

DATED 26 APRIL 2021

BDW TRADING LIMITED and TAYLOR WIMPEY UK LIMITED and  
VISTRY HOMES LIMITED

- and -

THE OXFORDSHIRE COUNTY COUNCIL

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AGREEMENT

S38 (and S278) Highways Act 1980 (and  
S106 Town and Country Planning Act 1990)  
Relating to land at Longford Park, Parcel D & E Phase 3, Bodicote,  
Banbury  
-----

AS/53498

Sukdave Ghuman  
Head of Legal Services and Deputy Monitoring Officer  
Oxfordshire County Council  
County Hall  
New Road  
Oxford OX1 1ND



**THIS DEED OF AGREEMENT** is made on the 26<sup>th</sup> day of April  
Two Thousand and twenty one

**BETWEEN:-**

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** ("the Council")
- (2) **BDW TRADING LIMITED** and **TAYLOR WIMPEY UK LIMITED**  
and **VISTRY HOMES LIMITED** ("the Owner")

1. **Interpretation**

**In this Deed of Agreement:-**

- 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 which drawings shall be no less detailed than the Specification (unless the Council shall in writing otherwise agree) and where any part of the highway drainage system will pass through or will discharge onto land of a third party the route of the highway drainage system and the discharge point(s) shall be shown on the As-Built Drawings
- 1.4. "Certificate of Adoption" means a certificate issued by the Council under clause 12.3
- 1.5. "Certificate of Final Completion" means a certificate issued by the Engineer under clause 12.1
- 1.6. "Certificate of Practical Completion" means a certificate issued by the Engineer under clause 11.2
- 1.7. "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 street works authority or county planning authority and any duly appointed employee or agent of the Council or such successor
- 1.8. "the Engineer" means the Council's Director for Planning and Place



- 1.9. "the Estate Highway Drains" means any part of the drainage system for the Roads which will be sited at the Land and which will not be encompassed within the boundaries of the Roads
- 1.10. "Health and Safety File" means a file prepared in accordance with its Construction (Design and Management) Regulations 2015 and including the As-Built Drawings
- 1.11. "Highway Works" means works on the existing public highway to be carried out in conjunction with the construction of the Roads as shown coloured [pink] on the Plan
- 1.12. "including" means including without limitation and 'include' shall be construed accordingly
- 1.13. "the Land" means the land at Longford Park Parcel D&E Phase 3, Bodicote, Banbury Oxfordshire shown edged red on the Plan
- 1.14. "Land Compensation Acts" means the Land Clauses Consolidation Act 1845 the Land Compensation Act 1961 the Compulsory Purchase Act 1965 the Land Compensation Act 1973 and the Planning and Compensation Act 1991 and includes the Human Rights Act 1998 and any statute enacted on a date on or after the date of execution of this Agreement which confers a right of compensation for the compulsory acquisition of land and/or the diminution in value of land as a result of the carrying out of or the use of public works
- 1.15. "the Owner" means the said **BDW TRADING LIMITED** (Company. Registration. Number. 03018173) of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1UF and **TAYLOR WIMPEY UK LIMITED** (Company. Registration. Number..01392762) of Gate House, Turnpike Road, High Wycombe HP12 3NR and **VISTRY HOMES LIMITED** (Company. Registration.



Number. 00397634) of 11 Tower View, Kings Hill, West Malling ME19 4UY and of DX92866, West Malling and their successors in title and assigns

- 1.16. "the Plan" means the plan (drawing (s) number 20488\_02\_020\_302.2j section 38 sheet 2 of 2 annexed to this Deed of Agreement
- 1.17. "the Planning Permission" means the planning permission application reference 15/01777/REM
- 1.18. "the Roads" means the carriageways footways cycleways and verges margins and visibility splays which are to be constructed on the Land and which are coloured brown grey and green respectively on the Plan and including highways drains road gulleys swales and soakaways and connections and any off site highway drainage which are shown coloured blue on the Plan and any street lighting equipment which is shown coloured red on the Plan The Roads do not include any trees, shrubs or other vegetation save as expressly identified on the Plan as part of the Roads.
- 1.19. "the Service Media" means all drains sewers pipes wires cables and associated apparatus for the supply of water electricity gas radio television telephone and other audio visual and data signals and the disposal of foul and surface water
- 1.20. "the Specification" means the specification plans and sections approved by the Engineer which shall comply with the Council's conditions and technical specifications for the construction of roads in residential areas and shall include the provision of means for lighting the Roads in accordance with the Council's requirements
- 1.21. "Statutory Undertaker" means a body with a statutory right as defined in Section 105 (1) New Roads and Street Works Act 1991 to undertake street works as defined in that Act

- 1.22. "the Works" means the construction of the Roads and the Highway Works
- 1.23. Reference in this Agreement to fees for inspection of Works shall include fees for consideration of plans drawings and specification for the Works
- 1.24. Any reference to an enactment includes any amendment to or modification of it and the version of it for the time being in force shall apply
- 1.25. Headings in this Agreement are for convenience only and shall not be taken into account in its construction and interpretation
- 1.26. References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Agreement
- 1.27. Where the context so requires:-
  - 1.27.1. the singular includes the plural and vice versa
  - 1.27.2. the masculine includes the feminine and vice versa
  - 1.27.3. persons includes bodies corporate associations and partnerships and vice versa
- 1.28. Where a party comprises more than one person the obligations and liabilities on that party shall be joint and several obligations and liabilities of those persons
- 1.29. Where more than one party enters into any obligation or liability those parties are jointly and severally liable
- 1.30. 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

