

Admin fee = £4800

(£2k AFFORDABLE ON SITE +

£700 PER ON SITE CLAUSE (4) = £2.8k.)

DATED 14th SEPTEMBER 2017

**THE CHANCELLOR MASTERS AND
SCHOLARS OF THE UNIVERSITY OF
OXFORD**

and

THE OXFORD CITY COUNCIL

and

THE OXFORDSHIRE COUNTY COUNCIL

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990
relating to Wolvercote Paper Mill and
planning application no. 13/01861/OUT

THIS AGREEMENT by way of Deed is made on *14th September 2017*

BETWEEN:

- (1) **THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF OXFORD**, whose administrative office is as University Offices, Wellington Square, Oxford, OX1 2JD (the "**Owner**")
- (2) **THE OXFORD CITY COUNCIL** of The Town Hall Blue Boar Street Oxford OX1 4EY (the "**City Council**")
- (3) **THE OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford OX1 1ND (the "**County Council**")

WHEREAS

- 1.1. The Owner is the freehold owner of the land at Wolvercote, Paper Mill Oxford under title number ON308778 (the "**Land**") shown edged red on the plan annexed to this Deed free from encumbrances as the Owner hereby warrants.
- 1.2. The City Council is a local planning authority and the district planning authority for the administrative area of the City of Oxford for the purposes of the Town and Country Planning Act 1990 (the "**Act**").
- 1.3. The County Council is the county planning authority for the area which includes the Land for the purposes of the Town and Country Planning Act 1990 and is the highway authority for the purposes of the Highways Act 1980 and the traffic authority for the purposes of the Road Traffic Regulation Act 1984 for certain highways for that area.
- 1.4. Application bearing reference 13/01861/OUT (the "**Application**") has been made to the City Council pursuant to Part III of the Act for planning permission to develop the Land by up to 190 residential units, employment space, community facilities, public open space and ancillary services, facilities and infrastructure (the "**Development**").
- 1.5. The Owner has agreed that his interest in the Land and that of his successors in title and assigns will be subject to the terms of this Agreement.
- 1.6. The parties hereto have entered into this Agreement with the intent that its provisions be material to the determination of the Application.

- 1.7. The Works are works which the County Council is authorised to execute by virtue of Part V of the Highways Act 1980
- 1.8. The Owner and the County Council intend to enter into the Highways Agreement

NOW THIS DEED WITNESSTH AS FOLLOWS

1. Interpretation

- 1.1. Save where contrary intention is shown the provisions of the Interpretation Act 1978 shall apply to the provisions hereof as if this Deed was an Act of Parliament.
- 1.2. Save where contrary intention is shown the following expressions shall bear the following meanings herein:

"Affordable Housing" means Social Rented Housing and Intermediate Housing provided to eligible households whose needs are not met by the market.

"Affordable Housing Scheme" means a scheme for the provision of the Affordable Housing within the Development in accordance with Schedule 1 of this Agreement.

"Bus Service Contribution" means the sum of Two hundred and seventy five thousand pounds (£275,000) Index Linked towards improvements to the frequency and hours of operation of bus services between Wolvercote and Oxford

"Bus Stop Infrastructure Contribution" means the sum of Four thousand three hundred and fifty pounds (£4,350) Index Linked towards the provision and installation of a pole, flag, timetable case and real time information display unit at a new bus stop on the northern side of Godstow Road, the provision and installation of a pole, flag and timetable case at a new bus stop on the southern side of Godstow Road and the costs of consultation and implementation of associated road markings (bus stop cages and clearways)

"Commencement of Development" means the date on which any material operation (as defined in section 56(4) of the Act) comprising the commencement of construction of dwellings begins to be carried out pursuant to the Permission and for the avoidance of doubt the following works shall not comprise Commencement of Development for the purposes of

this Agreement (and for no other purpose): site clearance, demolition work, archeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, construction of accesses forecourts and parking areas, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence' and 'Commenced' shall be constructed accordingly.

"Community Facilities" means an area of the Land to be developed to provide a flexible community meeting space of not less than 110 square metres net for use by residents of the Development and surrounding areas in accordance with the Community Facilities Scheme

"Community Facilities Scheme" means the scheme for the provision of the Community Facilities in accordance with Schedule 2 of this Agreement.

