0 0877/25

Dated 20th of August **2025**

1. Parties:

1.1 the "**Developer**" means PERSIMMON HOMES LIMITED (Company Registration No. 04108747) whose registered office is at Persimmon House, Fulford, York, YO19 4FE

1.2 the "**Mortgagee**" means MICHAEL GUY TRISTRAM of Stable Cottage, Binsted, Arundel BN18 0LL and of The Sompting Settlement, Sompting Estate Office, Middle Yard Barn, Lambleys Lane, Worthing BN14 9JX and FRANCES ROSEMARY TRISTRAM of The Old Rectory, Binsted, Arundel BN18 0LL and of The Sompting Settlement, Sompting Estate Office, Middle Yard Barn, Lambleys Lane, Worthing BN14 9JX and RUTH ELIZABETH KENWARD of Brown Cottage, Glynleigh Road, Hankham, Pevensey BN24 5BJ and of The Sompting Settlement, Sompting Estate Office, Middle Yard Barn, Lambleys Lane, Worthing BN14 9JX

1.3 the "**Council**" means WEST SUSSEX COUNTY COUNCIL of County Hall Chichester West Sussex PO19 1RQ

1.4 the "**Surety**" means NATIONAL HOUSE-BUILDING COUNCIL of Nhbc House Davy Avenue, Knowlhill, Milton Keynes, Bucks, MK5 8FP

2. Interpretation:

2.1 **IN** this Agreement unless otherwise stated the following expressions where the context so admits shall have the following meanings:

2.2 The "**CDM**" means the Construction (Design and Management) Regulations 2015 and any successor legislation

2.3 a "**Competent Person in Health and Safety**" means an employee/contractor/ consultant with health and safety training experience and qualifications

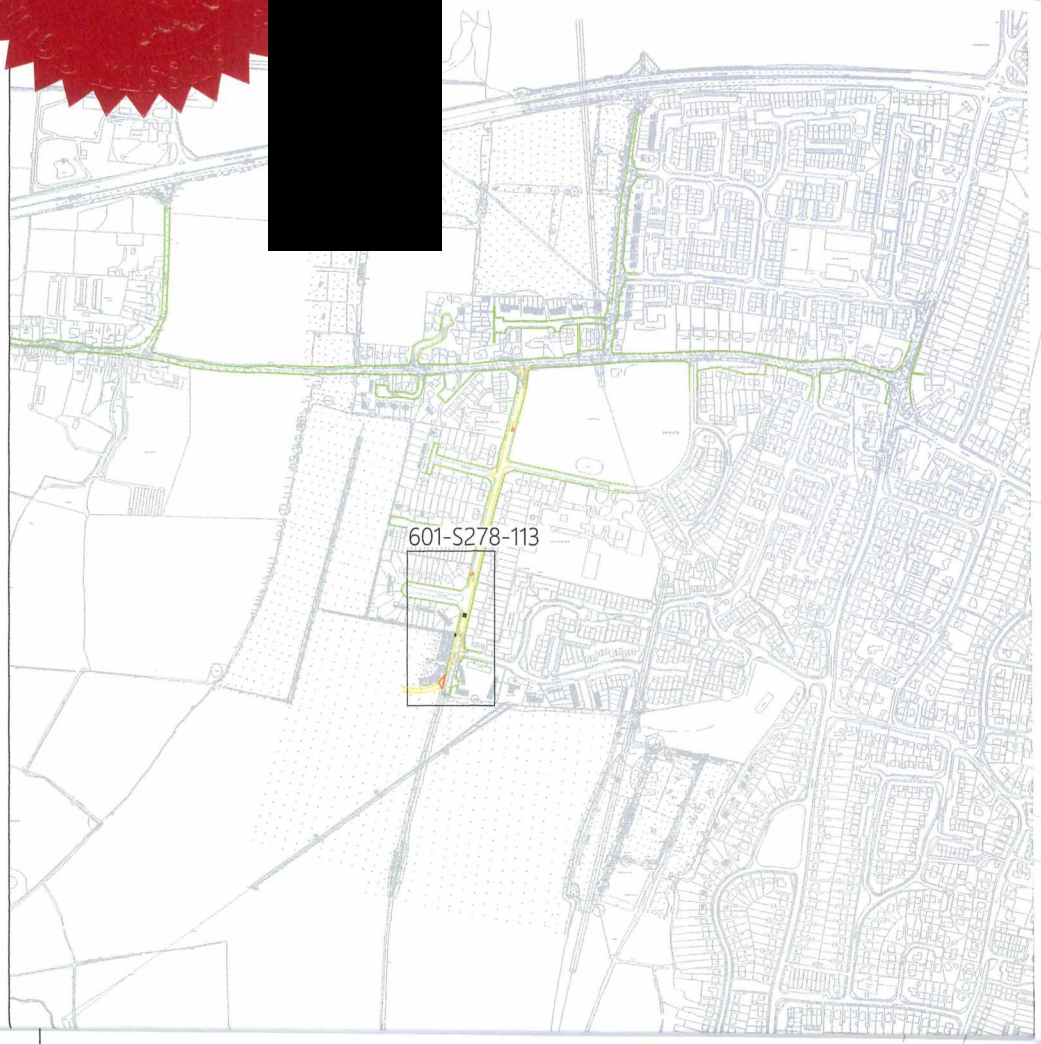
2.4 the "**Completion Certificate**" means the certificate to be issued on satisfactory completion of the Section 38 Works and the Section 111/278 Works in accordance with Clause 20

2.5 the "**Director of Law and Assurance**" means the Director of Law and Assurance for the time being of the Council or any other officer of the Council authorised by him

2.6 the "**Drawings**" means the drawings numbered 601/S278/113/P5 and 601/S278/114/P1 annexed to this Agreement and signed by or on behalf of the parties to this Agreement and any amended such Drawings signed by or on behalf of the Proper Officer