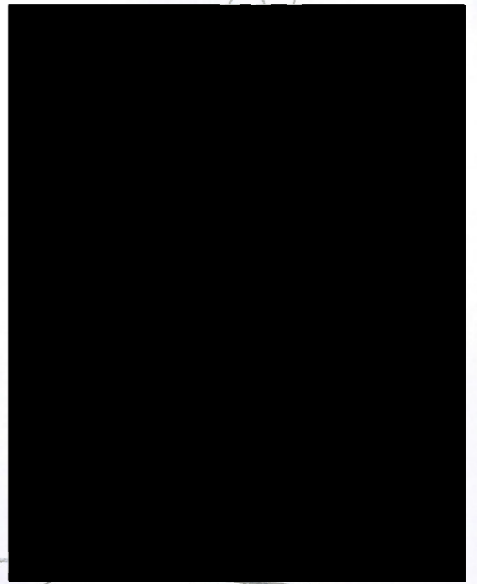
## 2. **Preliminary**

- 2.1. The Owner is the owner of the freehold of the Land registered at the Land Registry with title absolute under title number ON269171 subject to the incumbrances

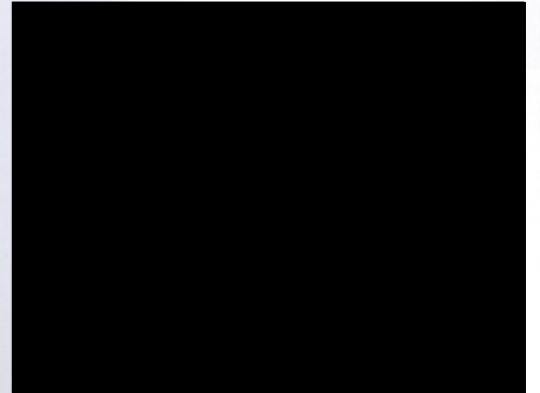




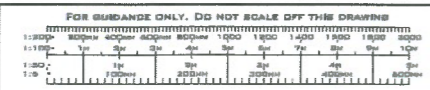
Chief Legal Officer



Chief Legal Officer/Designated Officer



DESIGN LAYOUTS SHOULD BE USED FOR  
 FENCE TYPES AND POSITIONS  
 DRIVE SLABING PATTERNS AND PATES  
 DRIVE POSITIONS AND MATERIALS  
 HOUSE TYPES, ROOSTERS & HANDINGS



NOTES:

REVISIONS:  
 REV A - XREF UPDATED TO SUIT REVISED CURRENT PLANNING LAYOUT, 28.09.15 ZT

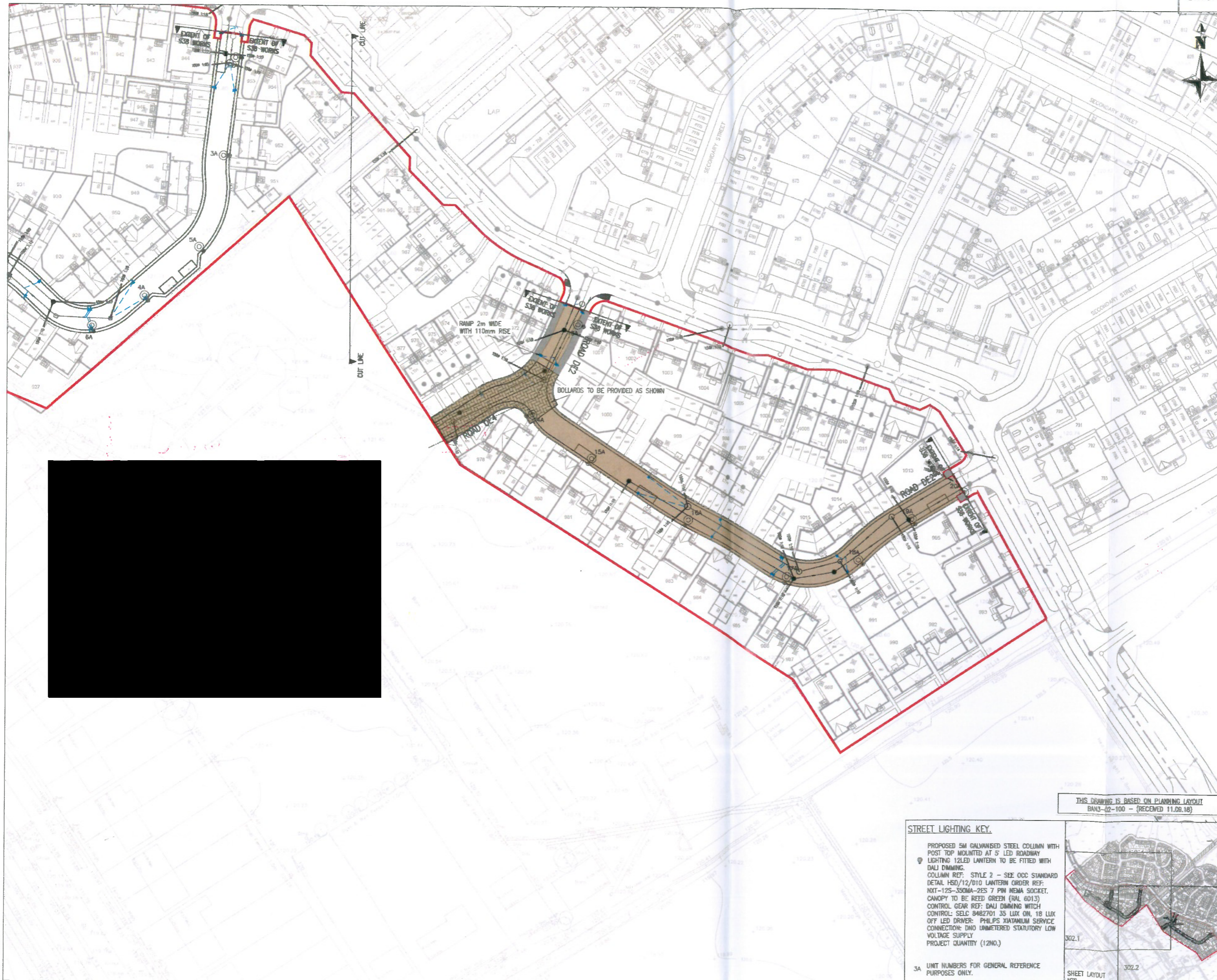
STATUS:	DRAWN BY:	CHECKED:
STATUS	ZT	NG
JOB REF:	SCALE @ A1:	DATE:
0120	1:1250	05/2015

