

DATED

7th February

2022

WILLIAM ASHBY ADAMS

MARY CATHLEEN ADAMS

to

CHERWELL DISTRICT COUNCIL

and

OXFORDSHIRE COUNTY COUNCIL

PLANNING OBLIGATION BY DEED OF UNILATERAL UNDERTAKING

under section 106 of the Town and Country Planning Act 1990
relating to
land at Glebe Farm Boddington Road Claydon Banbury OX17 1TD

Planning Application Ref: 20/02446/F

Planning Appeal Ref: APP/C3105/W/21/3280416

Morag Thomson
Freelance Solicitor
Planning and Infrastructure
www.moragthomson.net

THIS UNDERTAKING is entered into as a DEED on

7th February

2022

BY:

WILLIAM ASHBY ADAMS and **MARY CATHLEEN ADAMS** of Old House Farm Banbury Road Lower Boddington Northamptonshire NN11 6XY ("the Owner").

TO:

CHERWELL DISTRICT COUNCIL of Bodicote House Bodicote, Banbury, Oxfordshire OX15 4AA ("the District Council"); and

OXFORDSHIRE COUNTY COUNCIL whose principal office is at County Hall, New Road Oxford OX1 1ND ("the County Council").

INTRODUCTION

- A. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B. The County Council is the county planning authority for the purposes of the Act and has for the area in which the Site is situated powers and duties in respect of highways and the regulation of traffic pursuant to the Highway Act 1980, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004.
- C. The Owner is the freehold owner of the Site free from encumbrances other than those revealed on the charges register which interest is registered under Title Number NN287638.
- D. W A Adams Partnership (being a partnership comprising the Owner and their two daughters) has submitted the Application to the District Council, the District Council has refused to grant permission and the Owner has appealed against such refusal.
- E. If the Appeal is allowed the obligations in this undertaking will apply and may be enforced against the Owner and the Owner's successors in title by the Councils (for the avoidance of doubt the provisions set out in clause 4 will come into immediate effect and be enforceable regardless as to whether the Appeal is allowed).

NOW THIS DEED WITNESSETH AS FOLLOWS

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Undertaking the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990
"Appeal"	means the appeal against the refusal of the Application (ref: APP/C3105/W/21/3280416) to be determined by an Inspector appointed by the Secretary of State
"Application"	means the application for planning permission for the formation of an inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake submitted to the District Council and registered on 24 September 2020 under reference number 20/02446/F
"Development"	means the development of the Site as approved by the Planning Permission
"Implementation"	means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this undertaking and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Implement" "Implemented" and "Implementing" shall be construed accordingly
"Index Linked"	means adjusted according to any increase occurring between June 2018 and the date when the relevant payment is made to the

	<p>County Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely: -</p> <p>Index 1 Labour & Supervision 25%</p> <p>Index 2 Plant & Road Vehicles 25%</p> <p>Index 3 Aggregates 30%</p> <p>Index 9 Coated Macadam & Bituminous Products 20%.</p> <p>or if at any time for any reason it becomes impracticable to use any such index such alternative index as may be agreed between the Owner and the County Council</p>
"Interest"	means interest at the rate of 4% per annum above the base lending rate of Lloyds Bank Plc from time to time
"Occupation"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction; fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" and "Occupy" shall be construed accordingly
"Planning Permission"	means the decision letter granting any planning permission issued pursuant to the determination of the Appeal
"PROW Contribution"	means the sum of Ten Thousand Pounds (£10,000.00) Index Linked towards the cost of the PROW Improvements
"the PROW Improvements"	<p>means works to improve the public rights of way between the Site and the village of Claydon comprising all or any of the following:</p> <ul style="list-style-type: none"> • Surfacing • Furniture • Accessibility • Management of vegetation

"the Site"	means the land against which the obligations in this undertaking may be enforced shown edged black and coloured yellow on the Site Plan
"Site Plan"	means the plan showing the Site edged black and coloured yellow attached to this undertaking

2. CONSTRUCTION OF THIS UNDERTAKING

- 2.1 Where in this undertaking reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this undertaking.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons including companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 "Including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly
- 2.6 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, order, plans, regulations, permissions and directions for the time being made, issued, or given under that Act or deriving validity from it.
- 2.8 Reference to any party to this undertaking shall include successors in title to that party and to any deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions
- 2.9 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This undertaking is given pursuant to Section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this undertaking create planning obligations pursuant to Section 106 of the Act which apply to and bind the Site and are enforceable by the District Council and the County Council.

4 CONDITIONALITY

This undertaking is conditional upon the grant of the Planning Permission Save for the provisions of this clause and Clauses 3, 6, 7, 8, 9, 12 and 13 and 14 (legal basis, miscellaneous, waiver, fetter, data protection change of ownership, jurisdiction and delivery) which shall come into effect immediately upon the completion of this undertaking.

5 OWNER'S COVENANTS

- 5.1 The Owner undertakes to the District Council and County Council to comply with the obligations set out in the body of this Deed.
- 5.2 The Owner undertakes to the County Council as set out in Schedule 1 and in Schedule 2

6 MISCELLANEOUS

- 6.1 No provisions of this undertaking shall be enforceable under the Contracts (Right of Third Parties) Act 1999 (other than by the District Council and County Council and their successors to their respective statutory functions).
- 6.2 Insofar as any clause or clauses of this undertaking are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this undertaking and insofar as reasonably practicable the Owner shall seek to amend that clause or clauses by agreement with the District Council and County Council in such reasonable manner as achieves the original intention of the clause without illegality.
- 6.3 This undertaking shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission shall be quashed (and refused upon re-determination), revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to Implementation PROVIDED ALWAYS that the Planning Permission has not been Implemented.

- 6.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this undertaking after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.5 Nothing in this undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission (as defined herein) granted (whether or not on appeal) after the date of this undertaking.
- 6.6 The Owner undertakes to pay on demand the District Council's reasonable legal costs incurred in connection with the preparation and completion of this Deed
- 6.7 The Owner undertakes to:
- 6.7.1 pay on demand to the County Council the County Council's reasonable legal costs incurred in connection with the preparation and completion of this undertaking; and
- 6.7.2 reimburse the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with any enforcement of any of the provisions in this undertaking should the need for enforcement arise in the reasonable opinion of the County Council; and
- 6.7.3 within Fourteen (14) days of any grant of Planning Permission pay to the County Council the sum of £120 (One Hundred and Twenty Pounds) towards the cost of monitoring and administering compliance with the obligations in this undertaking

7 WAIVER

- 7.1 No waiver (whether expressed or implied) by the District Council and/or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this undertaking shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 NO FETTER

- 8.1 Nothing in this undertaking shall prejudice or affect the rights powers duties and obligations of the District Council or the County Council in the exercise of their respective functions in any capacity.

9 CHANGE OF OWNERSHIP ETC

- 9.1 The Owner undertakes:

9.1.1 to give to the District Council and separately the County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this undertaking have been discharged such notice to give details of the transferee's full name and registered office if a company, or usual address if not, together with the area of the Site or unit of occupation purchased by reference to a plan.

