

S38A/008/BRCL

AN AGREEMENT made the 19th day of February 2014
BETWEEN:

1. **TAYLOR WIMPEY DEVELOPMENTS LIMITED** (Company Number 00643420) whose registered office is at Gate House Turnpike Road High Wycombe Buckinghamshire HP12 3NR ("Taylor Wimpey")
2. **HALLAM LAND MANAGEMENT LIMITED** (Company Number 00643420) whose registered office is at Banner Cross Hall Sheffield S11 9PD ("Hallam")
3. **PERSIMMON HOMES LIMITED** (Company Number 4108747) whose registered office is at Persimmon House Fulford York YO1 4RE ("Persimmon")
4. **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter EX2 4QD ("Council")

WHEREAS

- 1) The Council is the local highway authority
- 2) The Developer and or the Owners are the registered proprietor under Title Numbers DN640317 DN612663 and DN351615 of the land known as Cranbrook which includes the site of the proposed public highway shown edged in red on the Drawings and all other land required for the Works hereinafter referred to and is desirous of making up the proposed public highway so that the same shall become highway maintainable at public expense
- 3) The Developer and/or the Owners have requested that when the Works hereinafter referred to for the making up of the proposed public highway have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the proposed public highway as highway maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing

THIS Agreement is made in pursuance of Sections 38 and 278 of the Highways Act 1980 in respect of the land upon which the proposed public highway is to be constructed, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 111 of the Local Government Act 1972 and with all other enabling powers and it is hereby agreed and declared by and between the parties hereto as follows:

1 Interpretation

In this Agreement where the context so admits:

"Bonds" means the bond dated 12 August 2013 between the Developer HCC International Insurance Company PLC and the Council; the bond dated 12 August 2013 between the Taylor Wimpey HCC International Insurance Company PLC and the Council and the bond dated 12 August 2013 between the Developer AVIVA Insurance Limited and the Council

"Bondsmen" means HCC International Insurance Company PLC and AVIVA Insurance Limited

"Certificate of Completion" means the certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 14

"CHP Mains" means service pipes ducts inspection points and associated infrastructure to be laid in or under the Works

"Crannaford Lane Diversion" means the diversion of part of Crannaford Lane as shown on Drawing number 1022-AP-118

"Crannaford Lane Diversion Drawing" means drawing number 10222-AP-150 annexed hereto

"Dedication Land Drawing" means drawing number [10222-^{AP-150}~~ED-100-B~~] annexed hereto 

"Development" means the development of a new community at Cranbrook consisting of 2,900 dwellings schools shops and associated infrastructure permitted under planning permission 7/22/03/P1900/0079 or any variation or renewal thereof together with the construction of various highway works as permitted by planning permissions 10/1848 and 07/0794

"Developer" means Persimmon Homes Ltd

"Drawings" means annexed drawings 10222-AP-116 10222-AP-117 10222-AP-118 and 10222-AP-119 signed by or on behalf of the parties hereto and any such amended drawing signed by the Proper Officer

"Estimated Cost" is Five Million Three Hundred and Fifty Thousand Three Hundred and Seventy Nine pounds (£5,350,379) being the amount which is in the opinion of the Proper Officer the cost of carrying out the Works within the period specified in clause 2

"Final Certificate" means the certificate to be issued on satisfactory completion of the Works in accordance with Clause 16

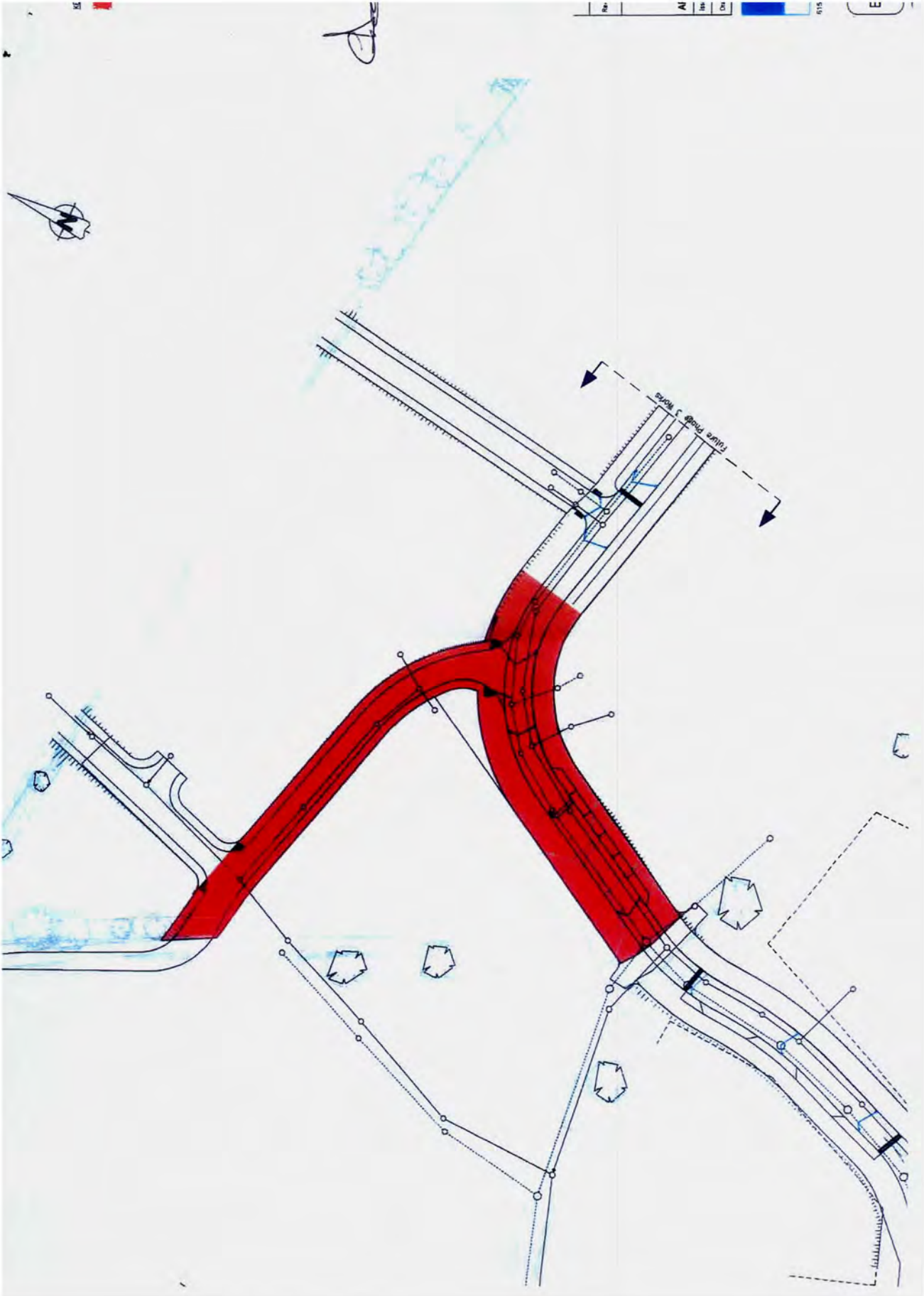
"Highway Works" means the works to be executed upon the public highway as shown on Drawing annexed hereto and described in Part 3 of the Schedule