PROJECT:	BANBURY PHASE 3
TITLE:	LOCATION PLAN

DWS NO:	2_100
REV:	A







- NOTES:**
- DO NOT SCALE THIS DRAWING.
  - THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER RELEVANT ENGINEERS, ARCHITECTS AND SPECIALIST DESIGN DRAWINGS AND DETAILS.
  - ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE. ALL LEVELS ARE IN METRES UNLESS NOTED OTHERWISE.
  - ANY DISCREPANCIES NOTED ON SITE ARE TO BE REPORTED TO THE ENGINEER IMMEDIATELY.
  - ALL HIGHWAY WORKS TO BE CARRIED OUT IN ACCORDANCE WITH OXFORDSHIRE COUNTY COUNCIL'S DESIGN GUIDE AND SPECIFICATIONS AND THE DETAILS SHOWN ON DRG NO. 20488\_02\_080\_302.
  - THE CONTRACTOR SHALL CHECK ALL TIE-INS FOR LEVEL AND LEVEL WITH EXISTING BEFORE COMMENCING ANY WORKS. THE ENGINEER SHALL BE NOTIFIED IMMEDIATELY IN WRITING SHOULD ANY ERRORS BE FOUND.
  - IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO LOCATE ANY SERVICE APPARATUS IN THE VICINITY OF THE WORKS. THE CLIENT WILL ACCEPT NO CLAIMS WHATSOEVER IN RESPECT OF ANY LOSSES OR DAMAGE CAUSED IN RESPECT OF SUCH APPARATUS, HOWEVER CAUSED.
  - IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO EXECUTE THE WORKS AT ALL TIMES IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE HEALTH AND SAFETY AT WORK ACT 1974, AND THE C.O.M. REGULATIONS 2015. THE CONTRACTOR WILL BE DEEMED TO HAVE ALLOWED FOR FULL COMPLIANCE, WITHIN HIS RATES.
  - THE CONTRACTOR IS RESPONSIBLE FOR ENSURING THAT ALL WORKS ARE TO THE SATISFACTION OF THE ENGINEER, AND SHALL BE DEEMED TO HAVE INCLUDED WITHIN HIS RATES FOR ANY NECESSARY TESTING.
  - THE CONTRACTOR WILL BE RESPONSIBLE FOR PROVIDING ALL NECESSARY DE-WATERING AND TRENCH SUPPORT TO EXECUTE THE WORKS IN A SATISFACTORY MANNER, AND SHALL BE DEEMED TO HAVE ALLOWED FOR THE SAME WITHIN HIS RATES.
  - ALL TACTILE PAVING TILE ARRANGEMENTS SHALL BE Laid WITH THE MODULES IN LINE WITH THE CROSSING AND MUST BE AGREED WITH THE HIGHWAY AUTHORITY PRIOR TO LAYING.
  - FOR HIGHWAY SETTING OUT INFORMATION REFER TO DRG NO. 20488\_02\_050\_301. FOR HIGHWAY & DRAINAGE LONGITUDINAL SECTIONS REFER TO DRG NOS. 20488\_02\_110\_301.
  - ALL BURIED CONCRETE PRODUCTS AND MORTAR SHALL BE MADE USING SULPHATE RESISTING CEMENT.

- KEY:**
- ADOPTABLE CARRIAGEWAY
  - ADOPTABLE CARRIAGEWAY (BLOCK PAVED)
  - ADOPTABLE FOOTWAY
  - ADOPTABLE VERGE
  - ADOPTABLE SURFACE WATER SEWER & MANHOLE
  - ADOPTABLE FOUL SEWER & MANHOLE
  - PRIVATE LATERAL CONNECTION TO ADOPTABLE SEWER (CONNECT SOFFIT TO SOFFIT UNLESS NOTED OTHERWISE)
  - EXISTING ADOPTABLE DRAINAGE (REFER TO PHASE 2 DRG NOS. 20488\_02\_070\_03 & 13)
  - 450mm DIA X 1050mm DEEP TRAPPED ROAD GULLY GRATING AND 150mm DIA GULLY CONNECTION (REFER TO PHASE 2 DRG NO. 20488\_02\_080\_01)
  - 2.4m X 25m VISIBILITY SPLAY
  - SITE BOUNDARY

