

S278/001/CRAN

00725/16

DATED 18TH APRIL 2016

- (1) CAVANNA HOMES (DEVON) LIMITED
- (2) PAUL KEVIN PARNELL and JUDITH MARY PARNELL
- (3) DEVON COUNTY COUNCIL
- (4) NATIONAL HOUSE-BUILDING COUNCIL
- (5) LLOYDS BANK PLC

S38/278 Agreement
Relating to land on the north side of
The Jack In The Green Inn
London Road Rockbeare

AN AGREEMENT made the 18th day of APRIL 2016
BETWEEN

- (1) CAVANNA HOMES (DEVON) LIMITED (Company Regn. No. 04228419) of Cavanna House, Riviera Park, Nicholson Road, Torquay, Devon, TQ2 7TD ("First Owner" and/or "Developer")
- (2) PAUL KEVIN PARNELL and JUDITH MARY PARNELL of The Jack in the Green, Rockbeare, Exeter, Devon, EX5 2EE ("Second Owner")
- (3) DEVON COUNTY COUNCIL of County Hall Topsham Road Exeter Devon EX2 4QD ("Council")
- (4) NATIONAL HOUSE-BUILDING COUNCIL (Company Regn. No. 00320784) whose registered office is at NHBC House, Davy Avenue, Knowlhill, Milton Keynes, MK5 8FP ("Surety")
- (5) LLOYDS BANK PLC (Company Regn. No 2065) ~~department number 0314 of Bristol Securities Centre, P.O. Box 852, Unit 2, City Business Park, Easton Road, Bristol, WU9 5HZ~~ ^{PENDERFORD} ~~WU9 5HZ~~ ^{WU9 5HZ} ~~BS99 5HZ~~ ^{WU9 5HZ} ("Mortgagee")

WHEREAS

- 1) The Council is the Local Highway Authority
- 2) The First Owner is the registered proprietor of the land registered at HM Land Registry under title number DN654096 and the Second Owner is the registered proprietor subject only to the Legal Charge of the land registered at HM Land Registry under title number DN225793 both forming part of the land on the north side of The Jack In The Green Inn London Road Rockbeare which is shown for the purpose of identification only by red edging on annexed drawing 13129-001 Rev O hereto which includes within such edging the site of the proposed highway shown coloured dark grey, light grey, red and hatched grey and all other land required for the Works hereinafter referred to.
- 3) The Developer, First Owner and Second Owner are desirous of making up the proposed highway so that the same shall become highway maintainable at public

expense. For the avoidance of doubt hedges between plots and adoptable highway are not adoptable and will not be maintainable by the Local Highway Authority

- 4) By the Legal Charge the Premises were charged to the Mortgagee to secure the sums therein mentioned
- 5) The Developer, First Owner and Second Owner have requested that when the works hereinafter referred to for the making up of the proposed Roads have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the Roads as highway maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing
- 6) The Council is requiring that the Developer execute certain works upon the public highway as hereinafter described and the Council is satisfied that those works will be of benefit to the public

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:-

- 1.1 "Certificate of Completion" means the certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 10
- 1.2 "Commencement of Development" the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development begins to be carried out, other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary

means of enclosure, the temporary display of site notices or advertisements, and similar expressions such as "Commence the Development" shall be interpreted in the same way

- 1.3 "Design Manual" the "Design Manual for Roads and Bridges" reference HD19/03 published by the Highways Agency and others, and any publication which amends or replaces it;
- 1.4 "Drawings" means drawing 13129-001 annexed hereto and signed by or on behalf of the parties hereto, and any amended drawings signed by or on behalf of the Proper Officer
- 1.5 "Development" means the erection of 19 dwellings with associated accesses (including new access to restaurant/pub), drainage, servicing and associated works including district heating plant, together with the realignment of kerbing and the moving of the pedestrian island
- 1.6 "Estimated Cost" is Two Hundred and Six Thousand Three Hundred and Sixteen Pounds and Eighty Five Pence (£206,316.85) being the amount which is in the opinion of the Proper Officer the cost of carrying out the Works and the Highway Works within the period specified in Clause 2
- 1.7 "Final Certificate" means the certificate issued on satisfactory completion of the maintenance period for the Works or the Highway Works in accordance with Clause 13
- 1.8 "Highway Works" means the works to be executed upon the public highway as shown on drawing 13129-001 Rev O annexed hereto and described in Part 3 of the Schedule
- 1.9 "Legal Charge" means the Mortgage/Legal Charge dated 12 June 2003 and made between the Second Owner and the Mortgagee
- 1.10 "Part 1 Certificate" means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 7
- 1.11 "Part 1 Works" means the works referred to in Part 1 of the Schedule
- 1.12 "Part 2 Certificate" means the certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 9