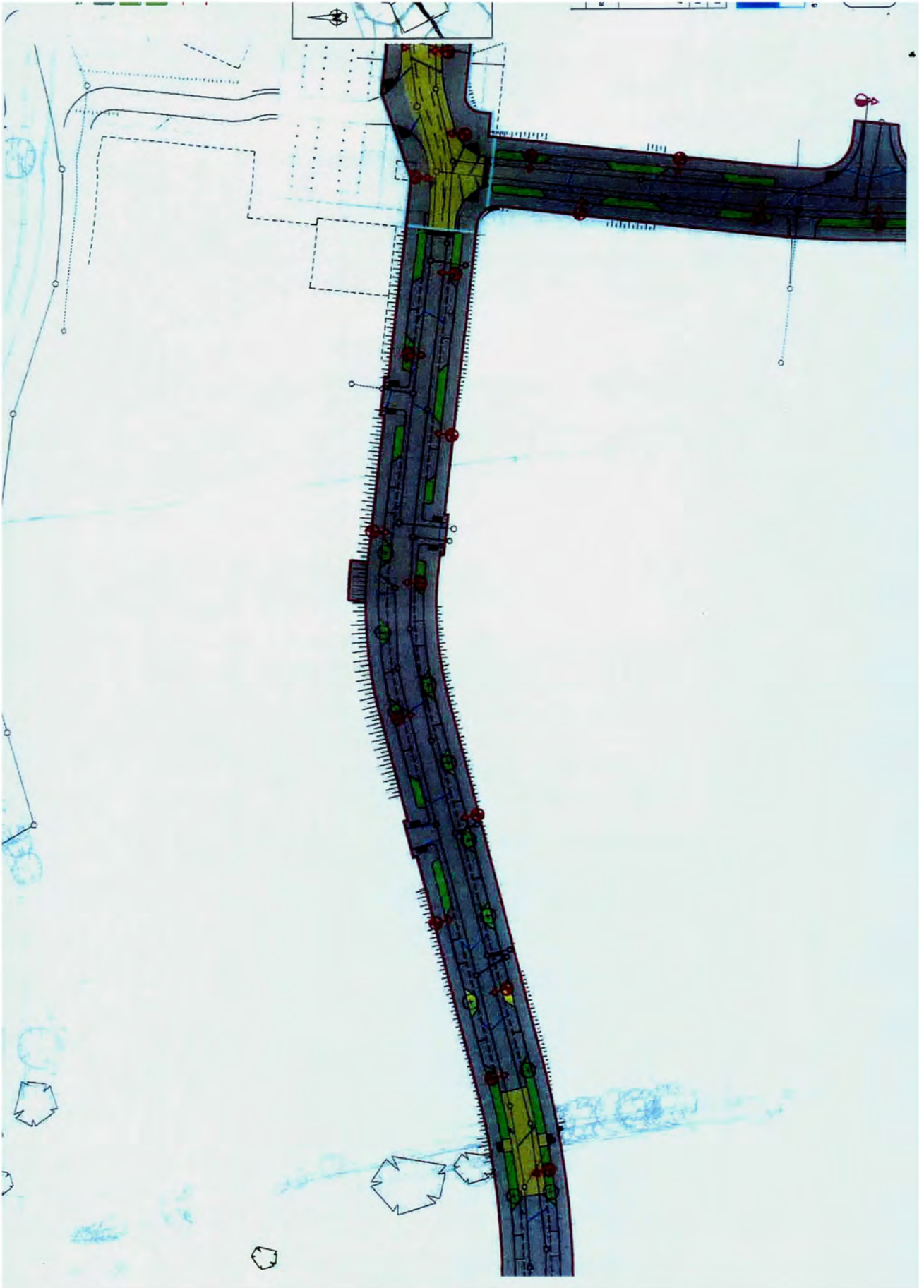
"Maintenance Period" means (in respect of the Works) the period between the issue of the Part 2 Certificate and the Final Certificate and (in respect of the Highway Works) the period between the issue of the Certificate of Completion and the Final Certificate during which the Developer and/or Owners are responsible for the maintenance of the Works and the Highway Works

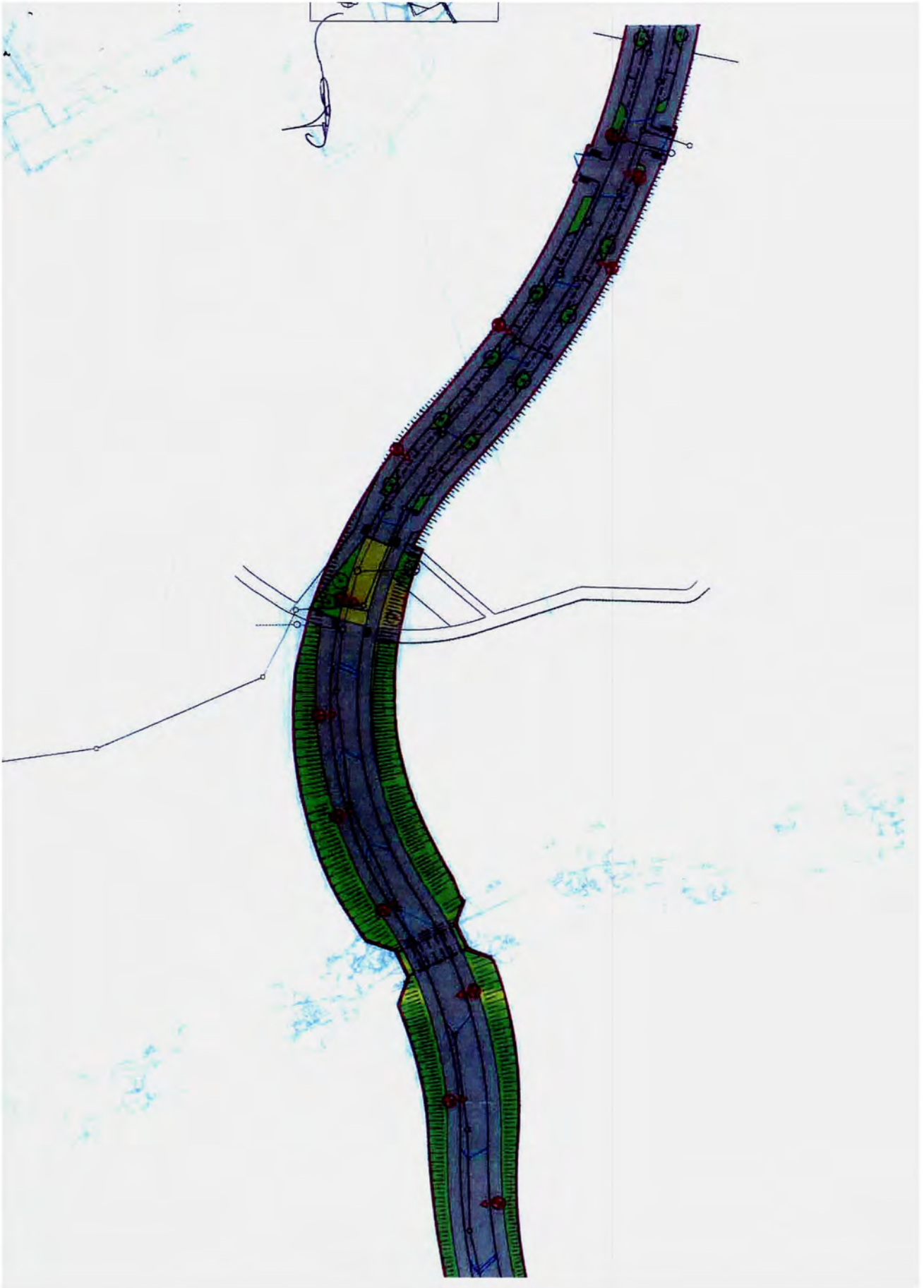
"Owners" means together Hallam Land Management Ltd and Taylor Wimpey UK Ltd