"First Occupation" means the date on which the Development or any part of it is first occupied for the purposes permitted by the 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 arrangements.

"Highways Agreements" means an agreement made between the Owner and the County Council under Section 278 and/or Section 38 of the Highways Act 1980 in accordance with the form annexed to this Deed (subject to any amendments that the circumstances may reasonably and properly require) which provides for the execution of the Works by the Owner at the Owner's expense.

"Index-Linked" means

- in relation to the Bus Stop Infrastructure Contribution adjusted according to any increase occurring between September 2016 and the date when the relevant payment is made 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 & Bituminous 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 Owner and the County Council.

- in relation to the Bus Service Contribution the Travel Plan Monitoring Contribution and the Traffic Regulation Order Contribution adjusted according to any increase occurring between September 2016 and the date when the relevant payment is made in the All Items Retail Price Index excluding mortgage interest payments (RPIX) published by the Office of National Statistics

“Interest” means interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc and compounded annually

“Intermediate Housing” means homes for sale and rent provided at a cost above social rent but below market levels. These can include shared equity, starter homes, other low cost homes for sale and intermediate rent but not social rented housing.

“Neighbourhood Forum” means Wolvercote Neighbourhood Forum

“Permission” means planning permission granted in determination of the Application.

“Registered Provider” means a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 (including for the avoidance of doubt the City Council)

“Social Rented Housing” means homes that are let at a level of rent generally set much lower than those charged on the open market, available to those recognised by the City Council as being in housing need, and offering long term security of tenure (through secure or assured tenancies)

Traffic Regulation Order Contribution means the sum of Two thousand five hundred pounds (£2,500) Index Linked towards the cost of promoting a traffic regulation order to

implement parking restrictions at the mini-roundabout junction on Godstow Road and where applicable implementing such amendment

Travel Plan Monitoring Contribution means the sum of One thousand two hundred and forty pounds (£1,240) Index Linked towards the cost of monitoring travel plans for a period of five years from first Occupation

Works means

- works to construct the proposed mini-roundabout on Godstow Road and proposed access arrangements as shown on drawings IMA-14-121-14B and IMA-14-121-18B
- works to construct a bus shelter with seats such shelter to be of a design to be approved by the County Council and which accommodates the installation and operation of a real time information display unit at the shelter together with associated works; the associated works shall include ducting at the shelter to accommodate cabling for real time information display units and underground ducting and cabling to the junction where the subsurface ducts connect to the 'riser' ducts at the shelter. Such shelter is to be in the approximate location marked on the On Site Highways Plan (as defined in the Highways Agreement)

2. Statutory Authority

- 2.1. All obligations hereunder on the part of the Owner (howsoever expressed) are planning obligations for the purposes of section 106 of the Act and section 278 of the Highways Act 1980 and all other enabling powers entered into in respect of its interest in the Land and are enforceable against the Owner and his successors in title the obligations being enforceable by the City Council and the County Council.
- 2.2. All and any obligations hereunder on the part of the City Council are contractual obligations entered into pursuant to section 111 of the Local Government Act 1972.

3. Obligations

- 3.1. The Owner covenants with the City Council to observe and perform the requirements contained in Schedules 1 and 2 hereof.

- 3.2. The Owner covenants with the County Council as set out in Schedule Three hereof
- 3.3. The County Council covenants with the Owner as set out in Schedule Four of this Agreement.

4. Conditionality and Release

- 4.1 This Deed is conditional on the grant of the Permission with the exception of clauses 5.11 (County Council costs) 5.12 (County Council administration fee) 6.2 (notice of commencement) 6.4 (notice of disposal of interests) and paragraph 1.1 of Schedule Two (City Council costs).
- 4.2 This Deed shall cease to have effect (insofar as it has not already been complied with) if the Permission shall be quashed, revoked, or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to Commencement of Development.
- 4.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it has parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 4.4 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Permission or against those deriving title from them PROVIDED ALWAYS THAT restrictions on occupation shall be enforceable against all owner-occupiers and tenants (and those deriving title from them) of dwellings first Occupied pursuant to a sale and purchase contract entered into after the date when the relevant restriction in question has arisen.
- 4.5 Insofar as any clause or clauses of this Deed 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 Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.