- 1.13 "Part 2 Works" means the works referred to in Part 2 of the Schedule
- 1.14 "Premises" means the land at HM Land Registry under title number DN225793
- 1.15 "Programme of Works" means that referred to in Clause 3.3
- 1.16 "Proper Officer" means the Executive Director of Environment, Economy & Culture of the Council or such other officer within the Council from time to time with responsibility for highways
- 1.17 "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 but excluding any hedges between the road or roads and the Development
- 1.18 "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
- 1.19 "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;
- 1.20 "Statutory Undertaker" means a statutory undertaker as defined in Section 329(1) of the Highways Act 1980 and British Telecommunications plc
- 1.21 "Traffic Manager" means the officer appointed by the Council to act as Traffic Manager for the purposes of the Traffic Management Act 2004
- 1.22 "Works" means the works specified in Parts 1 and 2 of the Schedule for the 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'S LIABILITY:

SUBJECT to the terms, conditions, agreements and undertakings contained in this Agreement the Developer shall carry out and complete the Works and the Highway Works at the Developer's 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 and in accordance with permits and approvals granted by the Council or any other statutory or public authorities and (except as may be otherwise provided in this Agreement) shall complete Part 1 Works by no later than 6 October 2016 and shall completed Part 2 Works by no later than 13 January 2017

3 Highway Works

3.1 THE Developer covenants with the Council that the Developer will at its own expense in relation to the Highway Works 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 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 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 2015 ("the Regulations") as if the 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 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)

3.2 THE Developer covenants 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 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 the = Developer shall ensure that the Stage 3 Safety Audit of the Highway Works is carried out and upon receipt of the safety audit report the Developer shall undertake such works to comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer

e) The 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

3.3 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

4 Declaration

THE Developer hereby declares and warrants 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

5 Statutory Undertakers - Connections to Existing Services

THE Developer shall before connecting the Roads with any highway maintainable at public expense give notice to each person, board or authority being the Statutory Undertaker for the time being of any service 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 any Statutory Undertaker in consequence of the proposal to make such connection

6 Access to the Works/Highway Works and Inspection

- a) THE Developer 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 sites thereof for the purpose of inspecting the same and all materials used or intended to be used therein and the Developer shall if requested open up for inspection any portion of the Works or (as the case may be) the Highway Works which may be covered up and should the Developer decline to comply with such a request the Council may itself open up the Works or (as the case may be) 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
- b) If any inspection carried out under sub-clause a) of this clause reveals defects in the Works or the Highway Works the Developer 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 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 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 the Highway Works the Developer 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 or (as the case may be) the Highway Works
- f) In the event of the final inspection revealing any defect or defects in the Works or (as the case may be) the Highway Works the provisions of sub-clause d) of this clause shall apply as if they related to a final inspection

7 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 a Part 1 Certificate to the Developer

8 Occupation of Buildings

NO dwelling erected fronting, adjoining or abutting onto 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 has arranged with the electricity company for an electricity supply thereto by giving at least six weeks prior notice in writing or as may otherwise be agreed in writing by the Proper Officer

9 Part 2 Certificate

ON completion of the Part 2 Works for the Roads to the satisfaction of the Proper Officer in all respects and subject to the prior issue of a Certificate of Completion of the Highway Works and to all dwellings fronting or which are proposed shall front the Roads having been constructed to roof level the Proper Officer shall if any sewer constructed under the Roads under an agreement under Section 104 of the Water Industry Act 1991 ("the 1991 Act") has been certified as being or having been on maintenance or has been the subject of a declaration made by the relevant Water Authority pursuant to Section 102 of the 1991 Act issue a Part 2 Certificate to the Developer and from the date thereof

