work being carried out on the Development Land.

- (viii) if required by the Director so to do to provide temporary traffic signal controls such controls to be of a type which meet Department for Transport requirements.
 - (ix) to construct all surface water drains and sewers to an adoptable standard.
 - (x) to complete and provide to the Council a condition survey of the existing highway in the form of photographs and video footage extending to a minimum of 200 meters from the work site PROVIDED THAT the Developer invites the Director to attend the condition survey inspection and provide copies of the photographs and video footage to the Director, which the Director shall use to determine whether any damage has been caused to the existing highway as a result of the construction works which are to be carried out by the Developer which the Council may demand to be remedied by the Developer or its works subcontractor at their cost before the issue of the Provisional Certificate.
 - (xi) to comply with all other terms and conditions of this Agreement.
8. Before any part of the Highway Works is begun the Developer shall:
- (i) serve on the Director not less than 2 (two) weeks' notice subsequent to the issue of the Letter of Technical Approval of its intention to commence the Highway Works.
 - (ii) deposit with the Council the sum of £[] ("**the Deposit**") no later than the date for commencement of the Highway Works for securing the performance of its obligations hereunder and the Deposit shall be reduced by [75] % on issue of the Provisional Certificate and then fully repaid when the Highway Works have become maintainable at the public expense in accordance with this Agreement hereof.

OR

enter into and complete a bond in substantially the form annexed hereto (“**the Bond**”) in the sum of £[32,142.50] no later than the date for commencement of the Highway Works for securing the performance of its obligations hereunder and the Bond may be reduced by 75% on issue of the relevant Provisional Certificate and then cancelled when the Highway Works or the relevant part have become maintainable at the public expense in accordance with this Agreement hereof.

- (iii) pay to the Director of Law and Democratic Services of the Council the sum referred to in clause 25 below.
- (iv) make all necessary arrangements for carrying out the Highway Works including the service of any necessary notices under the provisions of the New Road and Street Works Act 1991 and in particular in relation to statutory undertakers' and telecommunications apparatus and all other equipment over or under the highway and for enabling it to comply with the provisions of this Agreement.
- (v) deliver to the Director the Health and Safety File containing that information specified in the Third Schedule.

9. The Developer shall throughout the period from the commencement of the Highways Works until the issue of the Provisional Certificate or such later date as the Director shall reasonably notify in writing to the Developer ensure that:

- (i) adequate warning signs lights and cones are provided and maintained in good working order in accordance with chapter 8 of the Traffic Signs Manual published by her Majesty's Stationery Office (or any other replacement code agreed by the Council).
- (ii) any mud from the Development or the Highway Works which may be deposited on the highway maintainable at the public expense by vehicles leaving the Development Land or the Highway Works is removed at the end of each working day.

- (iii) any temporary traffic signal controls required by the Director under clause 7.1(viii) are maintained in proper working order.
- 10. If at any time the Developer fails to provide adequate warning signs lights or cones or any such provided are not in good working order or mud is deposited on the highway maintainable at the public expense and not removed or such other circumstance as the Director considers requires remedy as follows then the Director may take such action as he reasonably considers necessary to remedy the failure and the Developer shall be responsible for the reasonable costs of the Director in taking and fully implementing such action
- 11. Until the issue of the Final Certificate pursuant to clause 15 the Developer hereby grants to the Council its servants and agents:
 - (i) free access to every part of the Highway Works for the purposes of inspecting the same as they proceed and inspecting and testing all materials used or intended to be used therein and the cost of reasonable analysis and test in connection therewith shall be at the expense of the Developer.
 - (ii) the right to enter upon such parts of the Development Land as it is necessary so to do in furtherance of the terms of this Agreement.
- 12. The Council hereby licenses the Developer to enter upon such part of the highway as is reasonably required and do such works to the highway as are necessary in carrying out the terms of this Agreement.
- 13. The Developer shall comply with the reasonable timescales set by the Director to complete any Remedial Works (such timescales are to be a minimum of 3 months) prior to the issue of the Final Certificate AND any failure to comply will result in the Developer being responsible for Additional Council's Costs in accordance with clause **Error! Reference source not found.**
- 14. When the Highway Works have been completed in accordance with this Agreement (to be determined by way of a formal inspection of all items including CCTV of the highway

drainage and completion of remedials) the Director will issue his provisional certificate of completion ("**the Provisional Certificate**") and thereafter the Developer shall continue to maintain the Highway Works until the final certificate of completion is issued in accordance with clause 15 below ("**the Final Certificate**"). If the Works are constructed in phases the Director may authorise the phasing of the issuing of the Provisional Certificate (and subsequently the Final Certificate) with appropriate reductions in the Bond which the Director may agree.