[redacted]

[redacted]



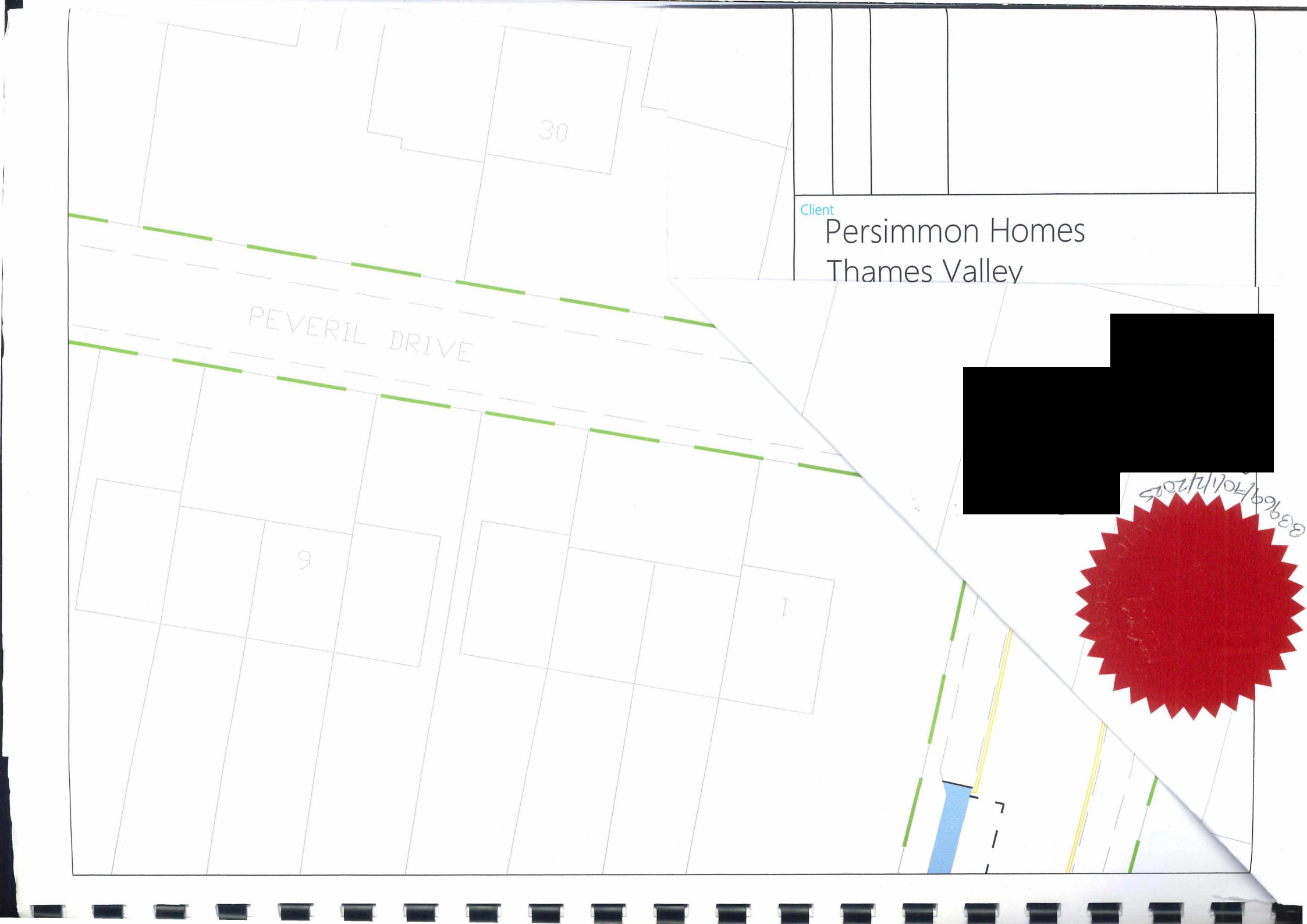
1. Do not scale from this drawing. All dimensions shown are in metres unless noted otherwise.
2. This drawing has been based upon topographical survey information produced by both Brunel Surveys Ltd and Milton Keynes Surveys Ltd and Milestone Transport Planning cannot be held responsible for any discrepancies which may arise because of it.

Key

- S278 Carriageway area
- S278 Footway area
- S278 Verge area
- S38 Carriageway for Adoption
- S38 Footway for Adoption
- S38 Verge for Adoption
- S278 Proposed Highway Surface Water Drains
- G Proposed Drainage Gully
- Existing Soakaway
- Existing Highway Surface Water Drains
- Existing Highway Boundary
- Proposed area for adoption
- Proposed Street Lighting Column

[redacted]

Drawing	Title


30
PEVERIL DRIVE
9
1
Client
Persimmon Homes
Thames Valley

2.7 the "**Electrical Connection Certificate**" means schedule of test results and particulars of electrical installation confirming compliance with the Electricity at Work Regulations 1989

2.8 the "**Estimated Works Cost**" is the sum of one hundred and fourteen thousand pounds (£114,000) being the amount which is in the opinion of the Proper Officer the cost of carrying out the Works within the period specified in Clause 6.1

2.9 the "**Final Certificate**" means the certificate to be issued on satisfactory completion of the Section 38 Works and the Section 111/278 Works in accordance with Clause 22

2.10 the "**Highway**" means an existing highway maintainable at the public expense

2.11 the "**Illuminated Design Check**" means the process of checking and approval by the Council's Street Lighting Service Provider of the Illuminated Equipment design

2.12 the "**Illuminated Equipment**" means the lighting and/or electrical bollards or beacons referred to in Clause 13 which is to be installed by the Developer under this agreement