5. Miscellaneous

- 5.1. All works undertaken pursuant to this Deed and all sums payable hereunder shall be exclusive of any value added tax properly payable and the Owner shall pay the City Council and County Council any value added tax properly payable on any sums paid to the City Council or County Council or works undertaken under this Deed upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.2. The Contracts (Right of Third Parties) Act 1999 shall not apply to any of the provisions of this Agreement but this does not affect any rights which are available apart from that Act and it may be enforced by the successors in title of the parties and by any successor to the City Council's and County Council's statutory functions.
- 5.3. If any sum payable to the City Council or to the County Council hereunder is not paid in full on or before the due date interest shall be due and payable to the payee at the rate of 4% per annum above the base lending rate of Lloyds TSB Bank PLC compounded monthly for the period from the due date until payment of the full amount due as at the date of payment.
- 5.4. No alteration in the terms of this Agreement nor any forbearance or forgiveness on the part of the City Council or the County 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 hereunder.
- 5.5. Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the City Council or the County Council in the exercise of its functions in any capacity.
- 5.6. Where more than one person is liable under any provision hereof the liability shall be joint and several.
- 5.7. All notifications approvals permissions consents or similar hereunder shall be in writing.
- 5.8. Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission or any reserved matters applications made pursuant to the Permission) granted (whether or not on appeal) after the date of this Deed
- 5.9. The Owner shall permit the City Council full access to the Land (save for buildings in residential or commercial occupation) for any purpose in connection with this Agreement.

- 5.10. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the City Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the City Council by the Head of Planning and Regulatory Services and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 5.11. The Owner shall on completion of this Deed pay the reasonable legal costs of the City Council and the County Council in connection with the preparation and completion of this Deed.
- 5.12. The Owner shall on completion of this Deed pay the sum of £3,750 (Three thousand seven hundred and fifty pounds) to the County Council towards the costs relating to the administration of this Deed.
- 5.13. The Owner will reimburse the City Council and the County 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 City Council or the County Council.
- 5.14. The Owner will not claim any compensation in respect of the provision of this Deed.

6. Notification

- 6.1 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 6.2 The Owner shall not cause or permit the commencement or continuance of the Development unless the Owner has given notice of commencement of the Development to the City Council and the County Council such notice specifying the intended date for commencement.
- 6.3 The Owner shall notify the County Council within 14 days of First Occupation of the Development that such Occupation has taken place

- 6.3 On each anniversary of Commencement of Development until completion of the Development the Owner shall give notice to the City Council identifying the extent to which the Development has been executed.
- 6.4 The Owner agrees with the City Council and the County Council to give the City Council and County Council written notice of any change in ownership of any of its interests in the Land within 14 days of such a change occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office together with the area of the Land or unit of occupation purchased by reference to a plan.
- 6.5 At the written request of the Owner the City Council shall provide written confirmation of the discharge of the obligations contained in this Agreement relating to the Owner's covenants in Schedules 1 and 2 when satisfied that such obligations have been performed
- 6.6 At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Agreement relating to the Owner's covenants in Schedule 3 when satisfied that such obligations have been performed

7. Jurisdiction

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales

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

Schedule One

Affordable Housing – on site provision

1. The Owner shall not cause or permit the Commencement of the Development prior to obtaining the written agreement of the City Council to the Affordable Housing Scheme such scheme to provide: *SEE AGREEMENT*
 - 1.1. 50% of the total number of dwellings within the Development to be provided as Affordable Housing
 - 1.2. the locations of the Affordable Housing ensuring that the Affordable Housing is integrated into the Development as a whole;
 - 1.3. the details of the type and tenure of the Affordable Housing;
 - 1.4. the proposed contractual arrangements with a Registered Provider for the delivery (both construction and transfer (or lease of not less than 125 years in the case of flats)) of the Affordable Housing the arrangements proposed for the servicing of the Affordable Housing and the allocation of responsibility for such servicing and the cost of such servicing;
 - 1.5. the details on the restriction on occupation of the open market dwellings authorised by the Permission until the Affordable Housing dwellings are fully constructed, ready for occupation and have been transferred to the Registered Provider on terms approved by the City Council;
 - 1.6. details of the restriction of occupation of any dwelling comprised within the Affordable Housing other than as Affordable Housing in accordance with the Affordable Housing Scheme;
 - 1.7. details of the restriction of sale price on the disposal of any Affordable Housing dwelling or the monthly charge to be paid by the occupier for occupation of any Affordable Housing dwelling.
2. To provide the Council with a completed copy of the transfer (or transfers as the case may be) between the Owner and the Registered Provider certified as a true copy by a solicitor within 20 days of completion thereof
3. The Owner will procure that all dwellings comprised within the Affordable Housing shall:

- 3.1. meet all requirements of Homes and Community Agency Design Quality Standards and Housing Quality Indicators that (were that Agency funding their provision) would be applicable to them;
- 3.2. comply with Lifetime Homes standards then applicable; and
- 3.3. show compliance with Secure By Design standards then applicable.
4. In this clause "Chargee" shall mean any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any Receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or any other person appointed under any security documentation to enable such mortgagee or chargee to realize its security or any administrator (however appointed) including a housing administrator (each a Receiver).
- 4.1 Any Chargee shall prior to seeking to dispose of its Affordable Housing dwellings pursuant to any default under the terms of its mortgage or charge shall give not less than onemonths prior notice to the City Council of its intention to dispose and:
 - 4.1.1 in the event that the City Council responds within one months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing dwellings can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall cooperate with such arrangements and use reasonable endeavours to secure such a transfer.
 - 4.1.2 if the City Council does not serve its response to the notice served under paragraph 4.1.1. within the two months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply.
 - 4.1.3 if the City Council or any person cannot within one month of the date of service of its response under paragraph 3.1.1 secure such a transfer then provided that the Chargee shall have complied with its obligations under paragraph 3.1.1 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply.

PROVIDED THAT at all times the rights and obligations in this paragraph 3 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the City Council must give full consideration to protecting the interests of the Chargee in respect of moneys outstanding under the charge or mortgage.

- 5 The provisions of this Schedule 1 shall cease to apply to the owners (and their respective successors in title and mortgagees and those claiming under them) of any of the Affordable Housing units where the Registered Provider is required to dispose of such Affordable Housing unit pursuant to a right to buy under Part V of the Housing Act 1985 or S16 of the Housing Act 1996 or any similar or substitute right applicable or shall be required to sell to a tenant with the benefit of a voluntary purchase grant provided under S20 and S21 of the Housing Act 1996 (or any similar provision in any subsequent legislation) nor bind on any individual owner of a share in or the whole of (pursuant to any rights of staircasing or otherwise) the equity of any Affordable Housing unit or any individual owner of an individual Affordable Housing unit nor their respective mortgagees and successors in title and those claiming under them

Schedule Two

Matters other than Affordable Housing

1. The Costs of the City Council

- 1.1. The Owner shall pay to the City Council prior to Commencement of the Development the City Council's costs in connection with the administration and management of this Agreement.

2. Bond

The Owner shall not cause or permit the commencement or continuance of the Development at any time that there are outstanding financial obligations hereunder that he has not procured that the City Council is in possession of an extant bond with at least 3 months remaining prior to its date of expiry in a form with a bondsman and to a value acceptable to the City Council (having regard to the then outstanding financial obligations) providing that in the event of default hereunder the bondsman shall be liable to the extent of that default.

3. Public Open Space

- 3.1. The Owner shall create new areas of open space as part of the development including but not limited to:
 - 3.1.1. 2.46 hectares of new open space including land known as Duke's Meadow, immediately north of the development area, as informal recreation/play space and the creation of new wildlife habitats;
 - 3.1.2. Creation of informal open space and a nature reserve along the Mill Stream frontage;
 - 3.1.3. Creation of new amenity green or 'green gateway' at the site's entrance;
 - 3.1.4. Retention of the existing water reservoir which runs parallel to the Mill Stream and the creation of a walkway around it;
 - 3.1.5. Development of a new local area for play within the development area.