15. The Final Certificate shall be issued by the Director when the following conditions have been satisfied:
- (i) 12 (twelve) months at least shall have elapsed since the date of the issue of the Provisional Certificate ("**the Maintenance Period**").
 - (ii) all defects that may have become apparent during the Maintenance Period (to be determined by way of a formal inspection of all items including CCTV of highway drainage) have been remedied and made good by the Developer at its own expense and to the reasonable satisfaction of the Director such defects to include damage or excessive wear caused to the Highway Works during the Maintenance Period.
 - (iii) the cleansing of all sewers gullies catchpits and manholes and the sweeping of the carriageway and footpaths and the cutting of grass to the reasonable satisfaction of the Director.
 - (iv) the Highway Works have been directly connected to a carriageway which is a highway maintainable at the public expense.
 - (v) the Highway Works have been provided with proper traffic signs road markings and street name plates and furniture to the reasonable satisfaction of the Director.

- (vi) where the street lighting is to be maintained by a council other than the Council as highway authority the Developer has produced a certificate from the said lighting authority as to the satisfactory completion of the same.
 - (vii) where the surface water sewers other than gullies and connections draining the Highway Works are to be vested in and under the control of a council other than the Council or the Water Authority in accordance with the provisions of the Water Industry Act 1991 written confirmation has been received by the Council from the appropriate authority that the sewers have been constructed to their satisfaction and have been adopted by that authority.
 - (viii) the Developer has delivered to the Director drawings which the Director agrees (such agreement not to be unreasonably withheld) show the Highway Works as constructed in accordance with this Agreement.
 - (ix) the Developer has delivered to the Council the Construction Design and Management file in relation to the Highway Works in accordance with the Construction (Design and Management) Regulations 2015 containing those matters set out in the Fourth Schedule hereto.
16. The Council shall from the date of the Final Certificate maintain that part of the Highway Works which constitute alterations and additions to the existing publicly maintainable highway and adopt the remaining Highway Works as part of the highway maintainable at the public expense.
17. Without prejudice to any other remedy of the Council in the event of any default by the Developer in preparing for or carrying out the Highway Works or any failure by the Developer to comply with any requirement of the Council as set out in this Agreement in relation to such works the Council may do all such things including the preparation of plans drawings and specifications and the carrying out of or remedying defects in works as it may deem necessary to secure proper construction of the Highway Works and the Developer shall pay to the Council the full cost of taking such action including

all design supervision construction and administrative costs **PROVIDED ALWAYS** that before taking any such action as aforesaid the Council shall give to the Developer written notice of the matter in default and shall take no action thereon until 28 (twenty eight) days from the date of such notice or such longer period as is agreed by the Council shall have elapsed without the Developer or its successors in title remedying fully the matter in respect of which the default has arisen.

18. This Agreement does not authorise interference with statutory undertakers' apparatus or works without their consent nor the installation or use of telecommunication apparatus without the consent of the owner nor entry upon nor doing works to or on any land other than the highway.
19. If the parking facilities provided as part of the Development prove insufficient (as shall be conclusively proved by the parking of vehicles associated with the use of the Development on the public highway) then the Developer shall pay on demand the sum of £6,000 (one thousand pounds) towards the Council's costs in advertising, associated signs, lines and advertising and implementing a traffic regulation order restricting the waiting of vehicles on the new road to be constructed as part of the Highway Works.