F	PLANNING LAYOUT UNPROPOSED AND ADOPTABLE FOOTWAY ADDED	BS	CA	09/03/18
H	ROADS D12 & D16 AMENDED TO SHOW MANHOLE IN OPENINGS CORRECT FROM STRUCTURE OF SPINE ROAD TO END OF ROAD D14, MATCHINGS AND CHANGES AMENDED TO SUIT	JP	EA	09/03/18
G	ROADS D12 AMENDED TO SHOW DRAINAGE UNPROPOSED TO SUIT	CG	JP	04/03/18
F	STREET LIGHTING ADDED	CG	EA	09/03/18
E	UNPROPOSED AND EXISTING MANHOLE CONNECTIONS ADDED TO ROAD	JP	EA	09/03/18
D	ADDITIONAL MANHOLE ADDED TO ROAD	CG	EA	09/03/18
C	MANHOLE ADDED TO ROAD TO ALLOW FOR PROPOSED FUTURE CONNECTIONS. GULLY CONNECTIONS AMENDED NEW MANHOLES SET, PIS AND GUY ADDED THERE WITH BRASS, RECEIVED FROM BOVIS DATED 09/03/18	JP	EA	09/03/18
B	SERVICE STRIP ARRANGEMENTS ABOUT SQUARES AMENDED	JP	EA	09/03/18
A	PLANNING LAYOUT UNPROPOSED	VP	EA	20/03/18
REV:	AMENDMENTS	DATE:	CHK:	DATE:

**PROJECT:**  
LONGFORD PARK  
BODICOTE  
BANBURY

**DRAWING TITLE:**  
PARCEL D & E  
S38 ADOPTION PLAN  
SHEET 2 OF 2

**CLIENT:**  
BOVIS HOMES

**DRAWING NUMBER:**  
20488\_02\_020\_302.2

REVISION:	SHEET SIZE:	SCALE:
J	A1	1:500
DRAWN BY:	CHECKED BY:	DATE:
DMH	KA	26.08.18

**STATUS:**  
FOR INFORMATION / APPROVAL

**M-EC** Walsingham House, Leiston Road, Bodicote, Leicestershire LE87 6EP  
T: 01530 266 250  
F: 01530 266 150  
info@m-ec.co.uk  
www.m-ec.co.uk

**STREET LIGHTING KEY:**

PROPOSED 5M GALVANISED STEEL COLUMN WITH POST TOP MOUNTED AT 5' LED ROADWAY LIGHTING 12LED LANTERN TO BE FITTED WITH DALI DIMMING.  
COLUMN REF: STYLE 2 - SEE OCC STANDARD DETAIL HSD/12/D10 LANTERN ORDER REF: NXT-12S-350MA-2ES 7 PIN NEMA SOCKET. CANOPY TO BE REED GREEN (RAL 6013)  
CONTROL GEAR REF: DALI DIMMING SWITCH CONTROL: SELC 8482701 35 LUX ON, 18 LUX OFF LED DRIVER: PHILIPS XNATMIUM SERVICE CONNECTION: DNO UNMETERED STATUTORY LOW VOLTAGE SUPPLY  
PROJECT QUANTITY (12NO.)

THIS DRAWING IS BASED ON PLANNING LAYOUT BAN3-02-100 - (RECEIVED 11.09.18)



3A UNIT NUMBERS FOR GENERAL REFERENCE PURPOSES ONLY.



shown on the title on 19 December 2019 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 Land
- 2.3. For the purposes of the 1980 Act the Council is the highway authority and the street works authority for certain highways in the area which includes the Land
- 2.4. The Owner intends to construct the Roads further to the Planning Permission and to dedicate them as highways
- 2.5. The Council has agreed with the Owner that upon the Council being satisfied that the Roads have been constructed executed and carried out to the Council's satisfaction and in accordance with the Specification it will adopt the Roads as highways maintainable at the public expense
- 2.6. The Highway Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act and it has been agreed between the Owner and the Council that in lieu of the Owner paying the costs of the Highway Works the Highway Works should be executed by the Owner in conjunction with the Roads
- 2.7. This Deed of Agreement is made under Section 38 and Section 278 of the 1980 Act and Section 106 of the 1990 Act and 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 in respect of the Land and enforceable by the Council

3. **Preconditions to Commencing Works**

The Owner will not commence the Works until all the following have been satisfied:-

- 3.1. the certificate of approval of drawings has been issued by the Council

- 3.2. not less than 28 days prior notice in writing of intention to commence works has been given to the Engineer (provided always for the avoidance of doubt this notice is for the purpose of this agreement only and does not constitute notice for any other function of the Council)
- 3.3. guarantors satisfactory to the Council have entered into a Bond in the sum of £324,744.60 in such form as shall be approved by the Council guaranteeing the performance by the Owner of its obligations under this Agreement
- 3.4. the Owner has secured easements (in such form as shall have previously been approved by the Council) over any land in the ownership of a third party through which any part of the highway drainage system will pass or into which the system will discharge (the routes of such easements to be shown on the As-Built Drawings) and where applicable such easements have been registered at HM Land Registry and has secured all requisite consents for any discharge of highway drainage into a watercourse
- 3.5. insurance in accordance with clause 4.3 has been approved by the Council

4. **Execution of Works**

- 4.1. The Owner will execute the Works
  - 4.1.1. entirely at its own expense;
  - 4.1.2. in accordance with this Agreement and the Specification;
  - 4.1.3. to the satisfaction in all respects of the Engineer
  - 4.1.4. with monitoring by the Engineer; and
  - 4.1.5. with all due diligence and in a good and workmanlike manner using only good quality materials and in accordance with all statutes, secondary legislation, national and governmental codes of practice, best practice guidelines and similar instruments