2.13 the "**Land**" means land at Loose Lane, West Sompting in the County of West Sussex registered under title number WSX442302 at the date hereof which is partially shown for the purpose of identification only by red edging on the annexed plan

2.14 the "**Maintenance Period**" means the period specified in Clause 20

2.15 "**Order**" means a traffic regulation order made under the Road Traffic Regulation Act 1984 for new traffic management measures, including a pair of speed cushions, two pinch point features, five formal parking bays, the introduction of double yellow line parking restrictions and alterations to two existing bus stops

2.16 the "**Proper Officer**" means any officer of the Council for the time being appointed for the purposes of this Agreement or of any provision contained in this Agreement

2.17 the "**Road**" means the carriageways and footways of the Road referred to in this Agreement including any off-site highway drainage shown on the Drawings and includes the footpaths street lighting all verges service strips service margins vehicular crossings road surface water drainage system (if any) and all other ancillary items

2.18 the "**Section 38 Works**" means the works under Section 38 Highways Act 1980 specified in the First Schedule for the making up of the Road

2.19 the "**Section 38 Works Specification**" means the Specification for Highway works and WSCC standard details which are available on the West Sussex County Council's website

2.20 the "**Section 111/278 Works**" means the improvements alterations and additions to the Highway shown on the Drawings and specified in the Second Schedule

2.21 the "**Section 111/278 Works Specification**" means the Department of Transport Specification for Highway Works

2.22 the "**Stage 3 Safety Audit**" means an audit as defined in the Department of Transport Design Manual for Roads and Bridges 1991: Volume 5 Section 2 Part 2 GG119 as amended by the WSCC Safety Audit Adopted Policy

2.23 the "**Statutory Undertaker**" means a "statutory undertaker" as defined in Section 329(1) of the Highways Act 1980 and shall include persons authorised under any enactment to carry on an undertaking for the supply of electricity gas water and any sewerage undertaking and shall also include the Environment Agency the holder of a licence to operate telecommunication systems the Civil Aviation Authority and the holder of a licence to supply cable television

2.24 the "**Street Lighting Service Provider**" means the approved service provider for the ongoing management of the Illuminated Equipment

2.25 the "**Works**" means the Section 38 Works and the Section 111/278 Works

2.26 **references** to clauses sub-clauses annexures and schedules are unless otherwise stated references to clauses sub-clauses recitals annexures and schedules to this Agreement

2.27 **the** singular number shall include the plural number and the masculine and neutral genders shall include the feminine gender and vice-versa

3. Background:

3.1 **THE** Council is the Local Highway Authority for highways in West Sussex

3.2 **THE** Developer is the estate owner in fee simple absolute in possession (Subject to a legal charge dated 18 August 2023 in favour of the Mortgagee but otherwise free from encumbrances) of the Land which includes the site of the proposed Road shown coloured brown grey and dark green on the Drawing and all other land required for the Section 38 Works referred to in this Agreement and wishes to make up the Road so that it shall become a highway or highways maintainable at the public expense

3.3 **THE** Developer has requested that when the Section 38 Works have been executed and maintained the Council shall undertake the maintenance of the Road as a highway maintainable at the public expense which the Council have agreed to do upon terms and conditions contained in this Agreement

3.4 **THE** Developer also desires to carry out work shown coloured yellow blue and pale green on the Drawings upon the Highway

3.5 **NOTICE** of this Agreement and the terms and conditions contained within it shall be entered in the Register of Local Land Charges

THIS Agreement is made pursuant to Sections 38 and 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 106 of the Town and Country Planning Act 1990

IT IS HEREBY AGREED AND DECLARED by and between the parties to this Agreement as follows:

4. **Mortgagee's Consent:**

THE Mortgagee consents to and joins in the execution of this Agreement and acknowledges that the Land shall be bound by the restrictions and obligations contained in this Agreement

5. **Traffic Regulation Orders & Recovery of Costs**

THE Council agrees that subject to its statutory duties from time to time it will use its best endeavours to publish and make such Order or Orders for the restrictive use of that part of the publicly maintainable highway known as Loose Lane on the drawing to facilitate the carrying out of the Works within shown on the Drawing and shall serve notice or letter in lieu thereof upon the Developer for the making of such Order or Orders **AND** the developer **HEREBY UNDERTAKES** that it will pay to the Council the Council's proper costs (including any incurred by its consultants) associated with the making of such Order or Orders

6. **Developer's Liability:**

6.1 **THE** Developer shall carry out and complete the Section 111/278 Works as agent for the Council but at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Drawings and with the notes shown on the Drawings and in accordance with the Specification to the satisfaction of the Proper Officer PROVIDED THAT the Developer shall not cause or allow the extent of the Highway relating to the Works to be opened to or utilised by the public until the County Council have made traffic regulation order reference ADR9021-MM under the

Road Traffic Regulation Act 1984 and all relevant works thereunder have been constructed and approved in writing by the Proper Officer

6.2 **THE** Section 111/278 Works shall commence upon the date of this Agreement and once the booking of the road space has been arranged (the "Commencement Date") SAID road space booking to be within 3 calendar months of the date of this Agreement and the Developer shall complete the Works to the satisfaction of the Proper Officer within two calendar months of the Commencement Date

6.3 **THE** Developer shall carry out and complete the Section 38 Works at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Section 38 Works Specification and the Drawings to the satisfaction of the Proper Officer within twenty-four calendar months of the Commencement Date

6.4 **THE** Developer undertakes not to cause any vehicular traffic restriction or interruption on the Highway nor to cause pedestrians to cross the carriageway of the Highway during the hours of 7.00 a.m. to 9.00 a.m. and 4.00 p.m. to 6.30 p.m. on Mondays to Fridays and during the hours of 9.00 a.m. to 6.00 p.m. on Saturdays in direct or indirect connection with the construction of the Section 111/278 Works without the prior written consent of the Proper Officer