3.2. The Owner shall not cause or permit the Commencement of the Development prior to obtaining the written approval of the City Council to a public open space scheme such scheme to provide:

3.2.1. the locations and details of each area of amenity and/or recreational open space (providing specifications of equipment where equipment is proposed) proposed within the Land as part of the Development sufficient to ensure that the needs of all those likely to use the Development will be met; and

3.2.2. a timetable for the provision of each and every element by reference to such element being available for functional public use either prior to a defined part of the Development being commenced or occupied for the purpose permitted by the Permission.

3.3. The Owner shall comply fully with all aspects of the approved scheme referred to in paragraph 3.1 above and shall notify the City Council of each and every element of the approved scheme referred to in paragraph 3.1 above first being made available for public use.

3.4. The Owner shall in respect of each and every element of the approved scheme referred to in paragraph 3.1 above from the date on which it is first made available for public use:

3.4.1. keep it available for free public use at all times restricting public access only as may be required by law; and

3.4.2. maintain it such that it does not materially deteriorate.

3.5. The Owner shall not cause or permit the commencement or carrying on of any works for the provision of any element of the approved scheme referred to in paragraph 3.1 above prior to obtaining the written approval of the City Council to a mechanism to ensure future compliance with the obligations of the Owner pursuant to paragraphs 3.4.1 and 3.4.2 above.

4. **Community Facilities**

4.1 The Owner shall not cause or permit the Commencement of the Development prior to obtaining the written approval of the City Council to the Community Facilities Scheme within the Land such scheme to provide:

4.1.1 details of the area proposed for Community Facilities;

4.1.2 a timetable for the provision of the Community Facilities by reference to such element being effected either prior to a defined part of the Development being commenced or occupied for the purpose permitted by the Permission.

4.1.3 The use of the Community Facility to be sanctioned by the approval of Oxford City Council and the Neighborhood Forum.

4.2 The Owner shall comply fully with all aspects of the Community Facilities Scheme referred to in paragraph 4.1 above and shall notify the City Council of each and every element of the approved scheme referred to in paragraph 4.1 above being completed.

5. **On site Habitats / Biodiversity Creation / Protection**

5.1 The Owner shall not cause or permit the Commencement of the Development prior to obtaining the written approval of the City Council to a scheme for the creation of a habitat suitable for reptiles within the Land (the "**Habitat Creation Scheme**") such scheme to provide:

5.1.1 the locations and details of each area proposed for the habitat together with a schedule of the works proposed to firstly render those areas suitable for its purpose and secondly to effect the establishment of the intended flora and/or fauna;

5.1.2 a timetable for the provision of each and every element by reference to such element being effected either prior to a defined part of the Development being commenced or occupied for the purpose permitted by the Permission; and

5.1.3 post provision maintenance and protection arrangements.

5.2 The Owner shall comply fully with all aspects of the Habitat Creation Scheme referred to in paragraph 5.1 above and shall notify the City Council of each and every element of the approved scheme referred to in paragraph 5.1 above being completed.

5.3 The Owner shall not cause or permit the Commencement of the Development prior to obtaining the written approval of the City Council to a scheme offsetting the net loss of biodiversity caused by the development by the creation of new wildlife habitats within Duke's Meadow. Detailed solution and management arrangements will be determined by

comprehensive survey work undertaken at the cost of the Owner.

6. **GP Surgery Space**

- 6.1 The Owner shall not cause or permit the Commencement of the Development prior to obtaining the written approval of the City Council to the proposed location of the GP Surgery within the Land.
- 6.2 The Owner shall use reasonable endeavours for not less than 2 years to seek to reach agreement on the terms for and complete the transfer of the GP Surgery area in the Land to a GP partnership or the local health authority.
- 6.3 In the event that the Owner is not able to complete a transfer of the relevant part of the Land within the 2 year period, the Owner shall so notify the City Council enclosing such evidence of its attempts to enter into an agreement with a GP Partnership or the local health authority as the City Council may request (acting reasonably).
- 6.4 Subject to the prior written consent of the City Council, the Owner shall be permitted to develop the area of the Land proposed for the GP Surgery for uses which come within class B1(c) commercial uses or D1 non-residential institutional space of the Town and Country Planning (Use Classes) Order 1987 as amended.
- 6.5 In the event that the Owner is not able to complete a transfer of the relevant part of the Land for B1(c) commercial uses or D1 non-residential institutional uses within a further 6 months period, the Owner shall so notify the City Council and shall thereafter be permitted to make an application for the development of the GP Surgery Land for class C3 (Residential) development and thereafter develop and use the land for such purposes.