- 4.2. Without prejudice to the generality of clause 4.1 the Owner will in compliance with requirements of the Council erect lamp columns or wall/pole mounted brackets and fittings and other street lighting equipment as specified by the Engineer and arrange for the connection of the electricity supply so that the street lights are in working order to the satisfaction of the Engineer
- 4.3. The Owner will take out and maintain public liability insurance so as to cover the liability of the Owner 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 throughout the execution of the Works until they are adopted as highway maintainable at public expense and the sum insured will be not less than £10million in respect of a single incident
- 4.4. The Owner will comply with the following additional obligations in carrying out the Highway Works:-
- 4.4.1. The Owner will before undertaking works for connecting the Roads with any highway maintainable at the public expense give notice to each person board or authority being an undertaker (as defined in the New Roads and Street Works Act 1991) for the time being of any Service Media laid in upon or under such highway of the proposal to make such connection and will indemnify the Council in respect of the cost of any works or measures considered necessary by any undertaker in consequence of the proposal to make such connection
- 4.4.2. The Owner will carry out the Highway Works and the associated part of the Works in the area edged orange on the Plan in accordance with a timetable which has been approved by the

Council to the intent that the Highway Works and such associated part of the Works are undertaken at the commencement of the Works and are completed by February 2021

- 4.5. Prior to the commencement of the Works the Owner will 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 adjoining existing highways

5. **Duration of Works and Extension of Time**

- 5.1. The Owner will complete the Works no later than February 2021
- 5.2. Without prejudice to any other right or remedy of the Council, the Council may at any time permit an extension of time to complete the Works for such period of time as the Council shall in its discretion determine and the Owner shall pay within 14 days of demand such additional inspection fees (in addition to that provided for in clause 10.1) as is necessary to reimburse to the Council the additional cost incurred in inspecting the Works by reason of the grant of such extension of time

6. **Services**

- 6.1. The Owner will ensure that any Service Media to be laid under the Roads
  - 6.1.1. are laid to the satisfaction of the Engineer in compliance with any requirements of the Engineer as to the laying position depth protective covering or other matter concerning any such apparatus and will afford all necessary facilities to enable the Engineer to satisfy himself that any requirements laid down by him have been observed and



6.1.2. are laid to the boundaries on either side of the Roads to points to be agreed with Engineer **AND** that all such Service Media are so laid before the final surfacing of the Roads is carried out

- 6.2. The Owner will not at any time give consent to the erection by any electronic communications operator of telegraph or telephone poles on the Roads without the consent in writing of the Council first having been obtained
- 6.3. The Owner will not without having first secured at the absolute discretion of the Council a licence from the Council for the purpose discharge into the highway drainage system surface water from any part of the Land which does not form part of the Roads
- 6.4. The Owner will not grant without the consent of the Council any wayleave easement or right which could not be executed or enjoyed without the consent of the Council if the Roads were highway maintainable at public expense
- 6.5. The Owner will secure without expense to the Council easements (in such form as shall have previously been approved by the Council) over any land in the ownership of a third party through which any part of the highway drainage system will pass or into which the system will discharge and secure all requisite consents for any highway drainage which discharges into a watercourse
- 6.6. The provisions of the Schedule will apply where there are or will be Estate Highway Drains

7. **Occupation**

The Owner will not permit or suffer any residential unit or other building fronting or near to the Roads to be occupied until it has completed the Works (except the final wearing course surfacing of the carriageway and footways) in accordance with this

Agreement and there has been installed in accordance with the approved plans by a street lighting contractor approved by the Council the specified lamp columns or lanterns and other lighting equipment (and arrangements have been made with the distribution network operator so that it is in full operation) along the full distances of the Roads (between their junction with the existing public highway and those portions of the Roads fronting or adjacent to the residential unit or other building to be occupied furthest from the junctions of the Roads with the existing public highway)

8. **Testing**

8.1. The Owner will at all times give to the agents and employees of the Council free access to every part of the Roads and permit them to inspect the same and all materials used or intended for use (which inspection may in the case of the highway drainage system include the use of close circuit television equipment) and if required by the Engineer to do so to uncover or open up any work to enable it to be inspected and if so required to remove any work or materials which are not in accordance with the Specification or which in the opinion of the Engineer are defective and at the Owner's own expense to re-execute any such work and substitute proper and suitable materials to the satisfaction of the Engineer

8.2. The Owner will within 14 days of written demand pay to the Council the cost of any testing required by the Engineer in his discretion of materials used in connection with the Works