9.1.2 to notify the District Council and the County Council in writing within fourteen days of the occurrence of each of the following events and to specify in the notification the date on which it occurred:

9.1.2.1 the date of Implementation of the Planning Permission; and

9.1.2.2 the date of first Occupation.

10 INTEREST

10.1 If any payment due under this undertaking is paid late, Interest will be payable from the date payment is due to the date of full payment.

10.2 Interest shall be calculated and accrue daily and if any payment is made more than three months after the date it becomes due shall be compounded monthly

11 VAT

11.1 All consideration given in accordance with the terms of this undertaking shall be exclusive of any value added tax properly payable and the Owner shall pay to the County Council any value added tax properly payable on any sums paid to the County Council or works undertaken under this undertaking upon presentation of any appropriate value added tax invoice addressed to the Owner.

12 JURISDICTION

12.1 This undertaking is a Deed is governed by and interpreted in accordance with the law of England.

13 DELIVERY

13.1 The provisions of this undertaking (other than this clause which shall be of immediate effect) shall be of no effect until this deed has been dated.

14 DATA PROTECTION

The Owner acknowledges that information as to compliance with obligations pursuant to this undertaking (including as to whether or not contributions have been paid) may be passed to:

- 14.1 persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further
- 14.2 any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000

IN WITNESS whereof the Owner hereto has executed this Deed on the day and year first before written

PLANS

SP4651 SP4751
SP4650 SP4750

4596 X

SP4551 SP4651
SP4550 SP4650

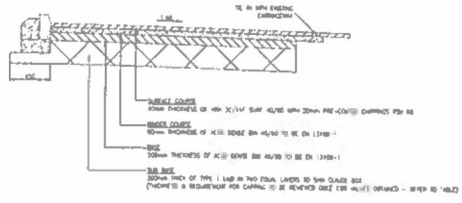


NOTES:

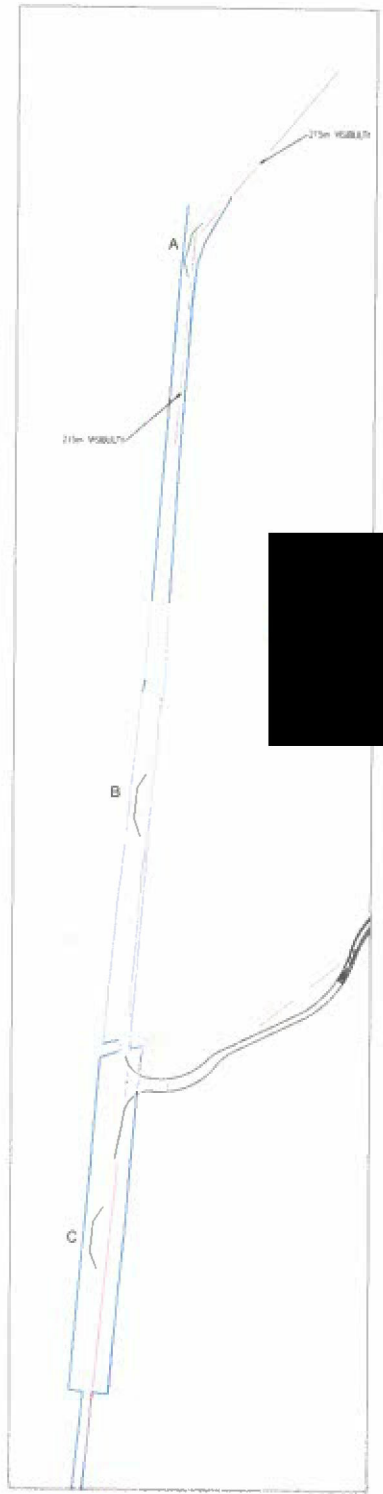
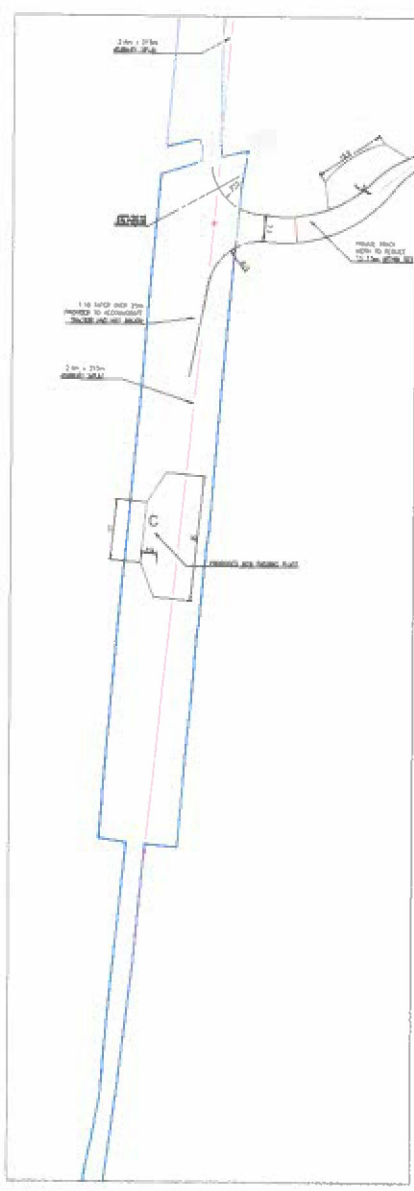
1. DO NOT SCALE THIS DRAWING

KEY:

— EXISTING HIGHWAY BOUNDARY



PASSING BAY CONSTRUCTION CROSS SECTION
SCALE 1:20



SPRINGFIELD FARM BOODINGTON ROAD, LOWER BOODINGTON		
OF SITE PASSING PLACE GENERAL ARRANGEMENT AND DETAILS		
W. A. ADAMS PARTNERSHIP		
2998_03_000_01.3		
A	AD	AS SHOWN
MEC		

SCHEDULE 1

PROW Contribution

1. The Owner covenants and undertakes to the County Council to pay the PROW Contribution to the County Council prior to first Occupation of the Development and not to cause or permit first Occupation of the Development until the PROW Contribution has been paid to the County Council.

SCHEDULE 2

Highway Works

PART 1

1. DEFINITIONS

- 1.1 In this Schedule the following definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

Expression

Meaning

the 1980 Act

means the Highways Act 1980

Highway Agreement

means an agreement under Section 278 (and if appropriate section 38) of the 1980 Act in accordance with the form contained in Schedule 3 to this Deed (subject to any amendments that the circumstances may reasonably and properly require) with the County Council which provides for the execution of the Works by the Owner at the Owner's expense.