"Part 1 Certificate" means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 10

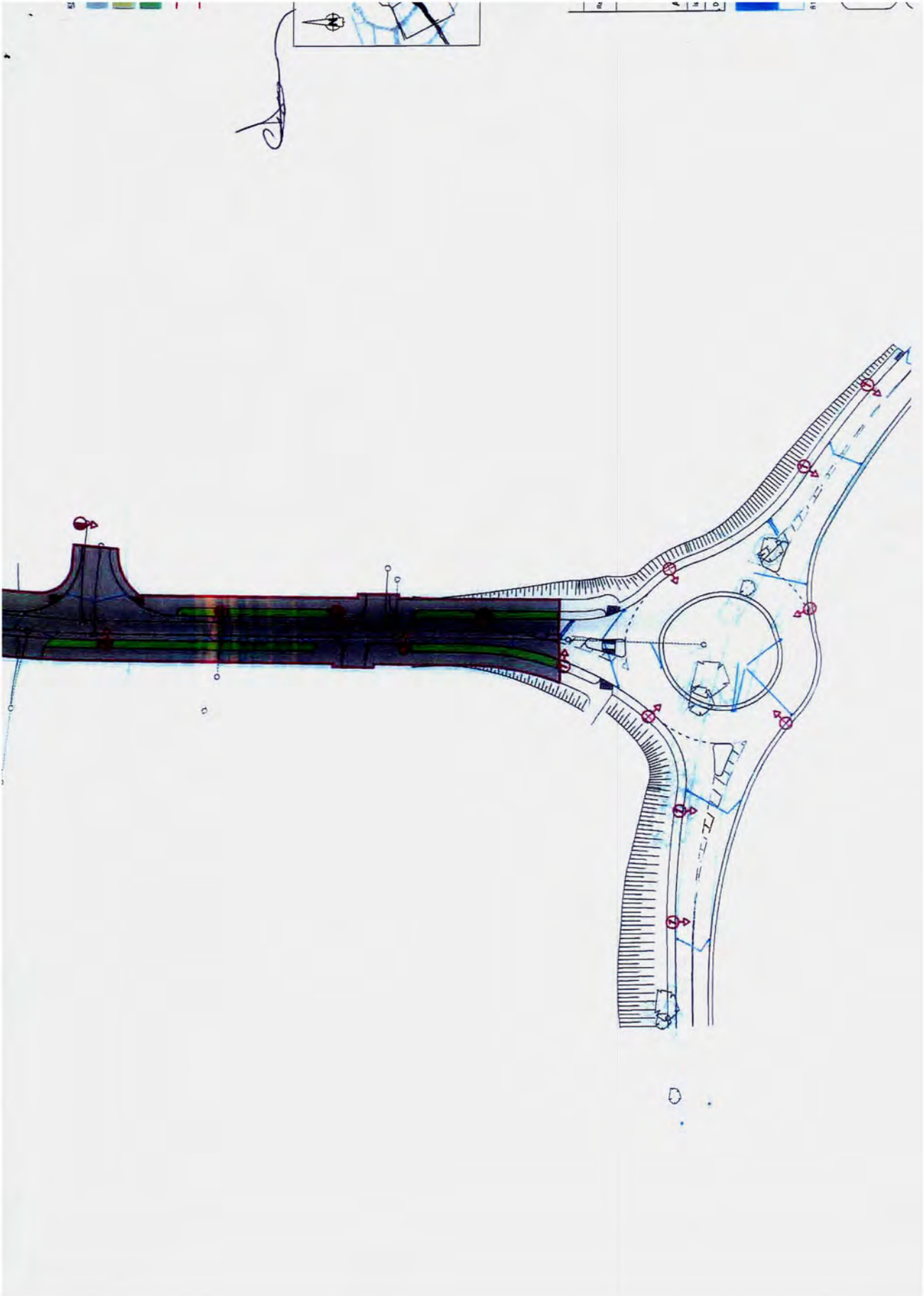
"Part 1 Works" means the works referred to in Part 1 of the Schedule