9. **Maintenance (General)**

Until the Roads become highways maintainable at the public expense the Owner will keep the whole of the Works in a good state of efficiency cleanliness and repair including but without limitation the cutting of grass verges and reinstate and make good



any defects which shall or may appear arise or become manifest to the Engineer

10. **Payment**

- 10.1. The Owner will on the execution of this Agreement pay to the Council the sum of £29,227 in respect of the monitoring of the Works by the Council (and without prejudice to the other provisions of this clause 10 the general management of this Agreement) and in addition (and without prejudice to clause 10.6) the Council's legal charges and disbursements in connection with the preparation and completion of this Agreement
- 10.2. The Owner will pay on demand (or if later together with payment further to clause 10.2) to the Council the aggregate sum of £13 multiplied by the number of street lighting columns
- 10.3. In the event that any payment due to the Council pursuant to this Agreement is not paid by the due date then interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc will be paid to the Council on the amount outstanding from the due date to the date of payment
- 10.4. The Owner will pay to the Council within 14 days of demand any costs incurred by the Council in the promotion of and where applicable making and implementing any orders that regulate traffic which the Council deems appropriate because of the Works and whether promoted, made or implemented before, during or after completion of the Works
- 10.5. The Owner will pay to the Council within 14 days of demand legal charges and disbursements incurred by the Council in connection with the consideration and where applicable completion of easements to be secured pursuant to clause 6.5 and exceptions and reservations

and deeds of grant of easement and covenant further to the Schedule

11. **Practical Completion and other arrangements**

- 11.1. The Council shall give consideration to the reduction of the sum secured by the Bond on practical completion of the Roads up to the binder course, the street lighting, highway drainage and any services to be laid in the Roads together with any supporting structures for the Roads but such a reduction shall be no more than 50% of the sum secured by the Bond for the construction of the Roads and thus for the avoidance of doubt it would exclude any reduction of the sum secured by the Bond for the Highway Works.
- 11.2. Upon the practical completion of the construction of the Roads in accordance with the preceding clauses of this Agreement the Engineer shall issue a Certificate of Practical Completion and give consideration to a reduction in the sum secured by the Bond (ordinarily a reduction to 20% of the original bond sum).
- 11.3. Within two months following the date of the Certificate of Practical Completion (or such longer period as the Council may in writing agree) the Owner will forward to the Council the Health and Safety File including As-Built Drawings together with certified copies of all easements secured pursuant to clause 6.5 and all consents obtained in accordance with clause 6.5
- 11.4. The Owner will remain the street manager for the purposes of the New Roads and Street Works Act 1991 (and as referred to in Section 49(4) of that Act) until such time as the Works become maintainable at the public expense and in this respect the Owner will appoint a supervisor qualified in accordance with the provisions of Section 67 New Roads and Street Works Act 1991 until the Works are adopted



11.5. If during the period of one year after the date of the Certificate of Practical Completion (and any further period during which any of the preconditions specified in clause 12.2 remain to be satisfied) any defect or damage shall arise or occur in the Roads the Owner will at its own expense and within three months after notification in writing by the Council to the Owner of such defect or damage make good the same to the satisfaction of the Engineer and during such period of one year and during the period until such defect or damage is made good (and any such further period as aforesaid) the Owner will maintain the Works in accordance with the terms of this Agreement

12. **Certificate of Final Completion and Adoption**

12.1. At the end of the period of one year after the date of the Certificate of Practical Completion (or as applicable any longer period during which any of the preconditions specified in clause 12.2 remain to be satisfied) if the Engineer is satisfied that the Works have been properly maintained and repaired and that all defects (if any) have been remedied he shall issue a Certificate of Final Completion

12.2. The following are preconditions to adoption of the Roads:-

12.2.1. the Engineer has issued his Certificate of Final Completion

12.2.2. unless otherwise agreed by the Council the Owner has procured that an independent safety auditor approved by the Council has undertaken road safety audit stages 1, 2, 3 and 4 on the Works in accordance with H.D. 19/03 (Road Safety Audit volume 5: design manual for roads and bridges) and the Owner has carried out at its own expense all the major



- works identified in the Road Safety Audits to the satisfaction of the Council
- 12.2.3. all payments due further to this Agreement including the Commuted Sum and the payment referred to in clauses 10.3 have been made to the Council
  - 12.2.4. the Health and Safety File has been furnished to the Council with the As-Built Drawings
  - 12.2.5. certified copy easements and consents required in accordance with clause 6.5 have been furnished to the Council and the Council is satisfied that where applicable the Owner will enter into a deed of grant as provided in paragraph 3 of Part 1 the Schedule on the same day as and immediately following the adoption of the Roads
  - 12.2.6. in the opinion of the Engineer all construction vehicles have ceased to use the Roads
  - 12.2.7. the Roads connect directly to a public highway
  - 12.2.8. at least seventy-five per centum of the frontage to the Roads on which the Planning Permission plans show buildings to be erected has been developed by the erection of buildings
  - 12.2.9. any sewers constructed under the Roads under an agreement under Section 104 of the Water Industry Act 1991 have been certified as being adopted (unless the Council at its absolute discretion waives this requirement
  - 12.2.10. this agreement has been noted on the registers of title number ON269171 as set out in clause 12.5.
- 12.3. When the conditions set out in clause 12.2 are satisfied (or at the absolute discretion of the Council such conditions have been partially satisfied and this is notified



to the Owner) the Roads as shown on the As-Built Drawings shall by virtue of this Agreement be deemed to have been dedicated by the Owner as public highways (for all public highway purposes including use by mechanically propelled vehicles) and adopted by the Council as highways maintainable at the public expense and the Council shall issue a Certificate of Adoption the date of which shall be the specified date under Section 38(3) of the 1980 Act on which the Roads as shown on the As-Built Drawings shall become for the purposes of the 1980 Act highways maintainable at the public expense and on the issue of the Certificate of Adoption the Bond shall be deemed to be discharged save for any prior claim.