6.5 **THE** Developer shall notify the Proper Officer in writing by letter not less than 7 days prior to the commencement of the Section 38 Works and/or the Section 111/278 Works

6.6 **THE** Developer hereby agrees to comply with all statutory procedures under the New Roads and Street Works Act 1991 (as amended) and the Traffic Management Act 2004 **AND FURTHER AGREES** it will provide the Proper Officer of the Council evidence that a suitable time-period has been reserved allowing the Developer the necessary road space to complete the Section 111/278 Works **AND** the Council agrees that under its network management duty it shall prioritise all notifications given under this Clause 6.6 against other requests already received by the Council and any works already programmed and shall treat all works promoters with parity

6.7 **WITHOUT** prejudice to any other remedy of the Council the Proper Officer may at any time by notice to the Developer grant an extension of time to complete the Section 38 Works for such period of time as he shall in his absolute discretion determine provided always that the Surety does not object to any such extension

6.8 **THE** Developer shall cause all foul sewers surface water sewers highway drains gas and water mains electricity cables television communication cables and/or ducting to be laid under the Road together with all necessary connections from them to the Highway

boundary to the satisfaction of the Proper Officer before the foundations of the Section 38 Works are laid and also cause the connections from electricity cables to the street lighting columns to be laid before the paving of any footway or cycleway is carried out

6.9 **THE** Developer covenants with the Council that upon the completion of this Agreement the Developer will pay the legal costs of the Council involved in the preparation and execution of this agreement

6.10 **TO** the extent that they fall within the terms of section 106 of the Town and Country Planning Act 1990, the obligations in this Agreement are planning obligations for the purposes of section 106 of the Town and Country Planning Act 1990 and are enforceable by the Council against the Developer and any person deriving title from the Developer.

7. **Suspension of the Section 38 Works:**

7.1 **THE** Developer shall in the event of it suspending construction of the Section 38 Works for a period of more than two weeks give to the Proper Officer notice in writing of such suspension not less than seven days prior to the commencement of such suspension and shall give to the Proper Officer notice in writing by letter of its intention to re-commence the Section 38 Works not less than seven days prior to such re-commencement

7.2 **IN** the event of failure by the Developer to notify the Proper Officer in accordance with Clauses 6.5 and 7.1 the administration and inspection fee referred to in Clause 30 shall be increased by such amount as the Proper Officer in his absolute discretion may consider necessary to reimburse to the Council any additional cost incurred by it in inspecting the Section 38 Works by reason of such failure and any such additional amount shall be paid by the Developer within twenty-eight days of receipt of an invoice

8. **Features:**

8.1 **THE** Developer undertakes that in the event of the Proper Officer employing a suitably qualified agent to check any feature (the "Features") included as any part of the Section 38 Works and/or the Section 111/278 Works or that is under or over the Highway and/or the Road and which in his sole judgment requires specialist knowledge to check the design of the Features in order to gain technical approval of the Features it shall reimburse to the Council all costs incurred by it in its endeavours to gain any such technical approval within twenty-eight days of receipt of an invoice

8.2 **THE** Developer shall notify the Proper Officer in writing by letter not less than 48 hours prior to the commencement of all stages of excavation and concrete operations concerned with the Features

9. Declaration:

THE Developer declares and warrants to the Council that he has and will throughout the duration of this Agreement maintain full right liberty and consent to carry out such works as may be necessary to connect the Road to a vehicular Highway

10. Variation of Design:

THE Developer undertakes that it will at no cost to the Council vary the design of the Road should any unforeseen circumstance prejudice the integrity of the Road if the Road were to be constructed in the position and format shown on the Drawings and any such revised design shall be to the satisfaction of the Proper Officer

11. Statutory Undertakers – Connections to Existing Services:

11.1 **THE** Developer shall before connecting the Road with any Highway give notice to each person board or authority being the Statutory Undertaker for the time being of any service or services laid in upon or under such Highway of the proposal to make such connection as if the connection were a work to be executed for road purposes or were mentioned in Sections 48(3) and 84(1) of the New Roads and Street Works Act 1991

11.2 **THE** Developer shall indemnify the Council in respect of the cost of any works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection as set out in Clause 6.8 and shall notify the Proper Officer in writing not less than 28 days prior to the commencement of any work connected with Statutory Undertakers' equipment located in on or under any Highway

12. Statutory Undertakers – Costs:

12.1 **THE** Developer shall before the date specified for completion of the Section 111/278 Works pay all charges levied by any Statutory Undertaker in connection with the removal protection or alteration of any of their apparatus required as a result of the Section 111/278 Works

12.2 **IF** in any case a Statutory Undertaker requires that the Council shall be responsible for the cost of any such removal protection or alteration the Developer shall pay such cost to

the Council as soon as so requested by the Proper Officer and no instruction to carry out such removal protection or alteration will be given to the Statutory Undertaker until the payment has been made

13. **Illuminated Design Check Payment**

ON or before the completion of this agreement the Developer shall pay to the Council the cost of the Illuminated Design Check

14. **Illuminated Equipment Inspection**

WITHIN 14 days of receipt of an invoice the Developer must pay to the Council the cost of any Illuminated Equipment inspection that has been carried out by the Council's Street Lighting Service Provider

15. **Keeping the Highway Clean:**

PRIOR to the commencement of the Section 38 Works the Developer shall provide suitable vehicle and wheel cleaning apparatus on the Land and shall ensure that such apparatus is maintained in good and usable condition and used by all vehicles immediately before leaving the Land to prevent mud or other materials being deposited on the Highway

16. **Access to the Site:**

THE Developer shall during the carrying out of the Section 38 Works and the Section 111/278 Works give to the Proper Officer and any other officer of the Council access to every part of the Land for the purpose of inspecting the Section 38 Works and the Section 111/278 Works and all materials used or intended to be used for the purpose of such works