20. Additional Council's Costs

20.1 The Developer and the Council agrees as follows:

- (i) that in the event the Developer has not completed the Highway Works and any Remedial Works which are required in order to issue the Provisional Certificate by the date prescribed by the Director acting reasonably [(AND for the avoidance of doubt such date shall be [] from commencement of the Highway Works] then Additional Council's Costs shall become due at the Rate of Additional Council's Costs and shall be paid upon demand without delay by the Developer to the Council.
- (ii) that Additional Council's Costs payable by the Developer to the Council shall be the sum equivalent to the Rate of Additional Council's Costs applied for each

whole day/week for the period between the reasonable date prescribed by the Director and the date that the Highway Works are actually completed [up to a maximum of £ [] – delete if no instruction on maximum sum].

- (iii) In the event that the Developer has not completed the Highway Works and any Remedial Works by the date prescribed in this clause 20.1(i) and such delay has been solely caused by a Force Majeure Event (as determined by the Council acting reasonably) then the Council agrees that the Developer will be given further time (such period to be equal to the period of time of the Force Majeure Event and the consequential delay it has caused as determined by the Council acting reasonably) to complete the Highway Works and during this period the Additional Council's Costs shall not be due in accordance with the provisions of this clause.
- (iv) Upon expiration of the additional period given to the Developer in accordance with this clause 20.1(iii) then the Additional Council's Costs shall become due to the Council in accordance with clause 20.1(i)(i) and 20.1(ii).

21. Workmanship

The Developer shall use reasonable endeavours to diligently carry out and complete the Highway Works at no cost to the Council in a good and workmanlike manner with good quality materials of their respective kinds and in accordance in all respects with the Programme, the specification the drawings and the Developer's obligations hereunder and for that purpose shall procure that the design of the Highway Works including the selection of any specification for any kinds and standards of materials and goods and workmanship to be used in the construction of the Highway Works so far as not described or stated herein are all carried out with reasonable care and skill.

22. Compensation

- 23. The Developer hereby undertakes and agrees with the Council that in the event of any claim for compensation or costs or charges arising in connection with or incidental to or

in consequence of the carrying out of the Highway Works including any such whether mandatory or discretionary which may be incurred by virtue of any enactment or statutory instrument and not otherwise hereby provided it will hold the Council fully indemnified from and against all claims charges costs and expenses in connection therewith or arising therefrom **PROVIDED ALWAYS THAT** the Council shall:

- (i) notify the Developer immediately upon receipt of any claims costs charges and expenses in respect of which it intends to make a claim on the Developer under this clause
- (ii) at all times after that date keep the Developer fully informed
- (iii) permit the Developer to make such investigations and/or tests as the Developer may reasonably deem necessary to verify such claims costs charges and expenses and
- (iv) not accept or settle any claims costs charges and expenses to which this clause relates without the prior approval of the Developer as to their validity and as to the amount of the settlement

PROVIDED FURTHER THAT the Developer shall not be liable under this clause in respect of any claims costs charges and expenses attributable to the negligence of the Council or its servants or agents.

24. VAT

24.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax ("**VAT**") properly payable in respect thereof.

24.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

25. **Costs**

25.1 The Developer shall pay to the Council:

- (i) upon the completion of this Agreement the legal costs of the Council in connection with the preparation and completion of this Agreement.
- (ii) before any part of the Highway Works are begin the sum of £[] to cover the administrative and technical expenses incurred by the Council, including the cost of supervising and inspecting the Highway Works as they proceed and the issue of the Provisional Certificate and the Final Certificate.
- (iii) to pay the Director's reasonable costs of £500 per additional inspection that is beyond the obligations of the Director under this agreement as determined by the Director such decision shall be final
- (iv) to pay the Director's fees relating to any additional design checking or any other matters that are beyond the obligations of the Director under this agreement or have arisen as a result of any unforeseen changes as determined by the Director acting reasonably such decision shall be final
- (v) all costs associated with the failure to comply with any of the Key Stages
- (vi) the Council's full legal and administrative costs incurred in the preparation and/or making of traffic regulation orders reasonably required whether implemented or not to regulate traffic entering or leaving the Development Land or otherwise occasioned or necessitated by construction of the Development and the full cost of such traffic signs and markings (including labour costs) as the Director shall reasonably deem necessary to give effect to the same as and when any costs have been incurred and within 28 (twenty eight) days of receipt by the Developer from the Council of invoices therefor.
- (vii) any sums that become payable under clause 19 or any other provisions in this Agreement

26. **Effect of invalidity illegality or enforceability**

If any provision in the Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.