- 12.4. The Council may at its discretion before the Works shall have been completed adopt any part of the Roads (the construction of which part shall have been completed and certified by the Engineer in manner specified above) if such part shall connect directly with an existing vehicular highway maintainable at the public expense. On such adoption the relevant part of the Roads shall be deemed to have been dedicated by the Owner as public highway and where such part of the Road comprises the area edged orange on the Plan there shall be paid the Commuted Sum (Access).
- 12.5. The Owner consents to the noting of the provisions of clause 12.3 and clause 12.4 of (and the schedule to) this Agreement on the registers of Title No. ON269171
- 12.6. If the Owner shall wish to use any section of the Works which under this Agreement has become a highway maintainable at the public expense with lorries or other heavy vehicles operated on behalf of the Owner in connection with road or building works carried out on the Land or on any adjoining land he shall first consult the



Engineer and any such traffic shall in any event be deemed to be extraordinary traffic for the purposes of Section 59 of the 1980 Act and the Owner agrees to pay to the Council any additional cost of repair or maintenance as may be certified by the Engineer as being attributable to such extraordinary traffic due allowance being made for the ordinary cost of maintenance of such section of the highway by reason of normal wear and tear

12.7. The Owner will secure all requisite consents for street name plates (including replacement in a revised style) to be placed and retained on walls constructed at the Land and for painting/repairs to be undertaken to them.

13. **Default**

13.1. Without prejudice to any other right or remedy of the Council if the Owner fails to execute or complete the Works in accordance with the Owner's obligations under this Agreement the Council shall be entitled (but without any obligation so to do) after giving not less than 7 days written notice to the Owner informing it of such failure to execute or complete the Works in default and a right of entry is hereby irrevocably granted to the Council for all such purposes and the Council may charge the Owner with the reasonable and proper expenses of carrying out any such remedial works it undertakes such expenses being a debt due to the Council and recoverable by the Council by action or otherwise provided always that save in case of emergency the Council shall not give a default notice unless it has first afforded the Owner a reasonable opportunity (not exceeding 3 months) to remedy the failure

13.2. The provisions of the Agreement (save for the obligation at clause 7 not to Occupy) shall not be enforceable



against individual owner-occupiers or tenants of the Dwellings nor against the mortgagees of the foregoing

14. **Indemnity**

- 14.1. The Owner will indemnify the Council against all liability actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works except to the extent that they arise out of or are in consequence of any negligence of the Council
- 14.2. Further the Owner will indemnify the Council against all liabilities actions claims charges costs demands and expenses under the Land Compensation Acts (and any regulations made thereunder) arising from or incidental to the use of the Works following upon the carrying out or completion of them or resulting from or incidental to the use of any other roads as altered on account of the Works
- 14.3. Prior to the commencement of the Works the Owner will arrange for a noise survey and assessment to be undertaken by a noise expert approved by the Council in such manner and at such times and locations approved by the Council and a copy of the survey and assessment shall be given to the Council

15. **No Implied Warranty**

Nothing in this Agreement shall imply any obligation on the part of the Council to the Owner or any other person to ensure that the Works are properly constructed or absolve the Owner in any way from any liability or obligation on its part of under this Agreement or by statute or at common law

16. **Non-Fetter**

Nothing contained in this Agreement shall operate to take away or prejudice the right of the Council to exercise the powers conferred upon it by the private street works code in Part XI of the 1980 Act in respect of the Roads if the Owner or its successors or assigns



shall fail to perform all or any of the obligations undertaken or imposed upon the Owner by this Agreement in the manner provided above

17. **Termination**

If the Owner shall fail to perform or observe any of the covenants and conditions on the part of the Owner contained in this Agreement or if the Owner shall go into liquidation voluntarily or otherwise except for the purpose of re-organisation amalgamation or reconstruction into a solvent company or if an administration order is made in respect of the Owner or a receiver or administrative receiver is appointed over all or any of the Owner's assets or if the Owner shall enter into a composition or arrangement with its creditors the Council may without prejudice to any of its rights claims or remedies against the Owner for any non-performance or non-observance terminate this Agreement by notice in writing signed by the proper officer of the Council

18. **Alienation**

18.1. The benefit of this Agreement may not be assigned by the Owner without the prior consent of the Council which shall not be unreasonably withheld

18.2. The Owner will give the Council written notice of any disposal of its interest in the Land or any part of it and of the name and address of the new owner and the date of the disposal within 14 days of such disposal **SAVE THAT** this shall not apply to a disposal of a residential unit for private occupation

19. **Act Reasonably**

Where a matter falls within the 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 Agreement without undue delay

20. **Rights of Third Parties**

Notwithstanding any other provision of this Agreement nothing in this agreement confers or purports to confer any rights under the

Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act

21. **No Waiver**

No alteration in the terms of this Agreement 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 Agreement shall in any way release the Owner from any liability under this Agreement

22. **Notice**

22.1. Any notice or notification to be given to the Council under this Agreement shall be sent to the Director for Planning and Place of the Council (Ref 10.2.137.28 ) 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

22.2. Any notice or notification to be given to the Owner under this Agreement shall be sent to the registered office or to such other person at such address as the Owner shall notify to the Council in writing

23. **Jurisdiction**

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

24. **Delivery**

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





## SCHEDULE

(see clause 6.6 – Estate Highway Drains)

In this Schedule

“the Property” means the Property transferred or as applicable the retained land of the Owner

“the Highway” means the Roads and any other highways for which the Council is the highway authority and which are capable of benefiting from the relevant rights and covenants

“the Strip” means the part of the Property [ ]

### **Part 1 – Protective Requirements**

- 1 The Owner will not permit or suffer any part of the Land at which the whole or part of Estate Highway Drains are or will be sited to be disposed of nor any contract in respect of such disposition to be entered into unless such disposition shall contain the following matters or they are comprised in a separate document completed simultaneously with such disposition:-
  - 1.1 Exceptions and reservations rights as set out in Part 2 of this Schedule for the benefits of the Highway.
  - 1.2 Covenants as set out in Part 3 of this Schedule for the benefit and protection of the Highway and with intent to bind the disponee and its successors in title owners and occupiers for the time being of the Property in whosever's hands the same may come

and the Owner will procure that such exceptions and reservations/rights and covenants are noted at H M Land Registry on the title of the Property and the title of the Roads.