- a) The maintenance period of twelve months for the Works shall commence to run
- b) The Roads shall become highway and remain forever open for use by the public at large

- c) The Developer 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

10 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

11 Obligations During the Maintenance Period for the Works

DURING the maintenance period for the Works

- a) The Developer at their own expense shall 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) The Council at its own expense shall undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs

12 Obligations During the Maintenance Period for the Highway Works

DURING the maintenance period for the Highway Works the Developer shall maintain the Highway Works and for the purposes of this clause and for the avoidance of doubt the 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

13 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 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 respective maintenance periods (including in the case of the Works any

defect in or any damage to the road surface water drainage system) of which they have been notified in writing by the Proper Officer so that the Works or (as the case may be) the Highway Works comply with the Specification

and then provided that

- a) The Developer has 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 has in the case of the Works delivered to the Proper Officer drawings showing the works as constructed

the Proper Officer shall issue a Final Certificate to the Developer in respect of the Works or as the case may be the Highway Works

14 Grants of Rights of Drainage

On completion of this Agreement the Developer 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 will at their own cost obtain those rights prior to any further certificates being issued in accordance with Clauses 7, 9 and 13. 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 13

15 Adoption

- a) UPON the issue of the Final Certificate in respect of the Works the Roads shall become highway maintainable at public expense

- b) For the avoidance of doubt any hedges between the public highway and the Developer's adjacent development shall remain the responsibility of the Developer and its successors in title and the Developer and its successors in title shall ensure that such hedges are cut and maintained at all times in the future in a condition which will not cause any obstruction to the public highway and in the event that the Developer and its successors in title default in maintaining such hedges the Council shall be entitled to carry out such maintenance and recover the costs of doing so from the Developer or its successors in title

16 Inspection Fee

- a) WITHIN seven days of the completion of this Agreement the Developer shall pay the Council Twelve Thousand Three Hundred and Seventy Nine Pounds and One Pence (£12,379.01) in respect of the costs incurred by the Council in inspecting the Works and Highway Works
- b) RECEIPT by the Council of the payment of the sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer 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 may sustain by reason of insufficient or faulty inspection of the Works by the Council

17 Determination by the Council

IF the Developer fails 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 is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights, claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 18, 20 and 21) by notice in

writing signed by the Proper Officer and delivered to the Developer or sent by post to the address stated in this Agreement

18 Power to Execute Works in Default

WITHOUT prejudice to Clauses 2 and 17 if the Developer fails to execute or complete the Works in accordance with the Developer obligations contained herein the Council shall after not less than twenty-eight days' notice in writing to the Developer 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

19 Power to Execute Highway Works in Default

IF the Developer fails to execute the Highway Works in accordance with any previously agreed Programme of Works (unless prevented from doing so by matters beyond the control of the Developer 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 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 who shall reimburse the Council on demand

20 Defective or Dangerous Works

UNTIL the Roads become highway maintainable at public expense pursuant to this Agreement the Developer 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 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 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. Without prejudice to Clauses 2 and 17 if the Developer fails to reconstruct or make good the same in accordance with the requirements of the Proper Officer the Council shall after not less than seven days' notice in writing to the Developer (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

21 Surety's Obligations

- a) If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on their part contained in this Agreement or if the Developer is adjudged bankrupt or if the Developer is being wound up or If the Developer enters into a composition or scheme or arrangements (otherwise than for the purpose of reconstruction or amalgamation) the Proper Officer may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement (and in particular but without prejudice to the generality of this clause the rights of the Council pursuant to clause 21) send to the Surety notice in writing ("the Default Notice")
- i) Specifying the work ("the Default Work") to be carried out in order that the Works or Highway Works may be executed or completed in accordance with this Agreement
 - ii) Containing an estimate by the Proper Officer of the costs of the carrying out of the Default Work and the cost of maintaining the Works or the Highway Works for twelve months prior to the Roads becoming maintainable at the public expense or the issue of the Final Certificate and also a statement of the amount of the usual establishment charges of the Council ("the Default Cost") which cost