27. **Ownership**

The Developer covenants with the Council that as at the date of this Agreement no person other than itself has any interest in the Development Land.

28. **Dispute Resolution**

Any dispute under or arising out of the operation of this Agreement may be referred to a single expert if all parties to the dispute shall agree such expert or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Royal Institute of Chartered Surveyors ("**the Expert**") and the following provisions shall apply:

- (i) the charges and expenses of the Expert shall be borne equally between the parties to the dispute unless the Expert shall otherwise direct
- (ii) the Expert shall give the parties to the dispute an opportunity to make representations and counter representations to him before making his decision
- (iii) the Expert shall be entitled to obtain opinions from others if he so wishes
- (iv) the Expert shall make his decision within the range of any representations made by the parties to the dispute
- (v) the Expert shall comply with any time limit or other directions agreed by the parties to the dispute on or before his appointment.

29. **Notices**

29.1 Where under this Agreement the Council or the Director is required to agree to approve or to express satisfaction with or to give notice of any matter such agreement approval

satisfaction or notice shall be deemed to have not been given or expressed unless given or expressed in writing

29.2 The address for service of any such notice or consent or approval as aforesaid shall in the case of service upon the Council be upon the Council at its address aforesaid and marked for the attention of the Director of Law and Democratic Services or such other address for service as shall have been previously notified to the Developer and service upon the Developer shall be upon the Developer at its address aforesaid or such other address for service as shall have been previously notified to the Council.

29.3 Any notice consent or approval under this Agreement shall be deemed to have been served as follows:

- (i) if personally delivered at the time of delivery.
- (ii) if posted at the expiration of 48 (forty eight) hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom.
- (iii) if sent by facsimile transmission at the time of successful transmission and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope or that the facsimile was successfully transmitted on a tested line as the case may be.

30. **Termination of Agreement**

30.1 At any time 14 (fourteen) days prior to the physical commencement of the Highway Works the Developer may terminate this Agreement by giving written notice to the Council that it does not wish the Highway Works to be carried out.

30.2 On any termination under this clause the Council shall give the Developer an account of all abortive costs incurred by the Council in respect of this Agreement within 28 (twenty eight) days from the date of that account and:

- (i) if that account shows that the payments made by the Developer under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess.
- (ii) if that account shows that those costs exceed the payments made by the Developer under the foregoing provisions of this Agreement the Developer shall pay to the Council a sum equal to that excess

31. Assignment

The rights and liabilities of the Developer under this Agreement are not assignable except with the consent of the Council.

32. Interest

If any payment due under any of the provisions of this Agreement is not made on or before the date on which it is due ("**the Due Date**"), except in the case of manifest error in calculating the amount of the payment the party from whom it was due shall at the same time as making the payment pay interest to the other party at the rate of 4 (four) per cent above the Cooperative Bank plc base rate as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is made.

33. Copyright

The Developer hereby grants to the Council an irrevocable non exclusive royalty free licence to use and to reproduce all details plans specifications and calculations prepared or provided by the Developer in connection with the Highway Works (whether now or hereafter at any time in existence) and any works or designs of the Developer

incorporated in or referred to therein provided always that such licence is granted only for any legitimate purpose related to the Highway Works.

34. Registration

This Agreement shall be registerable as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

35. Contracts (Rights of Third Parties) Act 1999

Except in relation to successor bodies and successors in title and assigns to the parties to this Agreement, it is agreed that nothing in this Agreement entitles a person who is not a party to this Agreement to enforce any of the terms of this Agreement

36. Jurisdiction

This Agreement is governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof the Developer and the Council have executed this deed the day and year first before written

FIRST SCHEDULE

Brief description of the Works

Carry out the following highway improvement works and construction of new highway as generally indicated on the Drawing, which includes, but is not limited to:

1. Works to create a new junction access to be completed prior to the commencement of Development and to include but not limited to (if applicable):
 - (i) Trees to be cut back to create visibility splay
 - (ii) Adjust and form new footway to the line of the visibility splay
 - (iii) Provide highway drainage
 - (iv) Carry out alterations to existing highway drainage as necessary
 - (v) Create uncontrolled pedestrian crossing (if any)
 - (vi) Create a dedicate right turn lane into the Development site within the new highway
 - (vii) Surface the land coloured yellow and hatched over on Drawing to the reasonable satisfaction of the Director
 - (viii) Street lighting
 - (ix) Gullies and connections
 - (x) Carriageway construction
 - (xi) Footway construction
 - (xii) White lining
 - (xiii) Re-grading of verge
 - (xiv) Topsoil and seed verge.
2. Highway improvement works and construction of new highway as generally indicated on the Drawing the works to consist of off-site highway improvement works to the road

the works to be completed prior to occupation of the Development and to include but not be limited to:

- (i) Gullies and connections
- (ii) Kerb realignment where necessary (if required)
- (iii) Vegetation to be cut back (if required)
- (iv) Resurface and regrade carriageway.

SECOND SCHEDULE

Works to be completed before occupancy

1. All highway drainage
2. All other drainage contained in the highway
3. All kerbing including kerb foundations and where appropriate including lowering at vehicle crossings and pram-ramps
4. Carriageway sub-base road base and any supporting structures thereto, carriageway base course
5. Vision splays and verges
6. Pedestrian ways
7. Street lighting and street furniture
8. Road Marking and signage
9. Temporary road markings.

THIRD SCHEDULE

Health and Safety file

1. A method statement from the main highway contractor

2. References as reasonably deemed necessary by the Director
3. Details of Public Liability Insurance for up to £5 million for any one single claim
4. Certificates of Competency required under the New Roads and Street Works Act 1991
5. Completed Council health and safety questionnaire to the reasonable satisfaction of the Director
6. A copy of the main highway contractor's health and safety policy
7. Any other matters which the Director or site manager considers should be contained within the Health and Safety File.

FOURTH SCHEDULE

Construction Design and Management File

1. Construction details of the Road or Roads or highway
2. As built plans showing the position of services within the Road or Roads or highway including connections up to the back edge of the footway edging to be based on Topo Survey during the Maintenance Period and overlaid onto OS map
3. As built plans showing the surface water drainage for the Road or Roads or highway to be based on Topo Survey during the Maintenance Period and overlaid onto OS map
4. As built plans showing the position of street lighting columns and the associated service cables to be based on Topo Survey during the Maintenance Period and overlaid onto OS map
5. Items encountered in the Road or Roads or highways during construction and whether removed or left in situ
6. Stage 3 Road Safety Audit, exception response and works programme in line with HD19/15 and any updates.

EXECUTED as a deed by
(signature of Director)

[DEVELOPER – corporate]

acting by

..... a director,
(name of Director)

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

EXECUTED as a deed by
(signature of [Developer])

[DEVELOPER – individual]

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

EXECUTED as a deed by
(signature of Director)

[MORTGAGEE]

acting by

..... a director,
(name of Director)

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

The **COMMON SEAL** of)

SWINDON BOROUGH COUNCIL)

was hereunto affixed in the presence of:)

ANNEX

BY THIS BOND

- (1) **[DEVELOPER]** (Co. No. []) whose registered office is at [] (“the Developer”); and
- (2) **[SURETY]** (Co. No. []) whose registered office is situate [] (“the Surety”)

and their respective successors in title and assigns are bound jointly and severally to **SWINDON BOROUGH COUNCIL** of Civic Offices Swindon SN1 2JH ("the Council") for the payment to them of the sum of []

EXECUTED AS A DEED this _____ day of _____

WHEREAS

1. By an agreement dated [] relating to [] and highway works in the vicinity and made between the Developer and Swindon Borough Council ("the Agreement") the Developer covenanted with the Council to carry out the Highway Works as defined and referred to in the Agreement
2. It is intended that this Bond shall be construed as one with the Agreement
3. The Developer is to carry out the Highway Works as detailed in the Agreement and this Bond is in respect of those Highway Works only as detailed
4. At the time of entering into this Bond and on the faith thereof the Surety has agreed to concur with the Developer in this Bond for the due performance and fulfilment of the Highway Works by the Developer as defined and referred to in the Agreement
5. The Developer and the Surety are jointly and severally bound to the Council in the sum of [] ("the Bond Figure") [split as to [£]] in respect of the Highway Works
6. Without prejudice to the right of the Council to exercise any of its rights and powers (including without limitation rights and powers under the Town and Country Planning