- 2 There shall deemed to be inserted as clause 12.2.10 of this Agreement the following precondition to the adoption of the Roads: that there has been produced to the satisfaction of the Council evidence that any part of the Land which has been disposed of by the Owner and at which the whole or part of the Estate Highway Drains are sited is subject to exceptions and reservations/rights and covenants as provided in Parts 2 and 3 of this Schedule and that they have been noted at H M Land Registry on the title of the Property and the title to the Roads
  
- 3 The Owner will immediately on the issue of the Certificate of Adoption grant to the Council in fee simple with full title guarantee rights as specified in Part 2 of this Schedule for the benefit of the Highway and covenant as provided in Part 3 of this Schedule in respect of any part of the Land which is retained by the Owner and at which the whole or any part of the Estate Highway Drains are sited and the Owner will procure that any person with an interest in the Property joins in the Grant of Easement and Deed of Covenant in favour of the Council for the purpose of consenting to and confirming such Grant of Easement and Deed of Covenant and further the Owner shall in such Grant of Easement and Deed of Covenant consent to its noting on the registered title to the Property and procure the consent of all other persons whose consent will be necessary to effect such noting

**Part 2 – Exceptions and reservations/rights**

- 1 To use the Estate Highway Drains for the purpose of conveying surface water from the Highway
  
- 2 To maintain the Estate Highway Drains at the Property
  
- 3 To enter upon the Property with or without vehicles plant tools equipment and apparatus for the purpose of inspecting cleaning repairing maintaining renewing replacing (with the same or

updated apparatus) or removing the Estate Highway Drains as may be necessary from time to time on prior reasonable notice except in case of emergency when no notice will be required

- 4 To open up the surface of the Strip for the purpose of carrying out any inspection cleaning repair maintenance renewal replacement or removal of the Estate Highway Drains as may be necessary from time to time subject to the person exercising such right causing as little damage as reasonably practicable to the Property and making good all damage caused

### **Part 3 - Covenants**

- 1 Not to build or erect any building or structure whether a temporary or permanent nature upon the Strip
- 2 Not to plant any tree shrub or hedge in or on the Strip
- 3 Not to carry out mole ploughing or sub soiling drainage works at the Strip or otherwise carryout or omit at the Property anything which may damage or otherwise adversely affect or interfere with Estate Highway Drains





LOCATION PLAN





**WORKS PLAN**

20488\_02\_020\_302.2j section 38 sheet 2 of 2



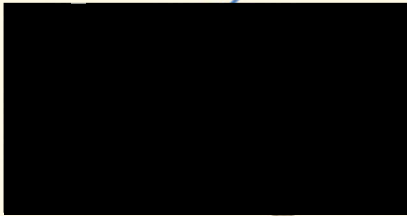


**IN WITNESS** whereof the parties hereto have executed this Deed of Agreement as a deed the day and year first before written

**EXECUTED AS A DEED** by

and

**LEE PERRY**

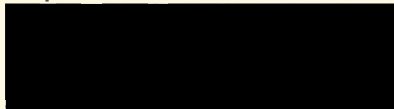


as attorneys for **BDW TRADING LIMITED**

under a power of attorney dated

Both signatures applied in the presence of:

Signature of witness:



Name (IN BLOCK CAPITALS):

Address:

Barrett West Midlands  
60 Whitehall Road  
Halesowen  
West Midlands  
B63 3JS  
Tel No 0121 585 5303  
Fax No 0121 585 5304

EXECUTED as a DEED by

TAYLOR WIMPEY UK LIMITED

Acting by two Attorneys

in the presence of:

)  
)  
)  
)

Signature of Attorney:



Name of Attorney:

DIANA CUMMINGS

Signature of Witness:



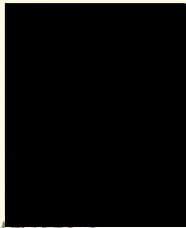
Name of Witness:

Carly Chapman  
Taylor Wimpey UK Limited  
730 Waterside Drive  
Aztec West  
Almondsbury  
Bristol  
BS32 4UE

Address of Witness:



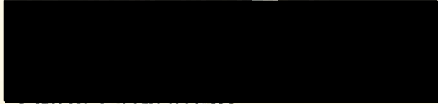
Signature of Attorney:



Name of Attorney:

REBECCA WILKINSON

Signature of Witness:



Name of Witness:

Gary Chapman  
Taylor Wimpey UK Limited  
730 Waterside Drive  
Aztec West  
Almondsbury  
Bristol  
BS32 4UE

Address of Witness:

VHL/21/59



THE COMMON SEAL of )

VISTRY HOMES LIMITED )

was affixed to this Deed in the )  
presence of:- )



Director

Secretary

THE COMMON SEAL of THE )

OXFORDSHIRE COUNTY COUNCIL )

was affixed to this Deed )  
in the presence of:- )



SS/21

Head of Legal/ Authorised  
Officer