Works Plan (Bellmouth)

means the drawing reference number ADAMCM-1-1-005 Revision A attached to this Deed

Works Plan (Passing Places)

means the drawing reference number 25958_03_020_01.5 Revision A attached to this Deed

Expression

Meaning

Works

means the principal works together with associated preparatory and ancillary works and the amenity and accommodation works described in Part 2 of this Schedule

1.2 The Works are works which the County Council is authorised to execute by virtue of Part V of the 1980 Act

1.3 The Owner intends to enter into the Highway Agreement with the County Council

2. WORKS OBLIGATIONS

2.1 The Owner covenants with and undertakes to the County Council not to cause or permit Implementation of the Development until:

2.1.1 there has been submitted to the County Council and approved by it in writing in principle drawings for the Works together with associated drawings and technical information as set out in the County Council's section 278 application form as adjusted from time to time;

2.1.2 if there is any land to be dedicated following completion of the Works there has been submitted to the County Council and approved by it in writing plans detailing the land to be dedicated following completion of the Works and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated

2.1.3 The anticipated duration of construction of the Works has been agreed with the County Council together with the longstop date for completion of the Works and commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Works, has been agreed; and,

2.1.4 a Highway Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 2.1.1 to 2.1.3 has been entered into by the Owner in respect of the Works together with all parties with an interest in any land to be dedicated further to the Highway Agreement and any mortgagee of such land has released it fully and effectively from its charge.

- 2.2 Not to cause or permit first Occupation of the Development unless and until the Works have been completed pursuant to and in accordance with the Highway Agreement
- 2.3 Notwithstanding the terms of paragraph 2.1.4 not to Occupy any part of the Development until the Highway Agreement has been entered into in accordance with paragraphs 2.1.1 to 2.1.3 above and the Works have been completed pursuant to and in accordance with the Highway Agreement

PART 2 THE WORKS

(1) PRINCIPAL WORKS

The provision and construction of the following works ("the Principal Works"):

- (a) A new bellmouth access to Boddington Road as shown indicatively on the Works Plan (Bellmouth)
- (b) Localised widening of Boddington Road to provide passing places as shown indicatively on the Works Plan (Passing Places)

(2) PREPARATORY AND ANCILLARY WORKS

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Principal Works such alteration thereof) as the County Council shall consider requisite for the proper construction and functioning of the Principal Works including: -

- (a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- (b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works

- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at any bend or junction
- (g) all traffic signs road markings bollards and safety barriers
- (h) all tapers joints and reinstatements necessary where the Principal Works abut the existing highway

(3) AMENITY AND ACCOMMODATION WORKS

The provision and construction of all such amenity and accommodation works as the County Council shall consider requisite for the protection of the local environment and private and public rights and property in consequence of the Principal Works including:-

- (a) any earth bunds and/or planting necessary to screen the Principal Works
- (b) all fences gates hedges and other means of separation of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other things necessary to give support to adjoining land

SCHEDULE 3

Standard Highway Agreement

DATED _____ 20[]

OXFORDSHIRE COUNTY COUNCIL

-and-

(OWNER)

-and-

(DEVELOPER)

draft

Agreement relating to highway works at [_____] to be undertaken
by Developer

Anita Bradley
Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS DEED is made on the _____ day of

Two Thousand and []

BETWEEN:-

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** ("the Council")
- (2) _____ ("the Owner")
- (3) _____ (company registration
number) ("the Developer")
- (4)

1. Interpretation

In this Deed:-

- 1.1 "the 1980 Act" means the Highways Act 1980
- 1.2 "the 1990 Act" means the Town and Country Planning Act 1990
- 1.3 "As-Built Drawings" means detailed plans and drawings showing the Works in the form in which they have actually been executed and completed required under Condition 29 of the Standard Conditions
- 1.4 "Certificate of Completion" means a certificate issued under Condition 30 of the Standard Conditions
- 1.5 "the Council" means the said Oxfordshire County Council whose principal office is at County Hall New Road Oxford OX1 1ND and any successor to its statutory functions as highway authority or planning authority and any duly appointed employee or agent of the Council or such successor

1.6 "the Dedication Plan" means the plan marked 'B' annexed to this Deed or such other plan as the Owner [the Developer and the Mortgagee] and the Council agree should be substituted for it

1.7 ["the Developer" means _____ of/ whose registered office is at _____ and its successors in title and assigns]

1.8 "the Development" means [_____]

1.9 "Implementation" means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and "implement" and "implemented" shall be construed accordingly

1.10 "including" means including without limitation and 'include' shall be construed accordingly

1.11 "Index-Linked" means adjusted according to any increase occurring between _____ and the date of payment to the Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

Index 1	Labour & Supervision	25%
Index 2	Plant & Road Vehicles	25%

Index 3	Aggregates	30%
Index 9	Coated Macadam & Bitumous Products	20%

or if at any time for any reason it becomes impracticable to compile the said composite index then an index compiled in such other manner as may be agreed in writing by the Owners and the County Council

1.12 "the Maintenance Costs" means the sum of () Index Linked as calculated in respect of the cost of future maintenance of the Works

1.13 ["the Mortgagee" means the said of/whose registered office is at and its successors in title and assigns]

1.14 "the Off-Site Works" means such part of the Works (if any) as is to be executed outside the Site

1.15 "the Owner" means the said of/ whose registered office is at and its successors in title and assigns

1.16 "the Planning Permission" means planning permission reference number [] for the Development of the Site

1.17 "the Site" means the land Oxfordshire shown edged black on the Site Plan

1.18 "the Site Plan" means the plan marked "Plan A" annexed to this Deed

- 1.19 "the Standard Conditions" means the Council's Standard Conditions for the Control of Highway Works in Conjunction with Development (2016 Edition) a copy of which is annexed to this Deed
- 1.20 "the Works" means the works specified in the Schedule
- 1.21 "the Works Plan" means the drawing(s) numbered [] annexed to this Deed
- 1.22 Any reference to an enactment includes any amendments to or modifications of it and the version of it for the time being in force shall apply
- 1.23 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation
- 1.24 References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed
- 1.25 Where the context so requires:-
- 1.25.1 the singular includes the plural and vice versa
- 1.25.2 the masculine includes the feminine and vice versa
- 1.25.3 persons includes bodies corporate associations and partnerships and vice versa
- 1.26 Where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons

1.27 Where more than one party enters into any obligation or liability those parties are jointly and severally liable

1.28 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction

2. Preliminary

2.1 The Owner is the owner of freehold of the Site registered with absolute title under title number [] [subject to an Option in favour of the Developer (and/or) a Charge in favour of the Mortgagee but otherwise] free from incumbrances as the Owner hereby warrants

2.2 For the purposes of the 1990 Act the Council is the county planning authority for the area which includes the Site

2.3 For the purposes of the 1980 Act, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the Council is the highway authority and the traffic authority for certain highways in the area which includes the Site

2.4 [The (Owner/Developer) [has] submitted the Planning Application for the Development to the district planning authority

Alternative 1

2.5 The Owner has/it has been agreed [by virtue of an agreement pursuant to Section 106 of the 1990

dated [] and made between [] that the Development shall not be implemented [as therein defined] prior to the completion of this Deed and shall not be occupied prior to the completion of the Works in accordance with the Deed

