

01558/16

DATED 12th January 2017

BDW TRADING LIMITED

- and -

WEST SUSSEX COUNTY COUNCIL

- and -

NATIONAL HOUSE BUILDING COUNCIL

AGREEMENT

under Section 38 of the Highways
Act 1980 and Section 1 of the Localism Act 2011
and Section 87 of the New Roads and Street
Works Act 1991
in connection with land east of Roundstone Lane
(Swanbourne Park) Angmering Littlehampton
West Sussex

Dated

12th January

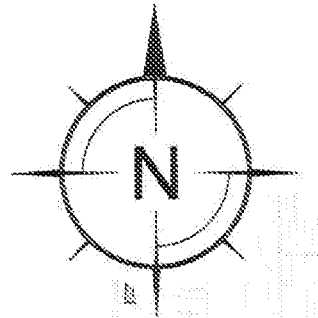
201~~6~~7

1. Parties:

- 1.1 the "Developer" means **BDW TRADING LIMITED** (Company Registration Number: 03018173) whose registered office is at Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE27 1UF of the first part
- 1.2 the "Council" means **WEST SUSSEX COUNTY COUNCIL** of County Hall Chichester West Sussex PO19 1RQ of the second part
- 1.3 the "Surety" means **NATIONAL HOUSE BUILDING COUNCIL** (Company Registration No: 320784) whose registered address is NHBC House Davy Avenue Knowlhill Milton Keynes Bucks MK5 8FP of the third part

2. Interpretation:

- 2.1 **IN** this Agreement unless otherwise stated the following expressions where the context so admits shall have the following meanings:
- 2.2 The "CDM" means the Construction (Design and Management) Regulations 2007, the Construction (Design and Management) Regulations 2015, and the Construction (Design and Management) Regulations 2015: Transitional arrangements
- 2.3 a "Competent Person in Health and Safety" means an employee/contractor/consultant with health and safety training experience and qualifications
- 2.4 the "Director of Law Assurance and Strategy" means the Director of Law Assurance and Strategy for the time being of the Council or any other officer of the Council authorised by him
- 2.5 the "Drawing" means the drawing numbered 22067-421 Rev H annexed to this Agreement and signed by or on behalf of the parties to this Agreement and any amended such Drawing signed by or on behalf of the Proper Officer
- 2.6 the "Electrical Connection Certificate" means schedule of test results and particulars of electrical installation confirming compliance with the Electricity at Work Regulations 1989
- 2.7 the "Estimated Section 38 Works Cost" is the sum of one million four hundred and forty thousand six hundred and thirty one pounds (£1,440,631) being the amount which is in the opinion of the Proper Officer the cost of carrying out the Section 38 Works within the period specified in Clause 4.1



SUPPORTING DRAWINGS		
No.	Title	Rev.
211	Site Layout - Proposed Levels Sheet 1 of 4	F
212	Site Layout - Proposed Levels Sheet 2 of 4	D
213	Site Layout - Proposed Levels Sheet 3 of 4	C
214	Site Layout - Proposed Levels Sheet 4 of 4	P
221	Site Layout - Proposed Drainage Sheet 1 of 5	R
222	Site Layout - Proposed Drainage Sheet 2 of 5	R
223	Site Layout - Proposed Drainage Sheet 3 of 5	R
224	Site Layout - Proposed Drainage Sheet 4 of 5	R
225	Site Layout - Proposed Drainage Sheet 5 of 5	A
231	Site Layout - Proposed Surfaces Finishes Sheet 1 of 4	F
232	Site Layout - Proposed Surfaces Finishes Sheet 2 of 4	E
233	Site Layout - Proposed Surfaces Finishes Sheet 3 of 4	D
234	Site Layout - Proposed Surfaces Finishes Sheet 4 of 4	P
251	Site Layout - Proposed Road Setting Out	F
252	Longitudinal Sections - Roads 1 and 2 Sheet 1 of 3	A
253	Longitudinal Sections - Roads 3, 4 and 5 Sheet 2 of 3	E
254	Longitudinal Sections - Roads 6, 7, 8, 9 and 10 Sheet 3 of 3	D
255	Road Cross Sections Road 1	P
256	Road Cross Sections Road 2	/
257	Road Cross Sections Road 3	/
258	Road Cross Sections Roads 4, 5, 6	/
259	Road Cross Sections Roads 7, 8, 9 and 10	/
261	Site Layout - Refuse Vehicle Tracking Sheet 1 of 4	/
262	Site Layout - Refuse Vehicle Tracking Sheet 2 of 4	/
263	Site Layout - Refuse Vehicle Tracking Sheet 3 of 4	/
264	Site Layout - Refuse Vehicle Tracking Sheet 4 of 4	/
426	Section 38 Agreement - Site Location Plan	/
501	Construction Details - Adoptable Road	/
SSE-912605-SL-00	Street Lighting Layout - Revision B	/