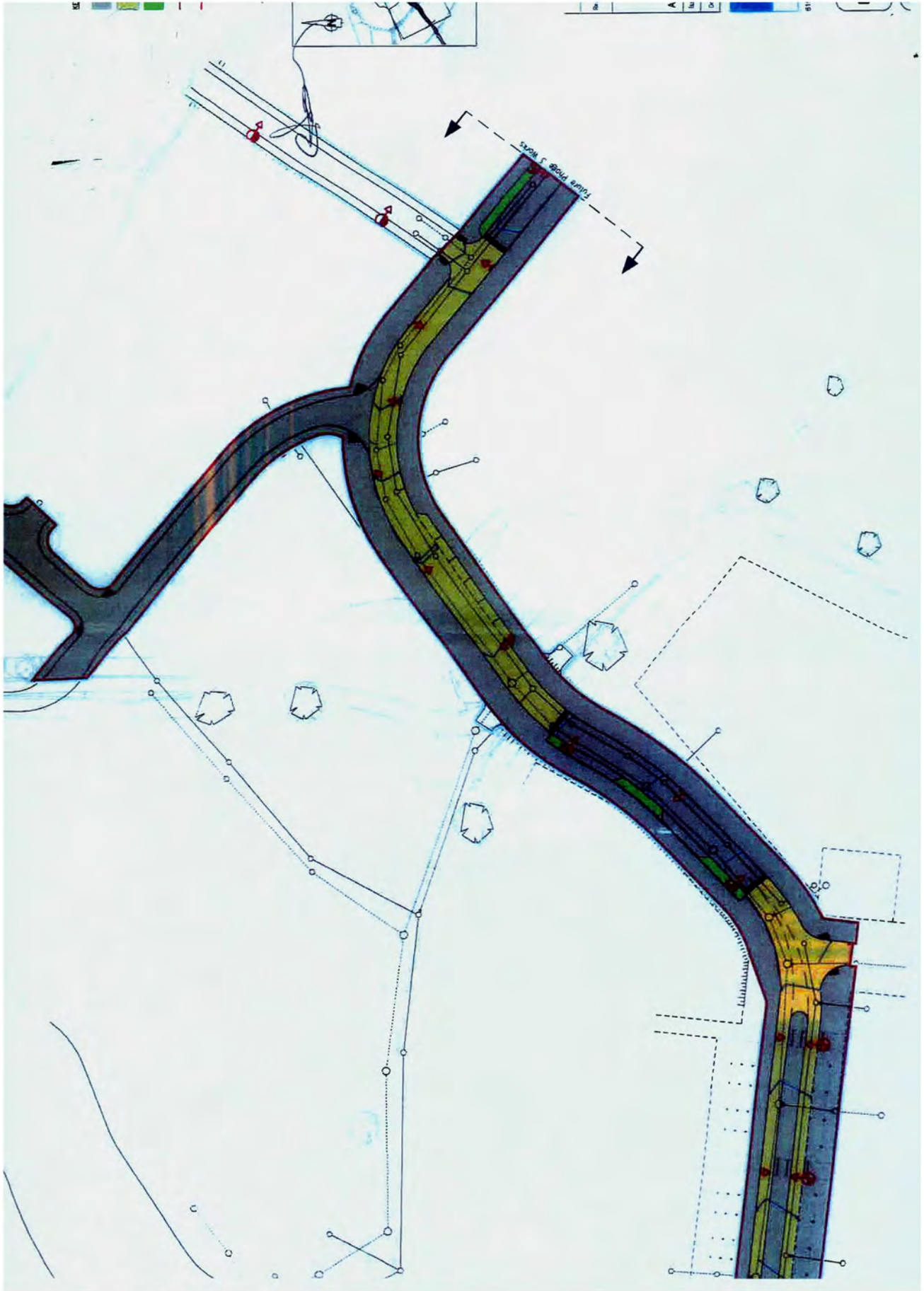












"Part 2 Certificate" means the certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 12

"Part 2 Works" means the works referred to in Part 2 of the Schedule

"Programme of Works" means the programme as to time under which the Works and the Highway Works shall be undertaken (including any variation or amendments or amendments thereto as agreed pursuant to clause 2a) of this Agreement)

"Proper Officer" means the Head of Planning Transportation and Environment of the Council or such other officer from time to time with responsibility for highways

"Roads" unless otherwise required means the carriageways and footways of the proposed highway hereinbefore referred to including any off site highway drainage shown on the Drawings and includes any footpaths street lighting verges service strips service margins vehicular crossings road surface water drainage system and all other things ancillary thereto

"Section 106 Agreement" means the Agreement dated 29 October 2010 and made under Section 106 of the Town and Country Planning Act 1990 between EAST DEVON DISTRICT COUNCIL, DEVON COUNTY COUNCIL, TAYLOR WIMPEY DEVELOPMENTS LIMITED, HALLAM LAND MANAGEMENT LIMITED, PERSIMMON HOMES (SOUTH WEST) LIMITED, REDROW HOMES LIMITED, THE OWNERS and THE CHARGEES (as defined therein) as varied by two deeds of variation dated 26 November 2013

"Specification" means the edition of the publication entitled Highways in Residential and Commercial Estates Design Guide 1996 as amended and current at the date of commencement of the Works

"Stage 1, 2, 3 and 4 Safety Audits" means the safety audits so defined in the Design Manual and the Institution of Highways and Transportation's Road Safety Audit guidelines as amended and current at the date of commencement of the Development;

"Statutory Undertaker" means a statutory undertaker as defined in Section 329(1) of the Highways Act 1980 and British Telecommunications plc

"Traffic Manager" means the officer appointed by the Council to act as Traffic Manager for the purposes of the Traffic Management Act 2004

"Works" means the works specified in the Parts 1 and 2 of the Schedule for making up of the Roads excluding any drainage which is or is intended to be the subject of an agreement under Section 104 of the Water Industry Act 1991

2 Developer and Owners Liability

- a) The Developer and/or the Owners shall agree in writing the Programme of Works with the Proper Officer prior to the commencement of the Works and the Highway Works and amendments required to the Programme of Works or extensions of time

to complete the Works and the Highway Works shall be agreed in writing with the Proper Officer such approval from the Proper Officer not to be unreasonably withheld or delayed

- b) The Developer and/ or the Owners shall carry out and complete the Works and the Highway Works at their expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Specification and the Drawings to the satisfaction of the Proper Officer in accordance with the terms of this Agreement and the Highway Works the Part 1 Works and the Part 2 Works shall be shall be completed in accordance with the Programme of Works
- c) The Developer and/or the Owners shall pay the Council's reasonable legal costs in connection with the preparation and completion of this Agreement and any subsequent variation of it together with the legal costs associated with drainage rights in accordance with Clause 17 and the issue of certificates in accordance with Clauses 10, 12 and 16

3 Highway Works

The Developer and the Owners covenant with the Council in relation to the Highway Works that they will at its own expense observe and perform to the satisfaction of the Council the following requirements obligations and conditions or any of them outstanding at the date of this Agreement and will immediately do any act or thing required by the Council to remedy any breach of those requirements obligations and conditions

- a) Not to commence any part of the Highway Works before a Programme of Works and a method of carrying out the Highway Works have been approved by the Proper Officer such approval not to be unreasonably withheld
- b) Secure at its own expense any necessary approvals required from any Statutory Undertakers, emergency services and other public authorities and utilities and comply with all requirements of these
- c) Execute the Highway Works and works associated therewith expeditiously causing no unnecessary nuisance to the public
- d) Employ a suitably qualified supervisor to oversee the construction of the Highway Works and to act as liaison between the Developer's and/or the Owners' contractor and the Council
- e) Employ a contractor to carry out the Highway Works who shall be approved by the Proper Officer (such approval not to be unreasonably withheld or delayed) and that all the covenants, conditions and obligations contained in this Agreement relating to the method of working shall be included in any agreement between the Developer and/or the Owners (as appropriate) and its contractor and it shall not depart from it without the approval of the Council and the said contractor or contractors shall at all

times during the progress of the Highway Works maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000