- 2.6 The Off-Site Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act
- 2.7 It has been agreed between the Owner and the Council that in lieu of the Owner paying the cost of the Off-Site Works the Off-Site Works should be executed by the Owner in conjunction with the carrying out of the Development
- 2.8 This Deed (which the Council are satisfied will be of benefit to the public) is made under Sections 38 72 and 278 of the 1980, Act Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and all other enabling powers and is a planning obligation for the purposes of Section 106 of the 1990 Act entered into by the Owner the Developer and the Mortgagee in respect of the Site and enforceable by the Council

3. Covenants

The Owner and the Developer covenant:-

- 3.1 not to cause or permit [any planning permission obtained for the Development/the Planning Permission to be implemented (save insofar as is necessary for the execution of the Works)] [any building forming part of the Development

[to be occupied] [to open for business] before the Works have been completed

- 3.2 to execute the Works entirely at his/its own expense and to the satisfaction of the Council
- 3.3 in executing the Works to observe and perform all the obligations which fall on "the Developer" under the Standard Conditions and
- 3.4 to complete the Works not later than _____ and in any event within _____ from the date on which the Works started
- 3.5 not to commence the Works until the Maintenance Costs have been paid to the Council and to pay Maintenance Costs to the Council prior to commencing the Works
- 3.6 to give the Council written notice of any disposal of an interest in the Site and of the name and address of the new owner and the date of the disposal within 14 days of such disposal
- 3.7 if any payment to be made to the Council is not paid on or before the due date for payment to pay interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc from such due date to the date of payment¹

4. **Adoption as Highway**

- 4.1 On the issue of a Certificate of Completion for the Works the whole of the land shown [hatched black] on the Dedication Plan (subject to modification as provided in clause 4.2) shall

be deemed to have been dedicated as public highway (for all public highway purposes including use by mechanically propelled vehicles) and shall thereafter subject to Conditions 34 and 35 of the Standard Conditions be a highway maintainable at public expense

4.2 The Council may after consideration of the As-Built Drawings require the substitution of a modified dedication plan in which event that shall be agreed with the Owner [the Developer the Mortgagee] and the dedication as provided in clause 4.1 shall have effect in respect of the modified area

4.3 the Owner consents to the noting of the provisions of clause 4 of this Deed on the register under title number []

5/6 **Act Reasonably**

Where a matter falls within a party's discretion that party shall exercise such discretion in a reasonable and expeditious manner and shall give any requisite notice of that decision and any other notice provided for by this Deed (including the Standard Conditions) without undue delay

6/7 **[the Mortgagee**

The Mortgagee acknowledges that the Site is bound by the obligations contained in this Deed [and in the event that the dedication area is revised further to clause 4.2 the Mortgagee agrees that any part of the dedication area which is subject to its charge shall be released from such charge on dedication pursuant

to clause 4.1 and the Mortgagee will execute such further documentation as may be required to effect this]

7/8 Costs

7.1 The Owner shall on completion of this Deed pay the reasonable legal costs of the Council in connection with the preparation and completion of this Deed [and [] towards the costs of administering and monitoring the provisions of this Deed relating to the Contribution]

7.2 The Owner will reimburse the Council in respect of all legal and administrative costs in connection with the enforcement of any of the provisions of this Deed including correspondence monitoring and site visits by or on behalf of the Council

7.3 [The Owner will not claim any compensation in respect of the provision of this Deed]

8 Third Party Rights

This Deed does not create any right enforceable by any person not a party to it except that it may be enforced by the successors in title and assigns of the parties and by any successor to the Council's statutory functions

9 Notice

Any notice or notification to be given to the Council under this Agreement shall be sent to the Director for Planning & Place of the Council (Ref) County Hall, New Road, Oxford OX1 1ND or to such other person at such other address as the Council shall direct

from time to time [and any notice or notification to be given to [] shall be sent to [] or to such other person at such address as the [] shall notify in writing to the Council from time to time

10 **No Waiver**

No alteration in the terms of this Deed nor any forbearance or forgiveness on the part of the Council in or in the extent or nature of any matter or thing concerning this Deed shall in any way release the Owner/the Developer/the Mortgagee from any liability under this Deed

11 **No Fetter**

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions in any capacity

12 **VAT**

All works undertaken pursuant to and all payments made in accordance with the terms of this Deed shall be exclusive of value added tax and the Owner shall pay the Council any value added tax properly payable on any sums paid to the Council or works undertaken under this Deed upon presentation of an appropriate value added tax invoice addressed to the Owner

13 **Jurisdiction**

This Deed is governed by and interpreted in accordance with the Law of England

14 **Delivery**

The provisions of this Deed shall be of no effect until this Deed has been dated

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

SCHEDULE

The Works

(1) **Principal Works**

The provision and construction in the position indicated in principle on the Works Plan of the following works ("the Principal Works")

(a)

(b)

(c)

(2) **Preparatory and Ancillary Works**

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Works such alteration thereof) as the Council shall consider requisite for the proper construction and functioning of the Principal Works including:-

- (a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- (b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works

- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas
- (f) all measures necessary to ensure visibility for drivers at any bend or junction
- (g) all traffic signs road markings bollards and safety barriers
- (h) all tapers joints and reinstatements necessary where the Principal Works abut the existing highway

(3) **Amenity and Accommodation Works**

The provision and construction of all such amenity and accommodation works as the Council shall consider requisite for the protection of the local environment and private and public rights and property in consequence of the Principal Works including:-

- (a) any earth bunds and/or planting necessary to screen the Principal Works
- (b) all fences gates hedges and other means of separation of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other things necessary to give support to adjoining land

OXFORDSHIRE COUNTY COUNCIL

STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT

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Anita Bradley
Director of Law & Governance and
Monitoring Officer
County Hall
New Road
Oxford OX1 1ND

Director of Planning & Place
County Hall
New Road
Oxford OX1 1ND

2016 Edition

OXFORDSHIRE COUNTY COUNCIL

STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT

GENERAL

1 INTERPRETATION

In these Conditions:-

- 1.1 "the Agreement" means any agreement or other instrument by which these Conditions are applied.
- 1.2 "Authorisations" has the meaning given in Condition 11.1.
- 1.3 "the Bond" means the bond referred to in Condition 12.
- 1.4 "the Certificate of Completion" means the certificate issued under Condition 30.
- 1.5 "Contractor" includes an agent and any sub-contractor or agent of a main contractor.
- 1.6 "the Council" means the Oxfordshire County Council of County Hall New Road Oxford OX1 1ND and, so far as the context admits, includes any employee or contractors duly appointed by them.
- 1.7 "the Developer" means the person or persons by whom the Agreement requires the Works to be executed.
- 1.8 "including" means including without limitation or prejudice to the generality of any preceding description defining term phrase or word(s) and 'include' shall be construed accordingly.
- 1.9 "Safety Audit" means a safety audit in accordance with Oxfordshire Safety Audit Guideline as revised from time to time and incorporating GG 119 - Road safety audit.
- 1.10 "the Scheme of Works" means the matters specified in Conditions 9.1 – 9.3 as may for the time being have been varied and/or augmented under Condition 11 and/or Condition 23.
- 1.11 "statutory requirements" means the requirements of any enactment (being any act and any subordinate legislation as defined in the Interpretation Act 1978) national guidance or good practice guides.
- 1.12 "the Works" means the works which the Agreement requires to be executed in accordance with these Conditions and references to "the Works" includes each and every part of them.
- 1.13 The headings are for ease of reference and shall not affect the construction or interpretation of these Conditions.