Schedule Three

Owner's Obligations to the County Council

1. Contributions

- 1.1 The Owner shall pay the Traffic Regulation Order Contribution on or before Commencement of Development and not cause or permit the Commencement of Development unless and until the Traffic Regulation Order Contribution has been paid to the County Council
- 1.2 The Owner shall pay the Bus Service Contribution to the County Council before First Occupation of the Development and shall not cause or permit First Occupation of the Development unless and until the Bus Service Contribution has been paid to the County Council.
- 1.3 The Owner shall pay the Travel Plan Monitoring Contribution before First Occupation of the Development and shall not cause or permit First Occupation of the Development unless and until the Travel Plan Monitoring Contribution has been paid to the County Council
- 1.4 The Owner shall pay the Bus Stop Infrastructure Contribution to the County Council on or before Commencement of Development and shall not cause or permit the Commencement of Development unless and until the Bus Stop Infrastructure Contribution has been paid to the County Council

2 Highway Works

- 2.1 The Owner shall not cause or permit the Commencement of the Development until:
 - 2.1.1 there has been submitted to the County Council and approved in writing by it in principle drawing of the Works, duration of construction, commuted maintenance sum in respect of the cost of future maintenance of the Works (including but not limited to the maintenance of the bus stop poles, flags, timetable cases and real time information display units) and if applicable Dedication Plan as defined in the Highways Agreement; and

- 2.1.2 title to the land to be dedicated (as defined in the Highway Agreement) has been deduced to the satisfaction of the County Council; and
- 2.1.3 a Highways Agreement incorporating such matters has been entered into by the Owner and all parties with an interest in any land to be dedicated and any mortgagee has released the land to be dedicated further to such agreement from any charge.
- 2.2 The Owner covenants not to cause or permit First Occupation before the works required by the Highways Agreement have been completed pursuant to and in accordance with the Highways Agreement and to the satisfaction of the County Council.

Schedule Four

County Council's Obligations to Owner

The County Council covenants with the Owner

1. not to apply the Traffic Regulation Order Contribution the Bus Service Contribution the Travel Plan Monitoring Contribution or the Bus Stop Infrastructure Contribution for any purpose other than the purpose set out in the definition of that contribution in such form and at such time as the County Council shall in its discretion decide
- 1.2 that following written request from the Owner/ person who made the relevant payment the County Council will repay to the Owner/ that person the balance (if any) of the relevant contribution which at the date of the receipt of such written request has not been expended together with interest which has accrued on the balance after deduction of tax where required and any other sum required to be deducted by law provided always that no such request shall be made prior to the expiration of 10 years from the date of payment of the relevant contribution or if later 10 years from expiration of the due date for payment of the relevant contribution. Any contribution or part of a contribution which the County Council has contracted to expend prior to the date of receipt of such request shall be deemed to have been expended by the County Council prior to that date.

Annex
Highways Agreement

EXECUTED AS A DEED by affixing
the COMMON SEAL of THE
CHANCELLOR MASTERS AND
SCHOLARS OF THE UNIVERSITY
OF OXFORD in the presence of:-

)
)
)
)
)
)



Emma Potts

~~Vice-Chancellor / Registrar /~~
~~Director of Finance / Assistant Registrar~~
~~(Governance & Compliance)~~
Academic Registrar

EXECUTED AS A DEED by affixing
the COMMON SEAL of THE
OXFORD CITY COUNCIL in the
presence of:-

)
)
)
)
)
)

J. Franklin

Nominated Officer

JEREMY FRANKLIN

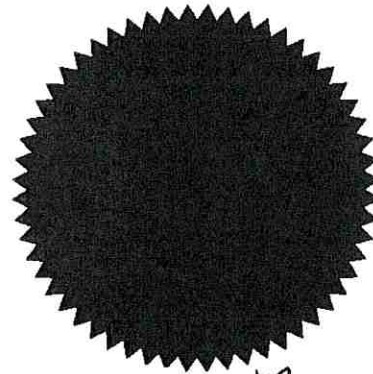
THE COMMON SEAL of THE
OXFORDSHIRE COUNTY COUNCIL