- f) To undertake all the requirements in respect of the execution of the Highway Works under the Construction (Design and Management) Regulations 2007 ("the Regulations") as if the Owner/Developer were the client and to indemnify the Council in respect of any actions proceedings costs claims demands and liabilities arising out of any breach of the Regulations and on the issue of the Healthy and Safety File for the Highway Works
 - g) As soon as possible after the date of this Agreement and in any event prior to the commencement of work on any element of the Highway Works the Developer and/or the Owners shall contact the Council who identify any necessary Traffic Regulation Orders and any other similar changes to the highway subject to statutory publications e.g. zebra crossings, road humps etc and shall request the Council if the Council is satisfied with the proposals to make any such Order or publish notice of intent or similar and shall indemnify the Council in respect of the costs involved in making any such Order including notification procedure pursuant to the relevant legislation (or any statutory modification or re-enactment thereof)
- 4 The Developer and the Owners covenant to include in the conditions of contract of the contractors (or any sub contractors) engaged to carry out the Highway Works the following clauses
- a) The Programme of Works and method of carrying out the Highway Works shall be approved by the Proper Officer and the contractor shall in all cases submit written notice of its intended Programme of Works and any width restrictions or occupation of the public highway to the Proper Officer for its approval in writing at least four weeks in advance of the proposed commencement of those works and the approved Programme of Works and method shall be followed at all times
 - b) To give the Traffic Manager appropriate notice to comply with the requirements of the Traffic Management Act 2004 of the Developer's intention to commence the Highway Works
 - c) All work on the public highway shall be restricted to dates and times agreed in writing by the Proper Officer in order to minimise delay to vehicular traffic
 - d) All operations on or affecting the public highway shall be carried out so as to avoid risk of danger to both pedestrians and vehicular traffic and (except as may be previously agreed in writing by the Proper Officer) to avoid any interference with the free movement of pedestrians and vehicular traffic

- e) The contractor shall in accordance with the agreed Programme of Works be allowed to take possession of so much of the public highway land as may be agreed in writing by the Proper Officer for the carrying out of the Highway Works
- f) Where in the opinion of the Proper Officer work affecting the public highway causes excessive traffic congestion the contractor shall immediately suspend that work and remove any plant or equipment that create such restrictions to traffic flows
- g) The Proper Officer may require the contractor to agree to variations to any previously agreed Programme of Works in the event of excessive traffic congestion resulting from it and the contractor will take all steps to comply with any such request
- h) The contractor will comply with Volume 1 of the Department of Transport's Manual of Contract Documents for Highway Works (MCHW) – Specification for Highway Works and any publication which amends or replaces it and shall include the following additional clauses to that specification
 - i) The traffic signs, road markings, lamps, barriers and traffic control signals shall be in accordance with the requirements of the Traffic Signs Regulations and General Directions current at the date of execution of the work and traffic control signals shall be operated in the vehicle actuated mode unless otherwise agreed by the Proper Officer
 - ii) Traffic cones and cylinders shall comply with the requirements of BS 873 Part 8 Category A Designation 1
 - iii) The contractor shall construct temporary diversion ways wherever they propose to interfere with the existing public or private roads or other ways over which there is a public or private right of way for any traffic
 - iv) The standard of construction and lighting shall be suitable in all respects for the appropriate class of road and the width of any diversion shall not (unless otherwise agreed with the Proper Officer such agreement not to be unreasonably withheld) be less than that of the existing way and the standard of construction shall conform to the requirements of the Council
 - v) Temporary white lining is to be provided to all such diversions and laid in accordance with the requirements of the Traffic Signs Regulations and General Directions current at the date of execution of the work or otherwise as instructed by the Proper Officer
 - vi) Roads, accesses and rights of way which are being used by construction traffic shall at all times be kept clean and clear so far as possible of dirt, mud and material dropped from vehicles or from tyres arising from such use and the contractor shall provide, maintain and use suitable equipment for this purpose

- vii) The contractor shall at all times ensure that all highway drains affected by its works shall be kept clear of any spoil, mud, slurry or other material likely to impede the free flow of water in them
- viii) The contractor shall provide the Proper Officer with the name and telephone number of a person and a deputy who can be contacted at any time during the day and night and who will be in a position to put into immediate effect any measures considered necessary by the Proper Officer to ensure public safety
- ix) The contractor shall:-
 - a) Employ an auditor who meets the qualifying standards of HD19/03 and who will not have been involved in any part of the scheme design to carry out the Stage 1 2 3 and 4 Safety Audits who shall be approved by the Proper Officer (such approval not be unreasonably withheld or delayed) and the said auditor or auditors shall at all times during the Stage 1 2 3 and 4 Safety Audits maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
 - b) Provide copies of the Stage 1 and 2 Safety Audit reports to the Proper Officer and any consequent changes or recommendations agreed with the Proper Officer
 - c) Provide copies of the Stage 3 and 4 Safety Audit reports to the Proper Officer and any recommendations or exception agreed with the Proper Officer and the Owner/Developer shall comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
 - d) Not less than fourteen days before the Highway Works are due to be completed Owner shall ensure that the Stage 3 Safety Audit of the Highway Works is carried out and upon receipt of the safety audit report the Owner/Developer shall undertake such works to comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
 - e) The Owner/Developer shall ensure that the Stage 4 Safety Audit is carried out not earlier than 12 months and not later than 36 months from issue of the Certificate of Completion

5 The Programme of Works shall include details of

- a) The sequence in which each phase of the Highway Works including temporary highway works or temporary access arrangements shall be undertaken
- b) The period within which each phase of work shall be completed
- c) Temporary traffic and pedestrian arrangements during the construction of the development of the adjoining land including the means and positions of vehicular and pedestrian access to the development
- d) Such additional plans and details as may be required by the Council to describe each phase of work

6 Declaration

The Developer and/or Owners hereby declare and warrant to the Council that they have and will throughout the duration of this Agreement maintain full right liberty and consent to carry out such works as may be necessary to connect the Roads to a vehicular highway

7 Statutory Undertakers – Connections to Existing Services

The Developer and/or Owners shall before connecting the Roads with any highway maintainable at the public expense give notice to each person board or authority being the Statutory Undertaker for the time being of any service or services laid in upon or under such highway of the proposal to make such connection as if the connection were a work to be executed for the purposes of and were mentioned in Section 48 of the New Roads and Street Works Act 1991 and shall indemnify the Council in respect of the cost of any works or measures considered necessary by the Statutory Undertaker in consequence of the proposal to make such connection