1.14 References to the Construction (Design and Management) Regulations are to the Construction (Design and Management) Regulations 2015 as varied or replaced from time to time.

1.15 Any reference to any enactment includes any amendments to or modification of it and the version of it for the time being in force shall apply.

2 RELATIONSHIP WITH AGREEMENT

These Conditions shall be construed together with and subject to the Agreement and in the event of any inconsistency between the Conditions and the Agreement the latter shall prevail.

3 COMMUNICATIONS WITH THE COUNCIL

Any notice or other communication required by these Conditions to be given by the Developer to the Council shall be given in writing to the Council's Director for Environment & Economy at his main office at County Hall, New Road, Oxford OX1 1ND or to such other person and/or at such other place as he may identify in writing to the Developer.

4 APPROVALS AND CERTIFICATES

4.1 No approval consent authorisation or payment as specified in Condition 4.3 shall create any contractual relationship between the Developer and the Council beyond that contained in the Agreement or operate in any way as a warranty or otherwise imply that the subject matter of such approval consent authorisation or payment is fit for its intended purpose nor shall it relieve the Developer or any professional adviser or contractor engaged in connection with the Works from their respective obligations to use all proper skill and care in respect of the Works.

4.2 The Council will not be liable for any loss damage or injury which the Developer may sustain arising from action taken in consequence of such approval consent authorisation or payment.

4.3 The matters referred to in Condition 4.1 are:

4.3.1 any approval or consent given by the Council in respect of the discharge by the Developer of its obligations under these Conditions; or any technical approval or consent issued by the Council in respect of the Works.

4.3.2 any authorisation given or implied by or under these Conditions in respect of anything done or to be done by the Developer on or in relation to any highway; or any payment made by the Developer to the Council under these Conditions.

5 COUNCIL TO ACT IN DEFAULT OR EMERGENCY

5.1 In the event that either of the following circumstances occur:-

5.1.1 if the Developer shall be materially in default in respect of any of the provisions of the Agreement including these Conditions requiring work to be done or not done, or to be done in a particular manner or by a particular time and if such default continues after the Council have given to the Developer not less than 21 days' written notice of the steps they require to be taken to remedy such default; or

5.1.2 if it shall appear to the Council at any time during the course of execution of the Works that danger to persons or prejudice to the structure or stability of the public highway or of adjoining land exists or is imminent, and that it is not reasonably practicable to cause the Developer to take the necessary remedial steps forthwith;

the Council may take such steps themselves to the exclusion of the Developer and charge the expenses incurred (including their reasonable administrative costs) against the Developer.

5.2 Such expenses will be a debt due to the Council and recoverable by them by action or otherwise and for the avoidance of doubt the Council may recover such expenses under the Bond where the Council has taken such steps because the Developer is in default as provided in Condition 5.1.1 or where the Council has taken such steps in an emergency further to Condition 5.1.2 and in the latter case the Developer has failed to discharge the Council's expenses.

6 INDEMNITY

The Developer shall indemnify the Council and keep them indemnified against;

6.1 all actions, liabilities, claims, costs and proceedings which may arise from the execution and completion of the Works (except insofar as may arise from the negligence or default of the Council) and from anything done or not done by the Developer or by its employees or contractors in connection with the Works;

6.2 all actions, liabilities, claims, costs and proceedings arising in connection with or incidental to or in consequence of the lawful use of the highway following upon the carrying out or completion of the Works under the Land Compensation Act 1973 or under regulations made pursuant to Section 20 of the Land Compensation Act 1973 (insulation against noise) and any grants made by the Council under such regulations in accordance with its established policy. The Council may by advertisement invite claims under the Land Compensation Act 1973 and under regulations made pursuant to Section 20 of that Act.

7 HEALTH AND SAFETY

The Developer shall act as the only client in respect of the Works for the purposes of The Construction (Design and Management) Regulations.

8 PAYMENTS

Where the Council seeks any payment further to these Conditions then save where there is express provision as to timing for payment such payment shall be due within 28 days of written request from the Council and if payment is not made within such 28 day period (or where applicable such other period as expressly provided) then interest at 4% per annum above the base rate from time to time of Lloyds Bank PLC shall be payable from the expiration of the 28 day period until the date of payment.

PRELIMINARIES

9 SUBMISSIONS TO THE COUNCIL

The Developer shall submit to the Council the information and other matters specified in column 1 below in accordance with the timetable set out in column 2 below and the notes set out in column 3 below: -

Highway Matters

9.1

Information	Timetable	Notes
Detailed plans (which shall include a layout plan to a scale of 1:1250 or 1:2500 according to whichever is the Ordnance Survey base scale for the area), drawings and specifications of the Works (including the drainage of them) and the materials to be used to comply with the relevant standards and specifications of the Council for the time being in force, together with such structural and drainage calculations as the Council may consider necessary having regard to the nature of the Works;	No later than 3 months before any tender is invited for the execution of the Works	There shall be paid to the Council on the submission a sum equal to 0.4% of the estimated gross cost of the Works as identified in Condition 12

9.2

<p>A detailed programme designed to ensure the orderly and timely execution and completion of the Work with the minimum of disturbance and disruption to use of the highway and occupiers of property and to facilitate the implementation of any such measures in respect of undertaker's apparatus as may be identified pursuant to Condition 10.</p>	<p>No later than 2 weeks after the acceptance of any tender for the execution of the Works</p>	<p>Significant programme changes to be identified not less than 2 weeks prior to the change</p>
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9.3

<p>(a) Measures for the control of vehicles and plant to be used in the course of execution of the Works (including vehicles engaged on the transport of materials and equipment to and from the Works) and measures for traffic regulation in order to minimise and/or alleviate damage to the highway disturbance to occupiers of property and disturbance and disruption to use of the highway (including traffic congestion) ;and (b) traffic safety measures and measures including lights, guards, fencing and warning signs in order to protect the Works and/or for the safety and convenience of the public</p>	<p>No later than 2 weeks before the Works are expected to commence</p>	
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9.4

<p>Safety Audit Stage 2 Report</p>	<p>No later than 3 months before any tender is invited for the execution of the Works</p>	
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9.5

<p>Details in accordance with Condition 15 of the persons proposed to be invited to tender.</p>	<p>No later than 1 month before any tender is invited for the execution of the Works.</p>	
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Other Matters

9.6

<p>Details of the bondsman proposed to be given pursuant to Condition 12, together with any bills of quantities or tenders which the Developer wishes the Council to take into account under that Condition.</p>	<p>No later than 1 month before the Works are expected to commence.</p>	
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9.7