- 1) Shall not exceed Two Hundred and Six Thousand Three Hundred and Sixteen Pounds and Eighty Five Pence (£206,316.85) being the Estimated Cost
 - 2) Shall not exceed One Hundred and Thirty Four Thousand One Hundred and Five Pounds and Ninety Five Pence (£134,105.95) on and after the issue of the Part 1 Certificate
 - 3) Shall not exceed Fifty One Thousand Five Hundred and Seventy Nine Pounds and Twenty One Pence (£51,579.21) on and after the issue of the Part 2 Certificate
 - 4) Shall not exceed Twenty Thousand Six Hundred and Thirty One Pounds and Sixty Nine Pence (£20,631.69) on and after the issue of the Certificate of Completion
- b) Within twenty-eight days after the Surety has received the Default Notice the Surety shall
- i) pay the Default Cost to the Council or
 - ii) send to the Council notice in writing ("the Surety's Counter Notice") of the intention of the Surety to carry out the Default Work
- c) If the Surety having sent the Surety's Counter Notice to the Council fails to start the Default Work within fifty-six days after the Surety received the Default Notice the Surety shall pay the Default Cost to the Council with interest added at four per cent per annum above the prevailing base rate from time to time of Barclays Bank Plc calculated from the date on which the Surety received the Default Notice
- d) If the Surety having sent the Surety's Counter Notice to the Council starts the Default Work and the said work is not completed within four months after the Surety's Counter Notice was received by the Council or within such further period as may be agreed by the Council the Surety shall subject to sub-clause (e) forthwith on demand by the Proper Officer pay to the Council such sum as the Proper Officer may determine as being the cost of carrying out any Default Work not carried out by the Surety or the

cost of maintaining the works for twelve months prior to the Roads becoming maintainable at public expense as may be the case (or as being the cost of both) and also to pay to the Council the amount determined by the Proper Officer as being the amount of the appropriate usual establishment charges of the Council

- e) The sum payable under sub-clause (d) shall not exceed the Default Cost and the covenant in Clause 21(c) shall apply with respect to such sum and on the issue of the Final Certificate the Surety shall be released from all liability hereunder
- f) For the purposes of this Agreement a demand stated to be made and signed or purportedly signed on behalf of the Council shall be conclusive as to the Surety's obligations to pay the amount demanded and there shall be no obligation or duty whatsoever on the Surety to consider the alternative set out in (f) (ii) above

22 Council's Covenants

THE Council hereby covenants with the Developer and the Surety for the benefit of all building plots fronting and adjoining or abutting the Roads and for each and every one of them

- a) To use reasonable endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the Council shall think fit
- b) To use money received from the Surety towards the expenditure involved in executing or completing the Works and Highway Works and maintaining and making good all defects for twelve months after completion and the amount received shall be deducted from any sum of which would otherwise be recoverable from the owners of premises fronting the Roads under the provisions of the Highways Act 1980 or any other Act for the time being in force replacing or amending the same
- c) In the event of the sum paid by the Surety to the Council exceeding the cost of executing or completing the works and maintaining and making good all defects as aforesaid together with the amount of the Council's usual establishment

charges to repay to the Surety within twenty-eight days after the Roads become maintainable at public expense the amount of such excess with interest calculated at half-yearly rests on the unexpended balance for the time being of the sum paid by the Surety to the Council at the rate of interest prevailing from time to time on monies held in a deposit account with the Council's bankers

The Council further hereby covenants that the Final Certificate will be issued in accordance with this Agreement and that the Surety will be released from all liability under this Agreement in accordance with this Agreement

23 Assignment

THIS Agreement may not be assigned by the Developer without the consent of the Council or the Surety which consents shall not be unreasonably withheld provided that the Council may require bonding as a condition of such an assignment

24 Arbitration

IN the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed by the President for the time being of the Institution of Civil Engineers and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or modification thereof

25 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 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