8 Indemnity

THE Developer and/or the Owners hereby indemnify the Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works and the Highway Works (other than those arising out of or in consequence of any act neglect default or liability of the Council) and against any lawful claim under the Land Compensation Act 1973 or the Noise Insulation Regulations 1975 and any statutory modification or re-enactment thereof arising out of the use of the Works

9 Access to the Site

- a) The Developer and/or Owners shall during the carrying out of the Works and the Highway Works give and allow the Proper Officer and any other officer of the Council access to every part of the Works and the Highway Works and the respective site

thereof for the purpose of inspecting the same and all materials used or intended to be used therein and the Developer and/or Owners shall if requested open up for inspection any portion of the Works and/or the Highway Works or which may be covered up and should the Developer and/or Owners decline to comply with such a request the Council may itself open up the Works and/or the Highway Works and in the event of any such portion of the same being found (in the reasonable opinion of the Council) to be defective the cost of such opening shall be recoverable from the Developer and/or Owners

- b) If any inspection carried out under sub-clause a) of this clause reveals defects in the Works and/or the Highway Works the Developer and/or Owners shall carry out remedial works to the satisfaction of the Council
- c) The Council will inspect any remedial works carried out under sub-clause b) of this clause within five working days of receipt of a written request from the Developer and/or Owners to do so
- d) Following any inspection under sub-clause c) of this clause the Council shall within five working days of its inspection notify the Developer and/or Owners in writing of its satisfaction with the remedial works **provided that** in the event of the remedial works being unsatisfactory this process may be repeated as many times as necessary until the defective works have been remedied to the satisfaction of the Council
- e) Upon practical completion of the Works and/or the Highway Works the Developer and/or Owners shall in each case notify the Council in writing of their completion and within fourteen days of receipt of such notice the Council shall carry out a final inspection of the Works and/or the Highway Works (as the case may be)
- f) In the event of the final inspection revealing any defect or defects in the Works and/or the Highway Works (as the case may be) the provisions of sub-clause d) of this clause shall apply as if they related to a final inspection

10 Part 1 Certificate

On completion of the Part 1 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue the Part 1 Certificate to the Developer and/or the Owners

11 Occupation of Buildings

No dwelling erected by the Developer and/or the Owners or on their behalf fronting adjoining or abutting on to the Roads shall be occupied until:

- a) the Proper Officer has issued the Part 1 Certificate in respect of the Roads or such part of the Roads as will provide the occupier with access to a vehicular highway and

where applicable a base course pedestrian access to such highway has been provided and

- b) the Roads or such part of the Roads have columns erected ready for lighting in accordance with the Specification and the Drawings and the Developer and/or the Owners have arranged with the electricity board for an electricity supply thereto by giving at least 6 weeks prior notice in writing or as may otherwise be agreed in writing by the Proper Officer

12 Part 2 Certificate

On completion of the Part 2 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall if any sewer constructed under the Roads under an agreement under Section 104 of the Water Industry Act 1991 has been certified as being or having been on maintenance issue the Part 2 Certificate to the Developer and/or the Owners and from the date thereof

- a) the Maintenance Period shall commence to run for a period of 12 months
- b) the Roads shall become highway and remain forever open for use by the public
- c) the Developer and/or the Owners shall remain the street manager for the purposes of Section 49 (4) of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Roads shall become highway maintainable at the public expense

13 Obligations during the Maintenance Period for the Works

During the Maintenance Period

- a) the Developer and/or the Owners shall at their own expense maintain the Works including all grassed and planted areas and carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians
- b) for a period of 12 months the Council shall at its own expense undertake routine maintenance of and be responsible for energy costs of street lights and illuminated traffic signs

14. Completion of Highway Works

On completion of the Highway Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue the Certificate of Completion and from the date thereof the maintenance period of twelve months for the Highway Works shall commence to run

15 Obligations During the Maintenance Period for the Highway Works

During the maintenance period for the Highway Works the Owner/Developer shall maintain the Highway Works and for the purposes of this clause and for the avoidance of doubt the Owner/Developer shall not have any obligations in respect of cyclic maintenance such as sweeping, cleansing and provision of street lighting and other functions normally performed by the Council in respect of highway maintained at public expense

16 Final Certificate for the Works and the Highway Works

Prior to the expiration of the respective Maintenance Periods for the Works and the Highway Works the Developer and/or the Owners shall at their own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the Maintenance Period (including any defect in or damage to the road surface water drainage system) of which they have been notified in writing by the Proper Officer so that the Works and the Highway Works comply with the Specification

AND THEN PROVIDED THAT

- a) the Developer and/or the Owners have paid to the Council all amounts due to the Council under this Agreement and
- b) any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer and
- c) the Developer and/or the Owners have delivered to the Proper Officer drawings showing the Works as constructed and
- d) the Roads connect directly to highway maintainable at public expense

the Proper Officer shall issue the Final Certificate to the Developer and/or the Owners and shall if appropriate release the Surety from all liability hereunder

17 Grants of Rights of Drainage

On completion of this Agreement the Developer and/or the Owners shall without cost to the Council execute or procure the execution by all necessary parties such deeds as the Council reasonably require to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Roads as are situate outside the limits of the Roads and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds. If after completion of this Agreement the Council find that further drainage rights are reasonably required the Developer and/or the Owners will at their own cost obtain those rights prior to any further certificates being issued in accordance with Clauses 10, 12 and 16. **For the avoidance of doubt** the Council will not be responsible for the drainage system until the issue of the Final Certificate in accordance with Clause 16

18 Procedure for Inspection and Issue of Certificates

Within 14 days of receipt of written application from the Developer and/or the Owners for the issue of a Part 1 Certificate pursuant to this Agreement and within 28 days of written application from the Developer and/or the Owners for the issue of a Part 2 Certificate or Final Certificate pursuant to this Agreement the Proper Officer shall inspect the Works and where necessary provide the Developer and/or the Owners with a definitive list in writing of any remedial Works required to be carried out before the issue of that Certificate. Any such remedial Works shall be subject to the same inspection procedure detailed herein until such time as they shall be completed to the reasonable satisfaction of the Proper Officer who within 28 days thereafter shall issue the relevant Certificate

19 Adoption

- a) Upon the issue of the Final Certificate in respect of the Works the Roads shall become highway maintainable at public expense
- b) It is hereby agreed and declared that provided the Works have been constructed in accordance with this Agreement the presence of the CHP Ducts shall not impair hinder or prevent the adoption of the Roads as highway maintainable at public expense PROVIDED THAT the CHP Ducts have been laid in accordance with an agreed method and construction and that the Council have inspected the installation and are satisfied with it

20 Inspection Fee

- a) Prior to the commencement of the Works the Developer and/or the Owners shall pay to the Council one hundred and fifty nine thousand pounds (£159,000.00) being 3% of the Estimated Cost in respect of the costs incurred by the Council in inspecting the Works