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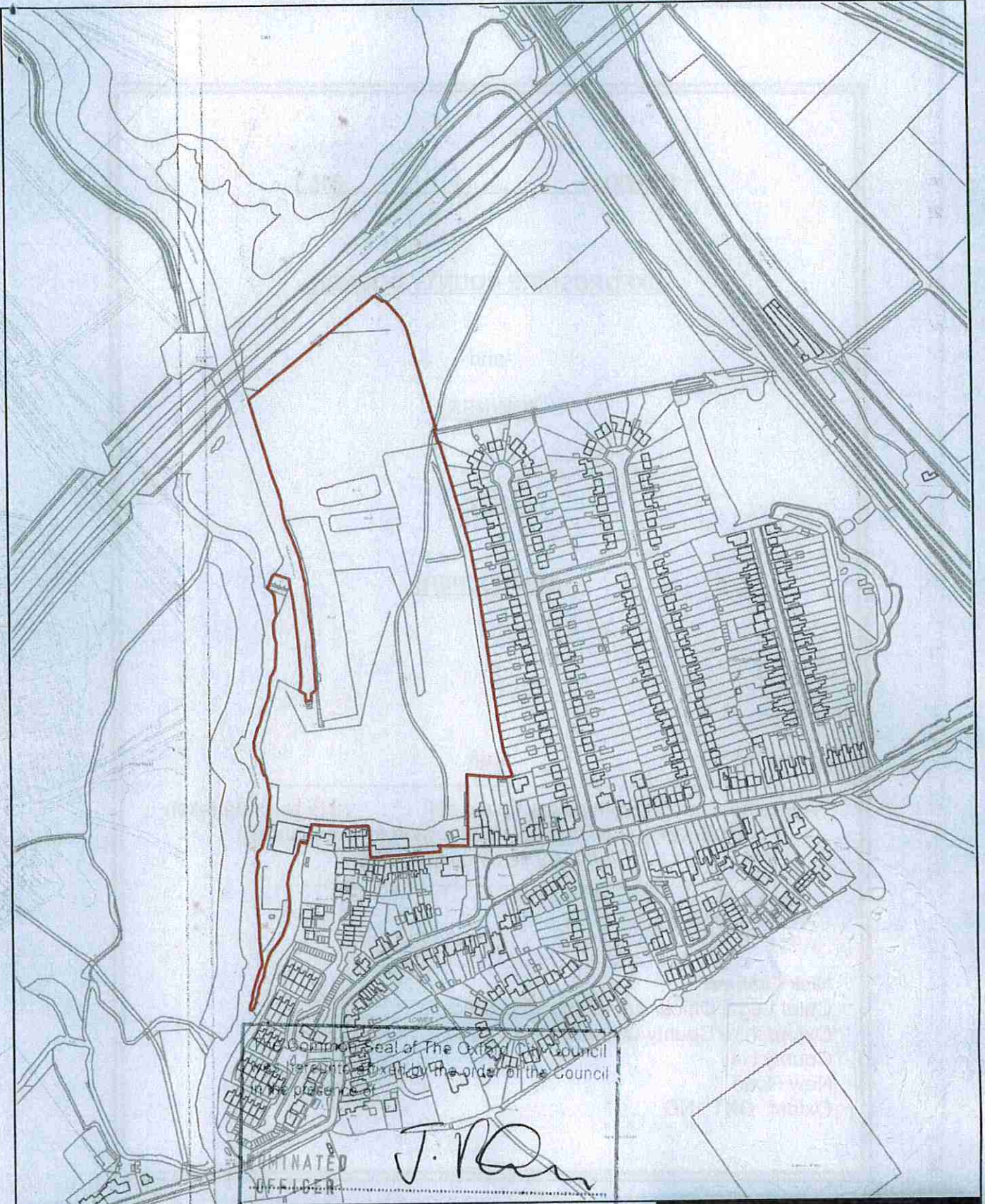
was hereunto affixed in the presence)
of:-

Wm. Graham

Solicitor to the Council/ Designated Officer



1037/17



GENERAL NOTES

DRAWING TITLE

Site Plan

DRAWING NO

765/LP5/17/08/08

BUILDING

Wolvercote Paper Mill (765)

FLOOR

SITE / AREA

Wolvercote Area (049)

DRAWN BY

L.P.H.