17. **Procedure for Inspection and Issue of Certificates:**

WITHIN fourteen days of receipt of a written application by letter from the Developer for the issue of a Final Certificate pursuant to this Agreement and within twenty-eight days of a written application by letter from the Developer for the issue of a Completion Certificate pursuant to this Agreement the Proper Officer shall inspect the works to which the application relates and where necessary provide the Developer with a definitive list in writing by letter of any remedial works required to be carried out before

the issue of that Certificate and any such remedial works shall be subject to the same inspection procedure detailed in this Agreement until such time as they shall be completed to the satisfaction of the Proper Officer who within twenty-eight days shall issue the relevant Certificate

18. Occupation of Buildings:

NO dwelling erected by the Developer or on its behalf fronting adjoining or abutting or having access on to the Road shall be occupied until:

(a) the Proper Officer has issued his Part 1 Certificate in respect of the Road or such part of the Road as will provide the occupier with access to a vehicular Highway and where applicable a base course pedestrian access to such Highway has been provided and

(b) the Road or such part of the Road has operational street lighting columns erected in accordance with the Section 38 Works Specification and the Drawings

19. The Stage 3 Safety Audit:

19.1 **THE** Developer shall at its own expense appoint an independent company/consultant to carry out the Stage 3 Safety Audit of the Section 38 Works and the Section 111/278 Works

19.2 **ON** completion of the Stage 3 Safety Audit the Developer shall:-

(a) submit to the Proper Officer the independent company's/consultant's report on the Stage 3 Safety Audit detailing its findings

(b) carry out at its own expense the Stage 3 Safety Audit remedial works to the satisfaction of the Proper Officer prior to the issuing of the Part 2 Certificate and the Completion Certificate

20. Completion Certificate:

ON completion of the Section 38 Works and the Section 111/278 Works and the Stage 3 Safety Audit remedial works to his satisfaction and upon receipt of the Electrical Connection Certificate and confirmation of a satisfactory Illuminated Equipment Inspection, and on completion of the construction all relevant works subject to the traffic regulation order to be made by the County Council under reference ADR9021-MM under the Road Traffic Regulation Act 1984 to the satisfaction of the Proper Officer the Proper Officer shall issue his Completion Certificate to the Developer and from that date the Maintenance Period of twelve calendar months in respect of the Section 38 Works

and the Section 111/278 Works shall commence to run or in the event of construction vehicles continuing to travel along the Road such longer period in respect of the Section 38 Works as the Proper Officer may determine

21. **Obligations During the Maintenance Period:**

DURING the Maintenance Period:

(a) the Developer at its own expense shall maintain the Section 38 Works and the Section 111/278 Works including all grassed and planted areas and carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians

(b) the Council at its own expense shall undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs

22. **Final Certificate:**

PRIOR to the expiration of the Maintenance Period the Developer shall without delay and at its own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the Maintenance Period (including any defect in or damage to the road surface water system) of which it has been notified in writing by the Proper Officer so that the Section 38 Works comply with the Section 38 Works Specification and the Section 111/278 Works comply with the Section 111/278 Works Specification and then provided that:

(a) the Developer has paid to the Council all amounts due to the Council under this Agreement;

(b) any necessary reinstatement or other works (including the Stage 3 works if any) have been completed to the satisfaction of the Proper Officer;

(c) the Road connects directly to an adopted or publicly maintainable highway;

(d) the Developer has delivered to the Proper Officer drawings showing the Section 38 Works and the Section 111/278 Works as constructed and an electronic plan showing the layout of the Road in accordance with the format described in the Third Schedule;

(e) any sewers constructed under the Road under an agreement under Section 104 of the Water Industry Act 1991 have been certified as being adopted by the Statutory Undertaker and verification of such certification having been provided by the Developer at its own expense to the Proper Officer

(f) the Council's Street Lighting Service Provider has provided confirmation of a satisfactory Illuminated Equipment Inspection,

the Proper Officer shall issue his Final Certificate relating to the Section 38 Works and to the Section 111/278 Works to the Developer and shall release the Surety from all liability in connection with the Section 38 Works and the Section 111/278 Works

23. Adoption:

UPON the issue of the Final Certificate the Road shall become a highway maintainable at the public expense

24. Grants of Rights of Drainage:

24.1 **BEFORE** the issue of his Final Certificate by the Proper Officer the Developer shall without cost to the Council execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Road that are situate outside the limits of the Road

24.2 **THE** Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds referred to in Clause 24.1

25. Proper Officer's Powers:

SUBJECT to Clause 40 any decision of the Proper Officer under the provisions of this Agreement shall be final and binding upon the parties to this Agreement

26. The Management of Health and Safety at Work:

26.1 **THE** Developer shall comply with the Health and Safety at Work etc Act 1974 and all other current relevant legislation approved codes of practice British-European Harmonised Standards and relevant industry best guidance applicable to the safe undertaking of the Section 38 Works and the Section 111/278 Works

26.2 **THE** protection of the general public is to be given paramount importance by the Developer and the particular attention of the Developer is drawn to the following non-exhaustive list of legislation most applicable to highway works and with which the Developer is to comply as a condition of this Agreement:

1. Chapter 8 – Traffic Signs Manual 2009
2. The New Roads and Street Works Act 1991 and Approved Code of Practice – Safety at Street Works and Road Works (2013)

3. The Construction (Design and Management) Regulations 2015 and any successor legislation
4. Traffic Signs (Amendments) Regulations and General Directions 2017
5. The Lifting Operations and Lifting Equipment Regulations 1998
6. Provision and Use of Work Equipment Regulations 1998
7. The Management of Health and Safety at Work Regulations 1999
8. The Control of Substances Hazardous to Health Regulations 2002
9. The Control of Substances Hazardous to Health (amendments) Regulations 2004