- NOTES:
1. All dimensions to be checked on site. All details and dimensions relating to sub-Contractors work must be checked and agreed between the sub-Contractor or supplier and the general Contractor.
 2. This drawing is to be read in conjunction with all relevant Architect's and Engineer's drawings and specification.
 3. The main Contractor is responsible for ensuring the stability of the structure whilst the works are in progress.
 4. Any information given regarding existing underground services is given in good faith after consultation with the relevant authority. No liability is accepted by the Consultant and the main Contractor is responsible for obtaining and checking all information and taking due care and attention whilst undertaking the works.

KEY: SECTION 38 HATCHING	
	Carriageway
	Footway
	Highway verge
	Highway drainage easement

KEY:

Highway Drainage for Adoption

- HW Highway pc ring manhole
- RG Road gully
- HWSA Highway soakaway

Proposed Tree (maintained by WSCC under a committed sum)

Proposed Tree (maintained by Gateway PLC)

For detailed tree planting proposals see ACD drawings BSH175/6 11-20

Proposed Foul Sewers For Adoption (maintained by Southern Water)

Proposed street lighting (to be located within the adoptable footpath / verge)

- NOTES:
1. No works shall commence within the existing public highway until the Agreement is signed.
 2. Any soft spots within the proposed Highway shall be dug out and the void backfilled in layers up to formation level with selected granular material as directed and to the satisfaction of the Highways Inspector.
 3. All fill material up to foundation level of the proposed highways to be approved and compacted in layers as directed and to the satisfaction of the Highways Inspector.
 4. Any damage caused to the existing highway during the course of the works to be repaired as directed and to the satisfaction of the Highways Inspector and/or Area Engineer.
 5. Continuity of access to occupied areas to be maintained to satisfaction of Highways Inspector, Area Office Engineer and/or Local Authority.
 6. Any abandoned/redundant pipes and chambers that fall within the proposed highway shall be grubbed up and the void backfilled in layers up to formation level of the carriageway with selected granular material or permanently filled with concrete (or similar filler).
 7. All redundant connections in existing manholes/chambers that are affected by the works shall be sealed and the benching made good as directed and to the satisfaction of the Highways Inspector and/or utility company involved.
 8. Any existing live drains, sewers, ducts, cables, etc. that will pass under the proposed highway shall be surveyed, probed, traced, rodded, jetted, CCTV'd, etc. to ascertain their structural condition and suitability to fall within the new highway. If deemed necessary, special protection and/or replacement may be required as directed and to the satisfaction of the Highways Inspector, Area Engineer and/or Utility Company involved.
 9. Any existing live manholes, chambers, boxes, etc. that will be located within the proposed highway shall be surveyed to ascertain their structural condition and suitability to fall within the new highway. If deemed necessary, special protection and/or replacement may be required as directed and to the satisfaction of the Highways Inspector, Area Engineer and/or Utility Company involved.
 10. Developer/Contractor to provide suitable and effective wheel washing facilities to prevent mud from being conveyed onto the public highway and to provide the means to clean the highway to the satisfaction of the Highways Inspector, Area Engineer and/or Local Authority.
 11. No concrete to be poured or laid in temperatures below 2deg C on a falling max/min thermometer or before the temperature reaches 2deg C on a rising max/min thermometer (to be provided by the Contractor and displayed in a position agreed by the Highways Inspector).
 12. All road signs and markings to comply with the Traffic Signs Manual.
 13. All road markings to be thermoplastic.
 14. Contractor to comply with Chapter 8 of the Traffic Signs Manual 2009.
 15. Refer to WSCC 278/38 Highway Agreement Standard Details drawings 01-21 and revision thereof.