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

21 Determination by the Council

If the Developer and/or Owners fail to perform or observe any of the conditions stipulations or obligations on their part contained herein or if a receiving order in bankruptcy is made

against them or if the Developer and/or Owners are being wound up or if the Developer and/or Owners enter into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer and/or Owners in respect of such non-performance or non-observance determine this Agreement (except Clause 22, 24 and 25) by notice in writing signed by the Proper Officer and delivered to the Developer and/or the Owners or sent by post to the address stated in this Agreement

22 Power to Execute Works in Default

Without prejudice to Clauses 2 and 21 if the Developer and/or the Owners fail to execute or complete the Works in accordance with the Developer's and/or the Owners' obligations hereunder the Council shall after not less than 28 days notice in writing to the Developer and/or the Owners be entitled to execute or complete the Works in default by its own employees or by contract or otherwise and to recover the cost as certified by the Proper Officer from the Developer and/or the Owners

23 Power to Execute Highway Works in Default

If the Developer and/or the Owners fail to execute the Highway Works in accordance with any previously agreed Programme of Works (unless prevented from doing so by matters beyond their control when the period for completion of the Highway Works or the relevant part of them shall be extended by such reasonable period as shall be appropriate to the circumstances of delay) or if work shall (without the prior agreement of the Council) cease for more than one month or if the Developer and/or the Owners shall go into voluntary or compulsory liquidation or if interim works are required in the interests of public safety then the Council may under Sections 278 and 296 of the Highways Act 1980 and after service of notice carry out any works it deems necessary in order to meet the requirements of this Agreement (if necessary entering onto the adjoining land for the purpose) and may then recover the reasonable and proper cost of those works from the Developer and/or the Owners who shall reimburse the Council on demand

24 Defective or Dangerous Works

Until the Roads become highway maintainable at the public expense pursuant to this Agreement the Developer and/or the Owners shall keep them and the several parts thereof in a reasonable state of repair having regard to the progress of the building works abutting on such several parts thereof and shall reinstate and make good any defects in or damage to the Works which shall or may appear to arise occur or become manifest to the Proper Officer and the Proper Officer may by notice require the Developer and/or the Owners to

make good any portion of the Works which they reasonably consider to be defective damaged or dangerous and require the making good or reconstruction of the same by the Developer and/or the Owners

Without prejudice to Clauses 2 and 16 if the Developer and/or the Owners fail to reconstruct or make good the same in accordance with the requirements of the Proper Officer the Council shall after not less than 7 days notice in writing to the Developer and/or the Owners (except in case of emergency) be entitled to reconstruct and make good the portion of the Works which is defective damaged or dangerous by its own employees contractors or otherwise and to recover the cost as certified by the Proper Officer from the Developer and/or the Owners

25 Bond

Unless otherwise agreed in writing (and to the extent agreed) by the Council prior to the commencement of the Works and the Highway Works the Owners and the Developer shall either:

25.1 enter into a deed of variation to the s106 Agreement to amend Appendix 3 to the S106 Agreement so that the list of bonded items there in includes the Works and the Highway Works herein as a DCC Secured Item (as therein defined) and obtain the written confirmation of the Bondsmen that the Bonds shall take effect subject to the deed of variation to the S106 Agreement; or

25.2 deposit with the Council a sum equivalent to the Proper Officer's Estimated Cost of the Works or shall have delivered the bond or bonds in a like sum in a form and with a surety approved by the Council which bond shall guarantee to the Council the due performance by the Owners and the Developer of the terms of this Agreement **PROVIDED THAT** if the bond is provided more than six months from the date of this Agreement then the sum secured thereby shall be increased to take account of inflation by a sum which bears the same proportion to the amount of the bond as shall be borne any increase in the BCIS All In Tender Price Index of the Royal Institute of Chartered Surveyors (or in the event of the said Index being discontinued the nearest equivalent Index) to the figures shown therein for the month in which this Agreement is executed such Index figures being the latest figures or provisional figures available at the date on which the bond shall be provided **AND Provided** also that the sum secured by the bond shall be reduced by 65% upon the issue of the Part 1 Certificate whichever is sooner, by a further 25% upon the issue of the Part 2 Certificate and by the remaining 10% on the issue of the Final Certificate and **FURTHER PROVIDED THAT** the Council shall first call upon the bond or bonds of the defaulting Owner or Developer (if appropriate) until such bond or bonds have been exhausted and then against the bond or

bonds of the remaining Owners or Developer

26 Part or Parts

Notwithstanding anything hereinbefore contained the Developer and/or the Owners may from time to time during the currency of this Agreement apply to the Proper Officer for the Part 1 Certificate or Part 2 Certificate in respect of any part of the Roads (being the whole width of the road between points to be defined in the application) and if the Proper Officer is satisfied that the part so defined is in all respects suitable to be treated as a separate road for the purpose of construction and adoption in accordance with the several provisions contained in this Agreement then they shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that part and thereafter the same proceedings may be taken in respect of the said part of the Roads as if the said part were the subject of a separate Agreement under which the terms of this Agreement applied to the said part separately from the remainder of the Roads the liability of the Surety shall where appropriate be reduced as may be agreed by the Proper Officer with the Developer and/or the Owners

27 Assignment

This Agreement may not be assigned by the Developer and/or Owners without the consent of the Council and the Surety (where appropriate) which consents shall not be unreasonably withheld provided that the Council may require bonding as a condition of such an assignment

28 Dispute Resolution

28.1 Any dispute arising out of the provisions of this Agreement shall be referred to a person having appropriate qualifications and experience in such matters ("the Expert") appointed jointly by the parties to the dispute ("the relevant parties") or in default by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties

28.2 The decision of the Expert shall be final and binding upon the relevant parties and the following provision shall apply:

28.2.1 the charges and expenses of the Expert shall be borne equally between the relevant parties unless the Expert shall otherwise direct

28.2.2 the Expert shall give the relevant parties an opportunity to make representations and counter representations to him before making his decision

28.2.3 the Expert shall be entitled to obtain opinions from others if he so wishes

28.2.4 the Expert shall make his decision within the range of any representations made by the relevant parties themselves

28.2.5 the Expert shall comply with any time limit or other directions agreed by the relevant parties on or before his appointment

29 Owner or Developer

Where the expression "Owners" or "Developer" comprises two or more persons or bodies the covenants and agreements expressed herein shall be deemed to have been jointly and severally made or given with the intention that they shall be jointly and severally binding and if necessary that they shall be jointly and severally enforceable

30 Interest

If the Developer and/or Owners fails to pay any sum payable to the Council under this Agreement on the date when such payment falls due then the Council shall have the right to charge interest on such unpaid sum at the rate of 4% above base rate of Barclays Bank Plc or any rate substituted therefor