FOR THE AVOIDANCE OF DOUBT by entering into this Agreement the Developer confirms that he has provided to the Council evidence in writing of his informing the Health and Safety Executive that the Developer has been appointed as Client for the purposes of the CDM AND that the County Council shall have no responsibility to act as Client under the said CDM

27. <u>Competence of Contractors Engaged on Highway Works:</u>

27.1 **THE** Developer shall have suitable and sufficient safe working systems in place for ensuring that all contractors engaged on the Section 38 Works and on the Section 111/278 Works are competent to fulfil their relevant functions pursuant to the CDM and any other applicable legislation and subsequent amending legislation and evidence of the existence of such systems shall be provided to the satisfaction of the Proper Officer at the Proper Officer's request

27.2 **THE** Developer shall ensure that a Competent Person in Health and Safety is employed until the issue of the Final Certificate

27.3 **THE** Developer shall appoint a supervisor qualified in accordance with the provisions of Section 67 of the New Roads and Street Works Act 1991 and any subsequent amending legislation until the issue of the Final Certificate

28. <u>Periodic Inspection of the Section 38 Works and the Section 111/278 Works</u>:

28.1 **THE** Developer shall permit the Proper Officer to have unfettered access to all parts of the Section 38 Works and the Section 111/278 Works and the Land for the purpose of the giving of health and safety advice and taking any action deemed necessary by him to ensure the protection of the general public employees of the Council and others as applicable having regard to the principal/main contractor's obligations and

responsibilities under health and safety legislation

28.2 **THE** right of the Proper Officer to enter upon the site of the Section 38 Works and/or the Section 111/278 Works and his taking or requesting actions that in his absolute discretion are necessary for reasons of health and safety shall not in any way lessen the primary obligation of the Developer or that of any contractor in its employ to comply with all health and safety legislation

29. <u>Health and Safety File:</u>

29.1 **THE** Developer confirms that he has the competence to perform the duties imposed on a client by the CDM

29.2 **THE** Developer is hereby appointed pursuant to regulation 4 of the CDM to act as the only client in respect of the Works

29.3 **UPON** the issue of the Final Certificate the Developer shall provide the Council with information from the health and safety file (as defined by the CDM) which is relevant to the Section 38 Works and to the Section 111/278 Works

29.4 **THE** information content shall be proposed by the contractor for approval by the Proper Officer and as specified by the Proper Officer

30. <u>Administration and Inspection Fee:</u>

30.1 **ON** or before the execution of this Agreement the Developer shall pay to the Council the sum of five thousand seven hundred and seven pounds (£5707.00) in respect of the costs incurred by the Council in administration and in inspecting the Section 38 Works and the Section 111/278 Works

30.2 **RECEIPT** by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Section 38 Works or Section 111/278 Works by the Council **UNLESS**

a) the Council was specifically invited to inspect a particular element of the Works; and

b) the Council failed to inspect those Works in accordance with the terms of this Agreement or carried out an inspection of that element of the Works but did not uncover any fault; and

c) the loss damage or injury was specifically related to the element of the Works that the Council was invited to inspect; and

d) the fault in the Works would have been identified in the normal course of an inspection carried out by a local highway authority acting reasonably.

31. Commuted Maintenance Payment:

ON or before the execution of this Agreement the Developer shall pay to the Council the sum of four thousand one hundred pounds (£4,1000) based upon the Council's estimated extraordinary costs of maintaining the speed cushion

32. Surety's Obligations:

32.1 **IF** the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement or if a receiving order in bankruptcy is made in respect of the Developer's estate or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation) the Director of Law and Assurance may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement send to the Surety notice in writing (the "Default Notice") containing details of the work (the "Default Work") to be carried out in order that the Section 38 Works and/or the Section 111/278 Works may be executed or completed as the case may be in accordance with this Agreement together with the following sums (the "Default Cost"):-

(a) an estimate by the Proper Officer of the cost of carrying out the Default Work separately detailing the cost of the Default Work relating to the Section 38 Works and to the Section 111/278 Works; and

(b) the cost of maintaining the Section 38 Works for the Maintenance Period; and

(c) the cost of maintaining the Section 111/278 Works for the Maintenance Period; and

(d) a statement of the amount of the usual establishment charges of the Council which cost in the case of the Works

AND the Default Cost shall not exceed:-

(i) the sum of one hundred and fourteen thousand pounds (£114,000) being the Estimated Works Cost

(ii) the sum of fifty-seven thousand pounds (£57,000) on and after the issue of the Completion Certificate

32.2 **WITHIN** twenty-eight days after the Surety has received the Default Notice the Surety shall –

(a) pay the Default Cost to the Council; or

(b) pay the Default Cost relating to the Section 111/278 Works to the Council; and send to the Council notice in writing (the "Surety's Counter Notice") of the intention of the Surety to carry out the Default Work relating to the Section 38 Works

32.3 **IF** the Surety having sent the Surety's Counter Notice to the Council fails to start the Default Work within fifty-six days after the Surety received the Default Notice the Surety shall without delay pay the Default Cost to the Council with simple interest thereon at a rate of two per cent above the base rate of the Bank of England calculated from the date on which the Surety received the Default Notice

32.4 **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 four months after the Surety's Counter Notice was received by the Council or within such further period as may be agreed by the Proper Officer the Surety shall subject to Clause 32.5 on demand by the Director of Law and Assurance pay to the Council without delay 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 Section 38 Works for a period of twelve months prior to the Road becoming maintainable at the public expense as may be the case (or as being the cost of both) and also pay to the Council the amount determined by the Proper Officer and the Director of Law and Assurance as being the amount of the appropriate usual establishment charges of the Council