CHECKED AND APPROVED

INITIALS: HM

DATE: 04 AUG 2015

PSI No: 302

INSPECTOR ☐ OFFICE ☐

REV.	DATE	BY	DESCRIPTION	CHK.
H	22.07.15	AJD	Updated to suit WSCC's comments	
G	21.05.15	AJD	Updated to suit WSCC's comments	
F	14.05.15	AJD	Updated to suit revised highway drainage layout	
E	14.04.15	AJD	Soakaways revised where indicated	
D	18.03.15	AJD	Highway swales removed	
C	10.03.15	AJD	Updated to suit WSCC's comments	
B	17.12.14	AJD	Updated to suit WSCC's comments	
A	22.07.14	AJD	Highway drainage layout updated to suit new soakage rate	

Issue Status

APPROVED - FOR CONSTRUCTION

11 Tungsten Building
George Street
Fishersgate
Sussex
BN41 1RA
Tel: 01273 434424
Fax: 01273 424425
email: design@civil.co.uk

the
Civil
Engineering
practice

CLIENT: Barratt David Wilson Southampton

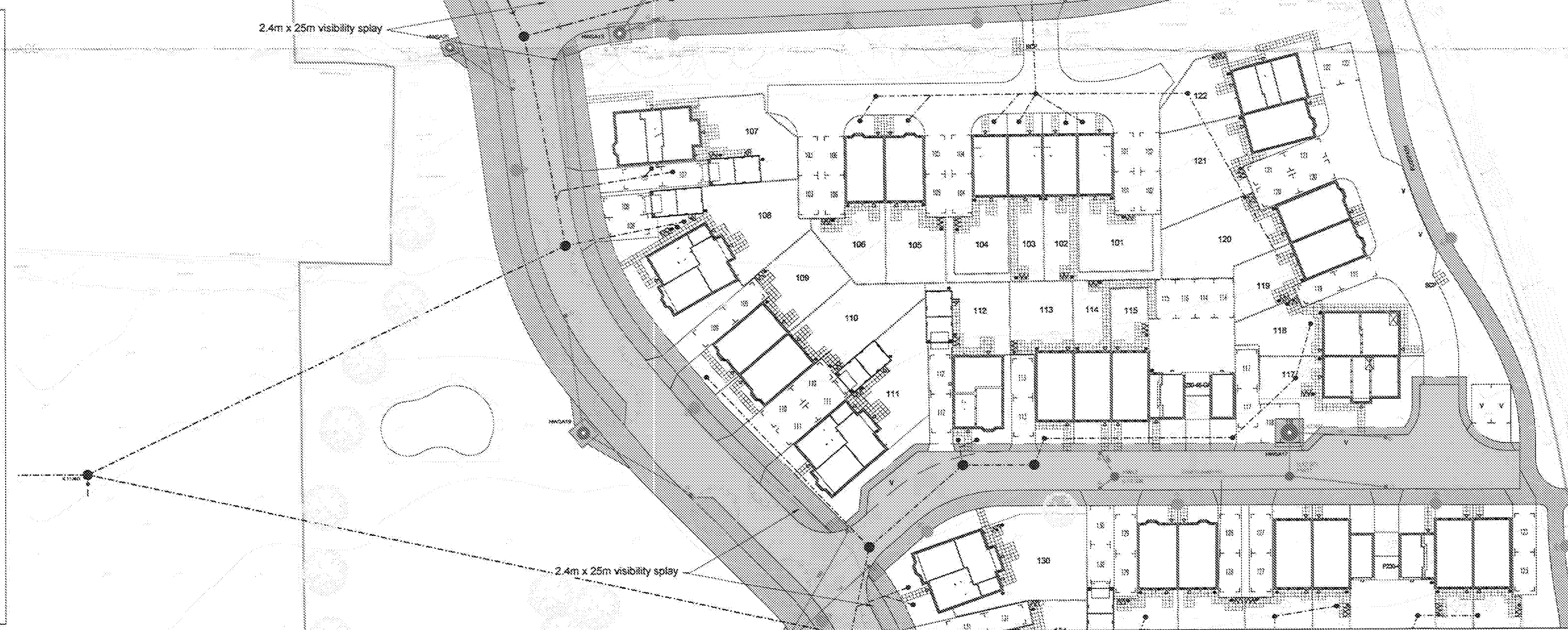
PROJECT: Swanbourne Park Angmering

TITLE: Section 38 Agreement Plan

DRAWN: A Davies DATE: June 2014 PROJECT NO: 22067

ENGINEER: A French CHECKED: SCALE: 1:500 @ A1

421 H



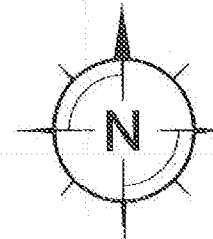
- 2.8 the "**Final Certificate**" means the certificate to be issued on satisfactory completion of the Section 38 Works in accordance with Clause 18
- 2.9 the "**Highway**" means an existing highway maintainable at the public expense
- 2.10 the "**Highway Drainage**" means the highway drainage depicted in blue on the Drawing
- 2.11 the "**Illuminated Equipment**" means the lighting and/or electrical bollards or beacons referred to in Clause 10 which is to be installed by the Developer under this agreement
- 2.12 the "**Land**" means land east of Roundstone Lane (Swanbourne Park) Angmering Littlehampton in the County of West Sussex which is shown for the purpose of identification only by red edging on the annexed Location Plan
- 2.13 the "**Location Plan**" means the means the drawing numbered 22067-425 annexed to this Agreement
- 2.14 the "**Maintenance Period**" means the periods specified in Clause 16
- 2.15 the "**Part 1 Certificate**" means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 14
- 2.16 the "**Part 1 Works**" means the works referred to in Part 1 of the First Schedule
- 2.17 the "**Part 2 Certificate**" means the certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 16
- 2.18 the "**Part 2 Works**" means the works referred to in Part 2 of the First Schedule
- 2.19 the "**Proper Officer**" means any officer of the Council for the time being appointed for the purposes of this Agreement or of any provision contained in this Agreement
- 2.20 the "**Road**" means the carriageways and footways of the Road referred to in this Agreement including any off-site highway drainage shown on the Drawing and includes the footpaths street lighting all verges service strips service margins vehicular crossings road surface water drainage system (if any) and all other ancillary items
- 2.21 the "**Section 38 Works**" means the works under Section 38 Highways Act 1980 specified in the First Schedule for the making up of the Road