<p>Details of the insurances required by Condition 14.</p>	<p>No later than 1 month before the Works are expected to commence.</p>	
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9.8

<p>Part 1 Noise survey and assessment and modelling sufficient to establish whether any properties will be eligible for noise insulation according to regulation 3 or regulation 4 (as applied by the Council) of the Noise Insulation Regulations 1975 applying the requirements of the Design Manual of Roads and Bridges Volume 11 – Environmental Assessment and the Calculation of Road Traffic Noise 1988 to be undertaken by a noise expert approved by the Council.</p> <p>Part 2 If the assessment concludes that there will be any property eligible for noise insulation to submit to the Council:</p> <p>(a) a map and list of all eligible properties. ¹</p> <p>(b) a list of all occupiers and landlords</p> <p>(c) a survey and assessment for each eligible property of the work to be carried out to comply with requirements of the Noise Insulation Regulations 1975 and the specification for that work</p>	<p>No later than 1 month before the Works are expected to commence or earlier than 3 months before the Works are expected to commence.</p> <p>As above</p>	<p>Precise timing of survey to be agreed with the Council. Location of the survey/testing to be advised to the Council and if applicable adjusted to ensure regulatory compliance.</p>
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¹ Dwellings and other buildings used for residential purposes which will be not more than 300 metres from the edge of the carriageway of the highway after completion of the work.

9.9

Condition survey (comprising photographs) of land and highway adjoining and neighbouring the site of the Works together with such further areas as the Council may require.	No later than 1 month before the Works are expected to commence.	
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9.10

Notification of the identity of the contractor who has submitted a successful tender.	No later than 2 weeks after the acceptance of any tender for the execution of the Works.	
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In any particular case any information or matter may be submitted to the Council at such later time as the Council may consider expedient subject to the Council identifying such later time in writing.

10 UNDERTAKERS' APPARATUS

10.1 The Developer shall in preparing the Scheme of Works consult every undertaker within the meaning of the New Roads and Street Works Act 1991 whose apparatus or services lie in, on, under or over the site of the Works or may otherwise be affected by the Works (whether or not it is intended to connect into such services in connection with the Works), with a view to the identification and implementation of any measures considered necessary by the undertakers for the protection of, or otherwise in relation to, their apparatus or services, and shall be responsible for all dealings with such undertakers in respect of the implementation of such measures and for all costs payable to the undertakers in that behalf.

10.2 For the avoidance of doubt the Developer shall comply with statutory requirements relating to street works (as defined in the 1991 Act).

11 AUTHORISATIONS

11.1 Authorisations signifies all rights, approvals and consents and any other requisite action to enable the Works to be properly and lawfully executed and completed (in accordance with the Agreement including these Conditions) and the subsequent implementation and functioning of the Works including (but not so as to provide an exhaustive list of examples)²:-

11.1.1 planning permission for the Works;

11.1.2 authority for stopping up diversion or other alteration of any existing highway so far as necessary to enable the Works to proceed and / or be implemented and function;

² Examples may also include noise consent from district council

- 11.1.3 authority or agreement for stopping up (including relocating) any private access to any existing highways which is necessary in the opinion of the Council to enable the Works to proceed and / or be implemented and function³;
 - 11.1.4 street works licence further to the New Roads and Street Works Act 1991;
 - 11.1.5 authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in the Council's opinion to enable the Works to proceed and/or to be implemented and function⁴; and
 - 11.1.6 any rights and easements which in the Council's opinion are necessary to ensure the permanent and satisfactory drainage or lighting of the Works such rights and easements to be in a form previously approved by the Council.
- 11.2 The Developer shall be responsible for ensuring that all Authorisations are secured in timely manner at its own cost.
- 11.3 Save in so far as any consent is expressly granted under the Agreement nothing in the Agreement shall prejudice or affect in any way the exercise by the Council of its powers and duties relating to any application for an Authorisation including the consideration and processing of an application, the carrying out of any procedural requirements (pursuant to any enactment or Council policies or protocols) and the determination as to whether or not the Authorisation should be made, granted or confirmed.
- 11.4 Any costs incurred by the Council relating to any application for an Authorisation - and any related matters shall be discharged by the Developer.
- 11.5 Where the procedures for securing any Authorisation entail consultation and in consequence of such consultation the Council determines that the Works / the Scheme of Works shall be varied and / or augmented then any reference to the Works and / or the Scheme of Works shall be construed as a reference to the Works and / or the Scheme of Works as so varied and / or augmented.
- 11.6 Forthwith on securing any Authorisation the Developer shall supply evidence of this to the Council to the Council's reasonable satisfaction.

³ This relates to for example Section 127HA.

⁴ This is directed at securing any requisite TROs which are integral to the Works e.g. bus lanes and also there may be various works such as traffic calming and signals where consultation is mandatory.

12 BOND

12.1 The Developer and a bondsman satisfactory to the Council shall enter into a Bond in such form as shall have been approved by the Council guaranteeing the execution and completion of the Works in accordance with the Agreement including these Conditions.

12.2 The amount of the Bond shall be

12.2.1. the gross cost of the Works (including any costs payable to undertakers pursuant to Condition 10) as then (being one month before the Works are proposed to be commenced) estimated by the Council and such estimate may take into account any bills of quantities prepared or tenders received by the Developer in respect of the Works and submitted by it to the Council; and

12.2.2. adjusted to take account of inflation for the duration of the Works (and subsequently) as reasonably estimated by the Council; and

12.2.3. adjusted to reflect the full costs that may be incurred by the Council as provided in Condition 5.1 (Council to act in default or emergency).

13 MONITORING AND OTHER COSTS

13.1 The Developer shall pay to the Council in respect of the costs to be incurred by the Council in monitoring the execution and completion of the Works (and administration of the Agreement) a sum equal to 10% of the amount of the Bond, subject to a minimum payment of £2,250

Note: The provisions of Condition 27.2 also apply

13.2 The Developer shall pay to the Council legal costs reasonably incurred in connection with the drafting and completion of the Bond.

14 INSURANCE

The Developer shall take out and maintain, until two years after the date on which the Council issues the Certificate of Completion (or if later the date on which all defects and outstanding works have been made good and completed as mentioned in Condition 33), such insurances satisfactory to the Council in the sum of £10million (or such higher sum as the Council may require) as may be appropriate to cover the liability of the Developer and of its employees and contractors in respect of any injury or damage to persons or property which may arise from or in connection with the execution and completion of the Works.

15 CONTRACTORS

15.1 The Developer shall not employ any contractor or agent for the execution of the Works except such contractor or agent as shall be recognised by the Council as being of proven competence and good standing in the field of civil and electrical engineering and experienced in the type and scale of the work which is to be the subject of the contract, and for that purpose the Developer shall not invite tenders for the execution of the Works except from persons proposed to and approved in writing by the Council before any such tender is invited; The employment of a contractor or agent shall not remove or abate any obligation on the part of the Developer arising from the Agreement including these Conditions.