32.5 **THE** sum payable under Clause 32.4 shall not exceed the Default Cost and the covenant in Clause 35 shall apply with respect to such sum and on the issue of the Final Certificate the Surety shall be released from all liability under this Agreement

33. <u>Determination by the Council:</u>

IF the Developer fails to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement or if a receiving order in bankruptcy is made against it or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation

or reconstruction) the Council may without prejudice to any of their rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 32 34 and 35) by notice in writing signed by the Director of Law Assurance and Strtategy and delivered to the Developer or sent by post to the address stated in this Agreement

34. **Power to Execute Works in Default:**

WITHOUT prejudice to Clauses 6 and 33 if the Developer fails to execute or complete the Section 38 Works and/or the Section 111/278 Works in accordance with the Developer's obligations contained in this Agreement the Council shall after not less than twenty-eight days notice in writing to the Developer be entitled to execute or complete the works to which the notice relates in default by its own employees or by contract or otherwise and to recover the cost as certified by the Proper Officer from the Developer

35. **Council's Covenants:**

THE Council hereby covenants with the Developer and with the Surety for the benefit of all building plots fronting adjoining or abutting or having access onto the Road and for each and every one of them:

(a) to use its best endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the Council shall think fit

(b) to apply all monies received from the Surety as towards the expenditure involved in executing or completing the works to which the payment relates and maintaining and making good all defects for a period of twelve months after completion and the amount so received shall be deducted from any sum which would otherwise be recoverable from the owners of premises fronting the Road under the provisions of the Highways Act 1980 or any other Act for the time being in force replacing or amending the same

(c) in the event of the sum paid by the Surety to the Council exceeding the cost of executing or completing the works to which the payment relates 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 twenty-eight days after the Road become maintainable at the public expense or in the case of the Section 111/278 Works the expiry of the Maintenance Period the amount of such excess that the Final Certificate

will be issued in accordance with this Agreement and that the Surety will be released from all liability under this Agreement in accordance with this Agreement

36. Specification to Take Precedence:

IN the event of any conflict between any provision of the Section 38 Works Specification and/or the Section 111/278 Works Specification and anything shown on the Drawings including any details or particulars the provisions of the Section 38 Works Specification and/or the Section 111/278 Works Specification (together with any applicable supplemental specification details not covered by the Section 38 Works Specification and/or the Section 111/278 Works Specification) shall take precedence over any such thing details or particulars and over any specification produced by the Developer or its agent

37. Indemnities:

37.1 **THE** Developer shall indemnify the Council in respect of any actions charges claims costs damages demands expenses or proceedings (including claims relating to the infringement or disturbance or destruction of any right easement or privilege) arising out of or in connection with or incidental to the carrying out of the Section 38 Works and/or the Section 111/278 Works and their subsequent use other than those arising out of or in consequence of any act or default of the Council

37.2 **THE** Developer shall in respect of the Section 111/278 Works take out a policy of insurance sufficient to cover the indemnity in Clause 37.1 and this certificate of insurance along with a copy of the relevant indemnity to principals clause (or evidence that the Council's interest has been noted upon the policy) shall be produced to the Director of Law and Assurance prior to the commencement of the Section 111/278 Works

37.3 **THE** Policy shall have a minimum third party public liability cover of £10m (the "Cover") and the Developer hereby undertakes to maintain the Cover until the issue of the Final Certificate and on notice from the Director for Law and Assurance the Developer shall increase the Cover to such additional amount of cover as specified in the notice

37.4 **THE** Developer shall indemnify the Council in respect of claims for compensation under Section 10 of the Compulsory Purchase Act 1965 and claims under Parts I and II of the Land Compensation Act 1973 arising out of or in connection with or incidental to

the carrying out of the Section 38 Works and/or the Section 111/278 Works and their subsequent use other than those arising out of or in consequence of any act or default of the Council

37.5 **FOR** the avoidance of doubt such indemnification referred to in Clause 37.4 includes compensation payments under Part I of the Land Compensation Act 1973 and all fees reasonably incurred by claimants and those of the Council or its agent or contractor in negotiating any claims (together with Value Added Tax payable upon the claimants' professional advisors' fees) and statutory interest payments to claimants and their professional advisors together with the Council's reasonable legal costs in making such payments of compensation fees and interest

38. Materials Sampling and Testing:

THE Developer shall pay for the cost of sampling and testing the materials used or intended to be used in the Section 38 Works and/or the Section 111/278 Works as required by the Proper Officer whether carried out by the Developer or in his absolute discretion by the Proper Officer and the Developer shall if it has carried out such sampling and testing send to the Proper Officer without delay the results of such tests for his approval

39. Adherence to Specifications:

THE Developer shall at its own expense produce any evidence that the Proper Officer may require in order to verify that it has constructed the Section 38 Works and/or the Section 111/278 Works in accordance with the Section 38 Works Specification and/or the Section 111/278 Works Specification

40. Arbitration:

IN the event of any dispute as to the construction of the Section 38 Works the dispute shall be referred to an independent expert who shall be a chartered civil engineer to be agreed between the parties or failing agreement to be appointed by the President for the time being of the Institution of Civil Engineers and whose decision shall be final and binding on the parties to this Agreement and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or modification

41. Transfer of Land:

41.1 **FOLLOWING** the completion of this Agreement the Developer shall without delay and at its own cost if called upon to do so by the Council execute and complete or procure the execution and completion by all parties of a transfer with full title guarantee and at nil consideration to the Council or its nominee for a consideration of one pound of the freehold estate in the land comprising the Road (the "Road Land") and the Developer shall assist in any application to the Chief Land Registrar both for the noting of the right granted by this Clause and for the registration of the Council with title absolute in respect of the Road Land