SCALE

1:4000

CHECKED BY

E.G.

PAPER SIZE

A4

APPROVED BY

C.A.P.

129 REVISION



UNIVERSITY OF
OXFORD

ESTATES SERVICES

CHECK ALL DIMENSIONS. DO NOT SCALE

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DATE

08 August 2017



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Number 100005215

DATED _____ 20[]

OXFORDSHIRE COUNTY COUNCIL

-and-

(OWNER)

-and-

(DEVELOPER)

draft

Agreement relating to highway works at [] to be undertaken
by Developer (with optional provision for contribution)
¹only applies if contribution

Nick Graham
Chief Legal Officer 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 Contribution" means the sum of _____ Index-Linked
- 1.6 "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

1.7 "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

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

1.9 "the Development" means [_____]

1.10 "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

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

1.12 "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:-

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

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

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

1.21 "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

1.22 "the Works" means the works specified in the Schedule

1.23 "the Works Plan" means the drawing(s) numbered [] annexed to this Deed

1.24 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

1.25 Headings in this Deed 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 Deed

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 of 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 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 has/it has been agreed [by virtue of an agreement pursuant to Section 106 of the 1990 Act] 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
- 2.5 The Off-Site Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act
- 2.6 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
- 2.7 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]
- 2.8 [The covenants in this Deed (except that in clause 8 which shall take immediate effect) shall be conditional upon the granting of planning permission for the Development]

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)]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 to pay the Contribution to the Council prior to [_____] and not to cause or permit any planning permission

5. **Application of Monies Received**

The Council shall not apply the Contribution for any purpose other than the Infrastructure (or any alternative which achieves similar benefits) in such form and at such time as the Council shall in their discretion decide]¹

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 (*consider further amendment to accord with mortgagee provision in Section 106 agreement*)**

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 Environment & Economy 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")

(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

Agreement requires adjustment where bus stop (and as applicable shelter) infrastructure is to be provided as part of the works:

- *Payment to County Council for provision, installation and maintenance of bus stop pole, flag and case*

- *Outline spec. for bus shelter – detailed spec. to be approved by town/parish council*
- *Bus shelter to be constructed by developer*
 - *Make reference to seating*
 - *Make reference to accommodation of RTI equipment where applicable including power supply to shelter*
- *Commuted maintenance to include sum for shelter*
- *Payment to County Council for provision installation maintenance of RTI equipment where this is required*

[STANDARD CONDITIONS]

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

Director

Secretary

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

Director

Secretary

SIGNED AS A DEED by the said)

)

THE COMMON SEAL of **THE**)

OXFORDSHIRE COUNTY COUNCIL)

was affixed to this Deed)

in the presence of:-)

Chief Legal Officer/
Designated Officer

OXFORDSHIRE COUNTY COUNCIL

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

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Nick Graham
Chief Legal Officer and Monitoring Officer
County Hall
New Road
Oxford OX1 1ND

Director for Environment & Economy
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 29.
- 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 H.D. 19/15 (Road Safety Audit Volume 5 design manual for roads and bridges)
- 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

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.	No later than 1 month before the Works are expected to commence.	
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9.7

Details of the insurances required by Condition 14.	No later than 1 month before the Works are expected to commence.	
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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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9.9

<p>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.</p>	<p>No later than 1 month before the Works are expected to commence.</p>	
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9.10

<p>Notification of the identity of the contractor who has submitted a successful tender.</p>	<p>No later than 2 weeks after the acceptance of any tender for the</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.

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;

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

² Examples may also include noise consent from district council

³ This relates to for example Section 127HA.

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.

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 9% of the amount of the Bond, subject to a minimum payment of £1,500

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 agree a commencement date with the contractor appointed to execute the Works which is no less than one month from such agreement and forthwith on agreeing the commencement date the Developer shall notify the Council in writing of the agreed date to the intent that the Council is given no less than one month's notice of the commencement date provided always for the avoidance of doubt this notice is for the purpose of the Agreement only and does not constitute notice for any other function of 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.