15.2 The Developer shall appoint a contractor to undertake the Works in compliance with the following:-

15.2.1 advertising/publication of the proposed contract for carrying out the Works sufficient to open up the market to competition and for the transparency and impartiality of the procurement procedure to be reviewed such advertising/publication to include the essential details of the contract to be awarded and of the award methodology;

15.2.2 awarding the contract for the Works further to competition applying such transparent and impartial procurement procedures and award methodology.

15.2.3 the Developer shall without cost to the Council supply such information as the Council may reasonably require to demonstrate compliance with this Condition.

16 PRECONDITIONS TO LETTING CONTRACT

The Developer shall not let any contract for the execution of Works unless and until:-

16.1 The Scheme of Works has been approved by the Council; and

16.2 Safety Audit Stage 2 Report has been approved by the Council.

IMPLEMENTATION OF THE WORKS

17 COMMENCEMENT OF WORKS

The Developer shall only undertake the Works at such times as have previously been approved by the Council

18 NO WORK PENDING APPROVALS ETC

18.1 The Works shall not be commenced before the following have occurred:

- 18.1.1 the Council has issued written approval of the Scheme of Works;
- 18.1.2 Safety Audit Stage 2 Report has been approved;
- 18.1.3 evidence of all Authorisations have been supplied to the Council;
- 18.1.4 the Bond duly executed as a deed by the Developer and the approved guarantor has been delivered to the Council;
- 18.1.5 the costs referred to in Condition 13 have been paid to the Council;
- 18.1.6 the Council has given its written approval to the insurances referred to in Condition 14;
- 18.1.7 the noise survey assessment and modelling in accordance with Condition 9.8 has been supplied to the Council and if appropriate the information referred to in the second part of that Condition has been supplied to the Council
- 18.1.8 the surveys referred to in Condition 9.9 (condition survey) has been supplied to the Council.

18.2 The Developer must have readily available at the site of the Works a copy of the insurances and approved Scheme of Works and shall retain them at the site for the duration of the Works and produce them to any representative of the Council on request.

19 GENERAL CONDUCT

- 19.1 The Developer shall execute and complete the Works in compliance with the approved Scheme of Works, in a sound and workmanlike manner with proper materials and in accordance with good engineering practice and in compliance with all statutory requirements and the provisions of the Agreement including these Conditions.
- 19.2 Without prejudice to the generality of Condition 6.2 and Condition 19.1 the Developer shall provide the Council with such assistance, information and documentation as the Council shall require to comply with any obligations under the Noise Insulation Regulations 1975 including assistance in responding to any claims made under Regulation 13 of those Regulations.

20 MONITORING OF SITE AND MATERIALS

20.1 The Developer shall at all reasonable times give to the Council free access to every part of the Works and shall permit them to monitor them and inspect all materials used or intended for use in the Works.

20.2 Where the Council require any such materials to be tested the Developer shall reimburse the Council the reasonable cost of such testing.

21 ERRORS AND DEFECTS

If in the course of execution of the Works it shall appear to the Council:

21.1 that any error has arisen in the position, levels, dimensions or alignment of the Works; or

21.2 that any work carried out or materials used for the purpose of the Works are defective to such extent as to prejudice in any respect the structure, stability, durability or subsequent functioning of the Works; or

21.3 that any damage has occurred in respect of the Works; or

21.4 that in any other respect the Works are not in accordance with the Scheme of Works;

and the Council notify the Developer in writing of this then the Developer shall, at its own expense and to the satisfaction of the Council, forthwith take such remedial steps as the Council shall specify in the notice. For the avoidance of doubt this Condition is without prejudice to Condition 19.

22 SUSPENSION OF WORK

If in the opinion of the Council some part of the Works ought not properly to be commenced or continued by reason either of:-

22.1 the dependence of that part on the completion of remedial steps specified in a notice given under Condition 21; or

22.2 adverse weather conditions such as to prejudice the structure or stability of that part if executed under those conditions;

the Developer shall on the written order of the Council suspend the progress of that part of the Works for such time or times and in such manner as the Council may consider necessary, and shall during such suspension properly protect and secure the Works so far as is necessary in the opinion of the Council.

23 VARIATIONS AND ADDITIONS

In the event that any of the following circumstances arising in the course of execution of the Works,:-

- 23.1 if discovery is made of adverse ground conditions or artificial obstruction or any other unforeseen factor which in the opinion of the Council necessitate a modification of the Works to avoid or compensate for such conditions, obstruction or other factor in the interests of the satisfactory completion and subsequent functioning of the Works; or
- 23.2 if it shall appear to the Council requisite, in accordance with good engineering practice and to ensure satisfactory completion and subsequent functioning of the Works that any work or materials should be added, or that any such work or materials proposed by the Developer to be done or used should be omitted or changed; or
- 23.3 if it shall appear to the Council expedient that any obligation arising from the approved Scheme of Works should be deferred by reason of delay incurred by the Developer arising from some cause not within the Developer's control; or
- 23.4 otherwise if in a particular case the Developer and the Council so agree;

the Scheme of Works shall be varied and/or augmented in manner notified in writing by the Council to the Developer, and in the application of these Conditions any reference to the Scheme of Works shall be construed as a reference to the Scheme of Works as so varied and/or augmented.

24 PREVENTION OF NOISE, DISTURBANCE ETC

- 24.1 All work shall be carried out without unreasonable noise and disturbance and in such manner as not to interfere unnecessarily or unreasonably with the use and enjoyment of property adjoining or near the Works by their owners and occupiers.
- 24.2 Without prejudice to the generality of Condition 24.1, no work shall be carried on between the hours of 8.00pm and 7.00am the following day or on any Sunday or public holiday except insofar as:-
 - 24.2.1 any operations are necessary to avoid disruption to or for the control of traffic on any highway; or
 - 24.2.2 any work is unavoidable or absolutely necessary for the safety of life or property or the safety of the Works; or
 - 24.2.3 the Council have in writing otherwise agreed.

25 PROTECTION OF HIGHWAY

- 25.1 Insofar as the Works affect in any respect the existing highway such part shall be executed with the minimum of disturbance to that highway and traffic using that highway consistent with the work in hand.
- 25.2 In the event of it appearing to the Council at any time that such disturbance has occurred or is likely to occur to such extent as to prejudice the structure of the highway or the safety of users the Developer shall forthwith take such remedial steps as the Council may require.
- 25.3 Prior to the commencement of the Works the Developer will provide suitable vehicle and wheel cleaning apparatus and ensure that such apparatus is maintained in good and useable condition and used by all vehicles immediately before leaving the site of the Works to prevent mud or other materials being deposited on the adjoining existing highway.
- 25.4 In the event of Developer receiving any complaint it will promptly notify the Council.

26 SAFEGUARDING OF COMPLETED WORK

The Developer shall until the Council have issued the Certificate of Completion take all steps necessary to protect and maintain those parts of the Works which have been executed, so that upon substantial completion of the whole of the Works every part of the Works is in a sound and workmanlike condition and free from any damage and any material wear and tear.