41.2 **THE** Developer shall not without the consent in writing of the Council make a disposal of the whole or any part of the land comprising the Road Land to any other person or persons or grant any rights thereover except a right of way for all purposes in accordance with any planning permission granted by the local planning authority in respect of the Road Land

42. Making up of Private Streets:

NOTHING in this Agreement shall prevent or restrict the exercise by the Council of their powers under Part XI of the Highways Act 1980 or any other statutory provision except that this Agreement is intended to be such an agreement as is mentioned in Section 219 (4) of the said Act

43. Rights of Third Parties:

FOR the avoidance of doubt it is agreed and declared that:-

43.1 **NOTHING** in this Agreement shall be construed as expressly providing a right for any third party within the meaning of the Contracts (Rights of Third Parties) Act 1999; and

43.2 **NOTHING** in this Agreement is intended to confer any benefit on any third party (whether referred to herein by name class description or otherwise) or any right to enforce a term contained in this Agreement

43.3 **NOTWITHSTANDING** the provisions contained in Clauses 43.1 and 43.2 party who is the permitted successor to or an assignee of the rights of a party is deemed to be a party to this Agreement

43.4 **THIS** Agreement may be rescinded or varied without the consent of or the need to give any notice to any person not a party to it

44. **Assignment:**

THIS Agreement may not be assigned by the Developer without the consent of the Council which consent shall not be unreasonably withheld

THE FIRST SCHEDULE

1. All road drainage and other drainage contained within the Road
2. All kerb works and pedestrian ways
3. Carriageway sub-base; base; binder course; surface course; and any supporting structures to the same
4. Sight lines vision splays and verges
5. Operational street lighting and street furniture
6. Street name plates
7. Road markings and signing
8. All other works described in the Section 38 Works Specification and shown in the Drawings

THE SECOND SCHEDULE

1. Carriageway construction
2. Footway construction
3. Kerbing
4. Tactile paving
5. Verges
6. Road drainage
7. Street lighting
8. Road markings and signing
9. Soft landscaping
10. Hard landscaping
11. Traffic signals and all associated equipment
12. Traffic islands
13. Carriageway resurfacing
14. Footway resurfacing
15. Reinstatement of existing carriageway footway and verge to the satisfaction of the Proper Officer
16. All other associated works described in the Section 111/278 Works Specification and shown on the Drawings

THE THIRD SCHEDULE

Specifications for as "As built" AutoCAD (or DXF or PDF) drawings:-

1. The model units of the drawing must be in accurate OS national grid co-ordinates (ie in the British National Grid Co-ordinate System).
2. The electronic drawings must only contain the layers/features that show the position of the new road(s) and properties - not additional engineering items such as street lighting/ drainage etc. Additionally, existing map data must not be included. Alternatively, all new features must be collaborated into distinct layers ie drainage as one layer, properties in one layer, property boundaries in one layer, thus enabling the County Council to turn the other unwanted layers off.
3. The extent of the AutoCAD (or DXF or PDF) drawings must not be larger than the actual extent of the features.
4. Any text must be in a simple Truetype font.
5. The drawing must be in 2D, not a 3D model.

The drawing should be emailed to the Proper Officer in accordance with the provisions of Clause 22.

IN WITNESS whereof the parties have executed this document as a Deed the day and year first before written

EXECUTED as a **DEED** by
PERSIMMON HOMES LIMITED
acting by its authorised attorneys
in the presence of: -

Attorney: [redacted]
Lee James Farmer

Attorney: [redacted]
DAN CASTLE

Witness Signature [redacted]

Witness Name ELIZABETH WINCH

Witness Address
PERSIMMON HOUSE, KNOLL ROAD
CAMBERLEY, SURREY GU15 3TQ

EXECUTED as a DEED by
MICHAEL GUY TRISTRAM
in the presence of [redacted]

Michael Guy Tristram:

Witness Signature: [redacted]

Witness Name:
JOSEPHINE LEE

Witness Address:
31 Hills Road,
Steyning
BN44 3QG

EXECUTED as a DEED by

FRANCES ROSEMARY TRISTRAM

in the presence of: - [redacted]

Frances Rosemary Tristram:

Witness Signature: [redacted]

Witness Name: MARTIN WATTS

Witness Address: 8 MILL LANE
SHOREHAM-BY-SEA
BN43 5AB.

EXECUTED as a DEED by

RUTH ELIZABETH KENWARD

in the presence of: - [redacted]

Ruth Elizabeth Kenward:

Witness Signature: [redacted]

Witness Name: Glenn Richards

Witness Address: 12 Lavant Road
Stone Cross
BN24 5EZ



THE COMMON SEAL of **WEST SUSSEX COUNTY COUNCIL** was hereunto affixed in the presence of:

[redacted]

Authorised Signatory

SIGNED AS A DEED BY and as attorneys for **NATIONAL HOUSE-BUILDING COUNCIL** under a power of attorney dated

23rd May 2024

CIARE HEAD

Project Underwriter

[redacted]

.....

As attorney for National House-Building Council

In the presence of: [redacted]

SAMANTHA STEWART .....

Name of Witness Witness Signature

Occupation Of Witness... UNDERWRITER .....

Address of Witness NHBC House, Davy Avenue, Knowlhill, Milton Keynes, Bucks MK5 8FP

.....

DATED 20th August 2025

PERSIMMON HOMES LIMITED

- and -

MICHAEL GUY TRISTRAM, FRANCES ROSEMARY TRISTRAM and RUTH ELIZABETH KENWARD

- and -

WEST SUSSEX COUNTY COUNCIL

- and -

NATIONAL HOUSE-BUILDING COUNCIL

AGREEMENT

under Sections 38 and 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 106 of the Town and Country Planning Act 1990
in connection with
Land at Loose Lane, West Sompting
West Sussex

WSCC REFERENCES: PSI/3661
SHOOSMITHS REFERENCE: M-01089949