26 Indemnity

guard for the Second Owner and/or the Mortgagee

THE Developer shall indemnify and keep indemnified the Council against any actions *ASHTONS LLP*
costs, claims, demands, expenses and proceedings arising out of the undertaking of specified
any of the Works or the Highway Works which are due to any acts or defaults of the *herein*

Developer or its contractor whether directly or indirectly during the course of their
construction or during the ensuing maintenance period other than those arising out of *ASHTONS LLP*
or in consequence of any act neglect default or liability of the Council and/or the Second

27 Indemnity - Land Compensation Act 1973

Owner and/or the Mortgagee (as applicable)

THE Developer shall indemnify the Council in respect of all claims pursuant to the
Land Compensation Act 1973 (or any statutory modification or re-enactment of it) *ASHTONS LLP*
arising from the carrying out of the Works and the Highway Works and prior to the
commencement of the Works and the Highway Works shall carry out such surveys as
may be necessary to define the levels of physical factors as specified in the said Act

38 Consents and Approvals

WHERE under this Agreement the consent or approval of any party is required that
consent or approval shall not be unreasonably withheld or delayed

39 Notice

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 Director of Environment, Economy & Culture,
County Hall, Topsham Road, Exeter EX2 4QW
- b) In the case of the First Owner at address shown in this Agreement
- c) In the case of the Second Owner at address shown in this Agreement
- d) In the case of the Developer at address shown in this Agreement
- e) In the case of the Surety at address shown in this Agreement
- f) In the case of the Mortgagee at address shown in this Agreement

30 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

31 Costs

On completion of this Agreement the Developer shall pay the Council's reasonable costs in connection with the preparation and completion of this Agreement and any subsequent variation of it together with the legal costs associated with Clauses 7, 9, 13 (issuing of certificates) and Clause 14 (drainage rights)

32 Mortgagee

The Mortgagee hereby covenants with the Council that in the event of the Mortgagee entering into possession of the Premises or any part thereof or exercising any power of sale in respect thereof this Agreement shall binding upon the Mortgagee as if he had been included in the expression "the Second Owner"

33 Owner or Developer

Where the expression "First Owner" "Second Owner" 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

34 Interest

If the Developer 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

IN WITNESS whereof the parties hereto have executed 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 Footways to formation level

The Schedule - Part 2

- 1 All outstanding kerbing not completed in Part 1
- 2 Pedestrian ways
- 3 Carriageway wearing course and/or carriageway base course
- 4 Vision splays and verges
- 5 Street lighting and street furniture
- 6 Street name plates
- 7 Road markings
- 8 All other works described in the Specification and shown in the Drawings

The Schedule - Part 3

The Highway Works

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

Executed as a DEED
by affixing
THE COMMON SEAL of

CAVANNA HOMES (DEVON)

LIMITED)

SIGNED as a DEED by the said)

in the presence of:-)

Direct)

Direct)

THE COMMON SEAL of)

DEVON COUNTY COUNCIL)

was hereunto affixed)

in the presence of:-)

A Duly Authorised Officer

DOCUMENT No..4.7.053.....

THE COMMON SEAL of)

NATIONAL HOUSE-BUILDING)

COUNCIL)

was hereunto affixed)

in the presence of:-)

CUSTOMER CONTACT MANAGER
AUTHORISED SIGNATORY

BUSINESS SUPPORT TEAM LEADER
AUTHORISED SIGNATORY

EXECUTED as a DEED by

as duly authorised attorney for and on

(Authorised Signatory)

behalf of LLOYDS BANK PLC in the
presence of:

Witness signature:

Witness name:

Witness address:

Witness occupation:

SIGNED AS A DEED

BY LISA JANE PACKHAM
as authorised signatory for
Lloyds Bank

in the presence of (signature of witness)

Per Pro
Lloyds Bank

Weboston Rd, Wolverhampton WV9 5HZ

EXECUTED and DELIVERED as)
a Deed by PAUL KEVIN)
PARNELL)

in the presence of)
Witness Name)

Witness Signature)

Address)

Occupation)

EXECUTED and DELIVERED as)
a Deed by JUDITH MARY)
PARNELL)

in the presence of)
Witness Name)

Witness Signature)

Address)

Occupation)