COMPLETION AND CONSEQUENTIAL MATTERS

27 COMPLETION OF WORKS

- 27.1 The Works shall be executed and completed within such period as the Agreement may define (whether by duration or by reference to a specified date or both), provided that in the event of delay to the work arising from some cause not within the Developer's control the Developer shall be entitled to a reasonable extension of such period.
- 27.2 Without prejudice to any right or remedy of the Council, the Council may at any time by notice to the Owner permit an extension of time as the Council shall in its discretion determine and the Developer shall pay within 14 days of demand such additional monitoring fees (in addition to that provided for in Condition 13) as is necessary to reimburse to the Council the additional cost incurred in monitoring the Works by reason of the grant of such extension of time

28 PRE COMPLETION - CLEARANCE OF SITE AND STAGE 3 SAFETY AUDIT

28.1 On substantial completion of the Works the Developer shall clear away and remove from the site of the Works all plant, surplus material, rubbish and temporary works and items of every kind, and shall leave the whole of the site of the Works clean and in a workmanlike condition to the satisfaction of the Council.

28.2 On substantial completion of the Works (and clearance of the site of the Works) the Developer shall lodge a stage 3 Safety Audit report together with the 'Designer's response' with the Council and the Developer shall execute and complete all works as advised by the Council arising from the Safety Audit recommendations.

29. HEALTH AND SAFETY

29.1 The Developer shall furnish to the Council the Health and Safety File prepared in accordance with Interim Advice Note 105/08 - Implementation of Construction (Design and Management) 2007 issued by the Highways Agency (now Highways England) as revised and/or replaced from time to time. The Health and Safety File shall include detailed plans and drawings showing the Works as the same have actually been executed and completed and the Developer shall at his own cost ensure that the Council shall not be prevented by copyright or otherwise from reproducing such plans and drawings or part of them as the Council may require for purposes relating only to the Works and the highway and the Developer shall furnish satisfactory evidence to the Council that this has been done. The plans and drawings furnished under this Condition shall be no less detailed than the plans and drawings submitted under Condition 9.1 unless the Council shall in writing otherwise agree.

30. COMPLETION CERTIFICATE

Subject always to prior compliance with the pre completion requirements (Condition 28) and with Condition 29 the Council shall issue the Certificate of Completion forthwith if the Council is satisfied that the Works (save for such minor outstanding works as the Council shall agree) have been completed in accordance with the Agreement including these Conditions

31. DEDICATION AS HIGHWAY

Upon the issue of the Certificate of Completion unless the Agreement provides otherwise the whole of the land comprised in the Works (so far as not already forming part of the public highway and excluding such part as the Developer and the Council may in writing agree) shall be deemed to have been dedicated as public highway and shall thereafter subject always to compliance with Conditions 34 & 35 be a highway maintainable at public expense.

32. EASEMENTS

32.1 The Developer shall forthwith following the issue of the Certificate of Completion:-

32.1.1 transfer to the Council all those rights and easements (so far as the same do not at that time already subsist in favour of the Council) referred to in Condition 11.1.6; and

32.1.2 grant to the Council any easement which in the Council's opinion is necessary to ensure the permanent and satisfactory drainage or lighting of the Works in respect of any land which is retained by the Developer and such easement shall be in a form previously approved by the Council and the Developer will procure that any person with an interest in the relevant land joins in the deed of easement for the purpose of consenting to and confirming such easement.

32.2 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising from any such transfer or grant of easement.

33. NOISE INSULATION

The Developer shall within 1 month after the opening of the Works to public traffic supply to the Council an update of the information required pursuant to part 2 of Condition 9.8 (noise survey assessment and modelling- map lists and works) which relates to all eligible properties at the date of the opening of the Works to public traffic.

34. REMEDYING OF DEFECTS AND OUTSTANDING WORKS

34.1 If at any time during the period of two years following the date on which the Council issue the Certificate of Completion:-

34.1.1 any defect in the Works becomes manifest (not being a defect arising solely from normal use by the public as a highway or from accidental or wilful damage by any third party); or

34.1.2 the Developer shall fail to complete any of the outstanding works mentioned in Condition 30 (minor outstanding Works on issue of Certificate of Completion) and the Council notify the Developer in writing of this

then the Developer shall at his own expense cause such defect to be made good or outstanding works to be completed (as the case may be) to the satisfaction of the Council.

34.2 Forthwith on receipt of any notification from the Council further to Condition 34.1 the Developer will agree with the Council the timing of the carrying out of such remedial or outstanding works and unless otherwise agreed shall secure their completion within one month of receipt of such notification (except in the event of delay

arising from some cause not within the Developer's control when the Developer shall be entitled to a reasonable extension of time).

35. STAGE 4 ROAD SAFETY AUDIT

35.1 The Council may require the Developer to carry out a Safety Audit Stage 4 at any time within 36 months from the opening of the Works and to lodge the report with the Council together with the "Designer's response" within 2 months and the Council shall notify the Developer of all works required to be undertaken arising from the Safety Audit recommendations

35.2 In the event that notification of works is given by the Council further to Condition 35.1 prior to the full release of the Bond the Developer shall execute and complete all the works as advised by the Council. The Developer will agree with the Council the time that he will be carrying out such works and unless otherwise agreed shall secure their completion within 1 month of receipt of such notification (except in the event of delay arising for some cause not within the Developers control, when the Developer shall be entitled to a reasonable extension of time).

35.3 In the event that notification of works is given by the Council further to Condition 35.1 subsequent to the full release of the Bond the Developer shall pay to the Council within 28 days of written request from the Council the costs incurred or to be incurred by the Council in carrying out such works.

36. RELEASE OF BOND

36.1 Upon the issue of the Certificate of Completion the Bond shall be deemed to be released by eighty per cent (80%) of its original value;

36.2 The Bond shall be deemed to be fully discharged at the latest of the following:

36.2.1 the date two years after the date on which the Council issue the Certificate of Completion; and

36.2.2 the date on which all defects and outstanding works have been made good and completed as referred to in Condition 34; and

36.2.3 the date on which all works have been completed as referred to in Condition 35.2

36.2.4 the Council have recovered their full expenses in all cases where Condition 5 applies (Council may act in default or emergency);

36.2.5 the date on which the Council have received the transfers or grants further to Condition 32;

36.3 Conditions 36.1 and 36.2 are without prejudice to the Council's absolute discretion from time to time upon application of the Developer to release the Bond to an extent commensurate with

the proportion of the Works that have been executed and completed at such time.

EXECUTED AS A DEED by)

LIAM ASHBY ADAMS)

in the presence of a witness: -)



Witness Signature

MURRAY THOMSON
Witness Name (Print)

1 LEIGH BURNINGHAM COURT

MURRAY THOMSON

6763 LEIGH TAP
Witness Address

EXECUTED AS A DEED by)

MARY CATHLEEN ADAMS)

in the presence of a witness: -)



Witness Signature

MURRAY THOMSON
Witness Name (Print)

AS ABOVE

Witness Address