31 Refund of Advance Payments Code Deposits

The Council shall pursuant to its powers under sub-section (3) of Section 221 of the Highways Act 1980 refund to the Developer and/or Owners as soon as may be after the date of this Agreement any sum deposited with the Council under Section 219 of the Highways Act 1980 in respect of buildings to be built on the Roads together with interest thereon from the date of deposit to the date of repayment at the rate of one per cent below the base rate of Barclays Bank plc

32 Enforcement

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any of its terms but for the avoidance of doubt it is further agreed that the exclusion of the application of the Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed

33 Traffic Regulation Orders

- 33.1 As soon as possible after the date of this Agreement and in any event prior to the commencement of work on any element of the Highway Works the Owners and the Developer shall contact the Council to identify any necessary Traffic Regulation Orders and any other similar changes to the highway subject to statutory publications (eg zebra crossings road humps etc) and shall request the Council if the Council is satisfied with the proposals to make any such Order or publish notice of intent or similar and shall indemnify the Council in respect of the costs involved in making any such Order including notification procedure pursuant to the relevant legislation (or any statutory modification or re-enactment thereof)
- 33.2 Subject to clause 33.1 above immediately following the issue of the Certificate of Completion and the opening to the public for the Crannaford Lane Diversion the Council shall advertise a Traffic Regulation Order(s) under the provisions of the Road Traffic Regulation Act 1984 to temporarily close and thereafter permanently close to vehicular traffic that part of Crannaford Lane ~~shown edged red line on the Crannaford Lane Diversion Drawing~~ as is necessary to enable the Development to be carried out and (subject always to outcome of the statutory consultation process) shall use reasonable endeavours to bring such Traffic Regulation Order(s) into effect.

34 Dedication

Immediately prior to commencement of the Highway Works the Owners and the Developer confirm that the land shown shaded pink on the Dedication Land Drawing is dedicated (insofar as it is not already so dedicated) to the public in perpetuity to form part of the highway maintainable at public expense (subject always to the provisions of this Agreement obliging the Owners to undertake the Highway Works and to maintain the same throughout the Maintenance Period) without the need for any further deed of dedication

35 Notices

ANY notice required to be served under this Agreement shall be in writing and shall be validly served if delivered to the relevant party or if sent by registered or recorded delivery post (and by fax in the case of emergency) as set out below

- a) In the case of the Council to the Head of Planning Transportation and Environment, County Hall, Topsham Road, Exeter EX2 4QD
- b) In the case of the Owner at address shown in this Agreement
- c) In the case of the Developer at address shown in this Agreement

36 Supplemental Drawings etc

All subsequent drawings, specifications, licences, agreements, letters and documents relating to any matter contained or referred to in this Agreement shall be signed by or on behalf of the parties to this Agreement as appropriate and shall be deemed to be supplemental to this Agreement and the stipulations and conditions contained in this Agreement shall apply to all such drawings, specifications, licences, agreements, letters and documents as if the same were incorporated in and formed part of this Agreement unless the parties specifically agree otherwise

IN WITNESS whereof the parties hereto have caused their respective common seals to be affixed to this deed the day and year first before written

The Schedule - Part 1

- 1 All highway drainage
- 2 All other drainage contained within the highway
- 3 All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps
- 4 Carriageway sub-base road base and any supporting structures thereto
- 5 Carriageway base course surfacing where appropriate
- 6 Demarcation of sight lines and clearance of vision splays
- 7 Footpaths to formation level

The Schedule - Part 2

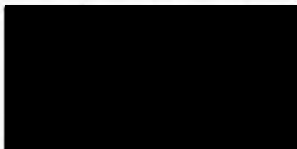
- 8 All outstanding kerbing not completed in Part 1
- 9 Pedestrian ways
- 10 Carriageway wearing course and/or carriageway base course
- 11 Vision splays and verges
- 12 Street lighting and street furniture
- 13 Street name plates
- 14 Road markings
- 15 All other Works described in the Specification and generally shown in accordance with but not limited to the Drawings

The Schedule - Part 3

The Highway Works

As specified on Drawings and all other works as the Proper Officer may reasonably require in connection with the Highway Works for this development

THE COMMON SEAL of)
DEVON COUNTY COUNCIL was)
hereunto affixed in the presence of)



~~Assistant County Solicitor~~/Duly Authorised Officer

Document No.44927.....

EXECUTED as a DEED by)
TAYLOR WIMPEY DEVELOPMENTS)
LIMITED acting by its attorneys)
in the presence of)

EXECUTED as a DEED by)
HALLAM LAND MANAGEMENT)
LIMITED acting by two directors or a)
director and the Secretary)

Director

Director/Secretary

EXECUTED as a DEED by)
PERSIMMON HOMES)
LIMITED acting by its attorneys)
in the presence of)

THE COMMON SEAL of)
DEVON COUNTY COUNCIL was)
hereunto affixed in the presence of)

Assistant County Solicitor/Duly Authorised Officer

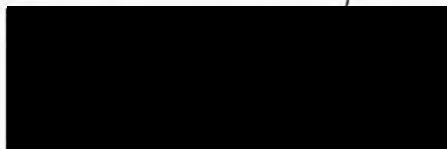
Document No.

EXECUTED as a DEED by)
TAYLOR WIMPEY DEVELOPMENTS)
LIMITED acting by its attorneys)
in the presence of)

Executed as a Deed by affixing the)
Common Seal of)
HALLAM LAND MANAGEMENT LIMITED)
in the presence of:)

~~Director~~

Secretary



Director



Director/Secretary

EXECUTED as a DEED by)
PERSIMMON HOMES)
LIMITED acting by its attorneys)
in the presence of)

THE COMMON SEAL of)
DEVON COUNTY COUNCIL was)
hereunto affixed in the presence of)

Assistant County Solicitor/Duly Authorised Officer

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TAYLOR WIMPEY DEVELOPMENTS)
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in the presence of)

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LIMITED acting by two directors or a)
director and the Secretary)

Director

Director/Secretary

EXECUTED as a DEED by)
PERSIMMON HOMES)
LIMITED acting by its attorneys)

in the presence of

Karen Greenstock

*ClO Persimmon Homes -
Mallory McEldon*

FIN CHILCOTT

Richard Williams

THE COMMON SEAL of)
DEVON COUNTY COUNCIL was)
hereunto affixed in the presence of)

Assistant County Solicitor/Duly Authorised Officer

Document No.

EXECUTED as a DEED by)
TAYLOR WIMPEY DEVELOPMENTS)
LIMITED acting by its attorneys)

in the presence of)



DEBBIE FITZPATRICK
Taylor Wimpey UK Limited
600 Park Avenue
Aztec West
Bristol
BS32 4SD

EXECUTED as a DEED by)
HALLAM LAND MANAGEMENT)
LIMITED acting by two directors or a)
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Director

Director/Secretary

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in the presence of)