Act 1990 or the Highways Act 1980) the Surety irrevocably and unconditionally guarantees to the Council that in the event of any breach or non-observance of any of the terms or covenants imposed on the Developer by the Agreement relating to the construction of the Highways Works the Surety shall subject to the conditions of this Bond pay to the Council on the Council's first written demand served on the Surety by post such sum of money as the Director (as that term is defined in the Agreement) ("the Director") may certify to be necessary to perform the obligations of the Developer relating to the construction of the Highway Works ("the Damages") under the Agreement up to a maximum liability of the Bond Figure PROVIDED ALWAYS that before the Council makes a written demand under this Bond it shall give the Developer written notice of the matter of default and shall take no action thereon until 28 (twenty eight) days from the date of such notice or such longer period as is agreed by the Council without the Developer remedying fully the matter in respect of which the default has arisen

7. The Surety shall be entitled to accept the Council's first written demand and any documents appended to it as conclusive evidence that the Damages as specified therein are properly due to the Council and shall be under no obligation to carry out any investigation into the same
8. The maximum aggregate liability of the Surety under this Bond shall not exceed the Bond Figure but subject to such limitation and to clause 5 the liability of the Surety to pay the Bond Figure shall be co-extensive with the liability of the Developer under the Agreement
9. The Surety shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Agreement which may be agreed between the Council and the Developer and no allowance or forbearance by the Council under or in respect of the Agreement shall in any way release reduce or affect the liability of the Surety under this Bond

10. This Bond is a continuing guarantee and shall remain in force until released and discharged in accordance with this clause 6. Whether or not this Bond shall be returned to the Surety the obligations of the Surety under this Bond shall be released and discharged absolutely upon the issue by the Director to the Developer of the Final Certificate referred to at clause 15 of the Agreement and the amount of the Bond shall be reduced by 75% upon the issue by the Director of the Provisional Certificate referred to at clause 14 of the Agreement. This discharge and reduction is at the discretion of the Director in accordance with clause 7. If this Bond is not released within 2 (two) years of the date hereof, if required to do so by the Council, a further Bond shall be entered into for a revised amount being the amount estimated by the Director (acting reasonably) to be the cost of the portion of the Highways Works which then remain to be constructed and at the date that the further Bond is provided this Bond shall be released
11. In the event that the Developer has failed to meet its obligations under the Agreement or has failed to comply with any reasonable requests from the Director relating to the obligations under the Agreement or any subsequent related matters such as remedial repairs then the Director shall be entitled to continue to hold the Bond Figure until such time that compliance has taken place.
12. The Developer having requested the execution of this Bond by the Surety undertakes to the Surety (without limitation of any other rights and remedies of the Council or the Surety under this Bond) to perform and discharge the obligations relating to the Highway Works set out in the Agreement
13. This Bond and the benefits thereof shall not be transferred or assigned without the prior written consent of the Surety and the Developer
14. This Bond shall be governed by and construed in accordance with the laws of England and Wales and only the Courts of England and Wales shall have jurisdiction hereunder

IN WITNESS whereof the Developer the Surety and the Council have today executed and delivered this Bond as a Deed

EXECUTED as a deed by
[DEVELOPER – corporate] (signature of Director)

acting by

..... a director,
(name of Director)

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

EXECUTED as a deed by
[DEVELOPER – individual] (signature of [Developer])

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

EXECUTED as a deed by
(signature of Director)

[SURETY]

acting by

..... a director,
(name of Director)

in the presence of:

.....
(signature of Witness)

Name of Witness

Address of Witness

.....

Occupation of

The **COMMON SEAL** of)
SWINDON BOROUGH COUNCIL)
was hereunto affixed in the presence of:)