- 2.22 the "**Section 38 Works Specification**" means the edition of the publication entitled West Sussex County Council Specification for the Construction of Residential Estate Roads and dated 1st August 1991 a copy of which the Developer hereby acknowledges has been supplied to him
- 2.23 the "**Statutory Undertaker**" means a "statutory undertaker" as defined in Section 329(1) of the Highways Act 1980 and shall include persons authorised under any enactment to carry on an undertaking for the supply of electricity gas water and any sewerage undertaking and shall also include the Environment Agency the holder of a

WEAVERS RING

ROUNDSTONE LANE

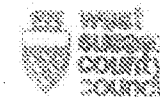
NURSERY ROAD

A280



1906415/1616

CHECKED AND
APPROVED



INITIALS: *HM*

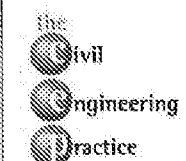
DATE: 04 AUG 2014

PSI No: 3/28

REV DATE BY DESCRIPTION CHK

Issue Status APPROVED - FOR CONSTRUCTION

11 Tongsten Building
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CLIENT Barratt David Wilson Southampton

PROJECT Swanbourne Park
Angmering

WRE Section 38 Agreement
Site Location Plan

DRAWN A Davies	DATE Dec 2014	PROJECT NO 22067
ENGINEER G Waler	CHECKED	DRAW NO 425
SCALE 1:2500 @ A3		

-25m 0 25m 50m 75m 100m
Scale 1:2500

licence to operate telecommunication systems the Civil Aviation Authority and the holder of a licence to supply cable television

2.24 the “**Street Lighting Service Provider**” means the approved service provider for the ongoing management of the Illuminated Equipment

2.25 **references** to clauses sub-clauses annexures and schedules are unless otherwise stated references to clauses sub-clauses recitals annexures and schedules to this Agreement

2.26 **the** singular number shall include the plural number and the masculine and neutral genders shall include the feminine gender and vice-versa

3. **Background:**

3.1 **THE** Council is the Local Highway Authority for highways in West Sussex

3.2 **THE** Developer is the estate owner in fee simple absolute in possession of the Land registered under title number WSX332978 at HM Land Registry which includes the site of the proposed Road shown coloured pink grey and green on the annexed Drawing numbered 22067-421 Rev H and all other land required for the Section 38 Works referred to in this Agreement and wishes to make up the Road so that it shall become a highway or highways maintainable at the public expense

3.3 **THE** Developer has requested that when the Section 38 Works have been executed and maintained the Council shall undertake the maintenance of the Road as a highway maintainable at the public expense which the Council have agreed to do upon terms and conditions contained in this Agreement

3.4 **NOTICE** of this Agreement and the terms and conditions contained within it shall be entered in the Register of Local Land Charges

THIS Agreement is made pursuant to Section 38 of the Highways Act 1980 Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 Section 87 of the New Roads and Street Works Act 1991 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982

IT IS HEREBY AGREED AND DECLARED by and between the parties to this Agreement as follows:

4. Developer's Liability:

- 4.1 **THE** Developer shall carry out and complete the Section 38 Works at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Section 38 Works Specification and the Drawing to the satisfaction of the Proper Officer within ten (10) calendar months from the date of this Agreement
- 4.2 **THE** Part 1 Works shall be completed within three (3) calendar months from the date of this Agreement and the Part 2 Works shall be completed within seven (7) calendar months of the date of issue of the Part 1 Certificate
- 4.3 **THE** Developer shall notify the Proper Officer in writing by letter not less than 7 days prior to the commencement of the Section 38 Works
- 4.4 **WITHOUT** prejudice to any other remedy of the Council the Proper Officer may at any time by notice to the Developer grant an extension of time to complete the Section 38 Works for such period of time as he shall in his absolute discretion determine provided always that the Surety does not object to any such extension
- 4.5 **THE** Developer shall cause all foul sewers surface water sewers highway drains gas and water mains electricity cables television communication cables and/or ducting to be laid under the Road together with all necessary connections from them to the Highway boundary to the satisfaction of the Proper Officer before the foundations of the Section 38 Works are laid and also cause the connections from electricity cables to the street lighting columns to be laid before the paving of any footway or cycleway is carried out
- 4.6 **THE** Developer covenants with the Council that upon the completion of this Agreement the Developer will pay the legal costs of the Council involved in the preparation and execution of this agreement
- 4.7 **THE** Developer undertakes not to cause any vehicular traffic restriction or interruption on the Highway nor to cause pedestrians to cross the carriageway of the Highway during the hours of 7.00 a.m. to 9.00 a.m. and 4.00 p.m. to 6.30 p.m. on Mondays to Fridays and during the hours of 9.00 a.m. to 6.00 p.m. on Saturdays in direct or indirect connection with the construction of the Section 38 Works without the prior written consent of the Proper Officer

5. Suspension of the Section 38 Works:

- 5.1 **THE** Developer shall in the event of it suspending construction of the Section 38 Works for a period of more than two weeks give to the Proper Officer notice in writing of such suspension not less than seven days prior to the commencement of such suspension and

shall give to the Proper Officer notice in writing by letter of its intention to recommence the Section 38 Works not less than seven days prior to such commencement

- 5.2 IN the event of failure by the Developer to notify the Proper Officer in accordance with Clauses 4.3 and 5.1 the administration and inspection fee referred to in Clause 27 shall be increased by such amount as the Proper Officer in his absolute discretion may consider necessary to reimburse to the Council any additional cost incurred by it in inspecting the Works by reason of such failure and any such additional amount shall be paid by the Developer within twenty-eight days of receipt of an invoice

6. Features:

- 6.1 THE Developer undertakes that in the event of the Proper Officer employing a suitably qualified agent to check any feature (the "Features") included as any part of the Section 38 Works or that is under or over the Highway and/or the Road and which in his sole judgment requires specialist knowledge to check the design of the Features in order to gain technical approval of the Features it shall reimburse to the Council all costs incurred by it in its endeavours to gain any such technical approval within twenty-eight days of receipt of an invoice
- 6.2 THE Developer shall notify the Proper Officer in writing by letter not less than 48 hours prior to the commencement of all stages of excavation and concrete operations concerned with the Features

7. Declaration:

THE Developer declares and warrants to the Council that he has 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 Road to a vehicular Highway

8. Variation of Design:

THE Developer undertakes that it will at no cost to the Council vary the design of the Road should any unforeseen circumstance prejudice the integrity of the Road if the Road were to be constructed in the position and format shown on the Drawing and any such revised design shall be to the satisfaction of the Proper Officer

9. Statutory Undertakers – Connections to Existing Services:

9.1 **THE** Developer shall before connecting the Road with any Highway 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 road purposes or were mentioned in Sections 48(3) and 84(1) of the New Roads and Street Works Act 1991

9.2 **THE** Developer 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 as set out in Clause 4.5 and shall notify the Proper Officer in writing not less than 28 days prior to the commencement of any work connected with Statutory Undertakers' equipment located in on or under any Highway

10. Illuminated Equipment Inspection

WITHIN 14 days of receipt of an invoice the Developer must pay to the Council the cost of any Illuminated Equipment inspection that has been carried out by the Council's Street Lighting Service Provider

11. Keeping the Highway Clean:

PRIOR to the commencement of the Section 38 Works the Developer shall provide suitable vehicle and wheel cleaning apparatus on the Land and shall ensure that such apparatus is maintained in good and usable condition and used by all vehicles immediately before leaving the Land to prevent mud or other materials being deposited on the Highway

12. Access to the Site:

THE Developer shall during the carrying out of the Section 38 Works give to the Proper Officer and any other officer of the Council access to every part of the Land for the purpose of inspecting the Section 38 Works and all materials used or intended to be used for the purpose of the Section 38 Works

13. Procedure for Inspection and Issue of Certificates:

WITHIN fourteen days of receipt of a written application by letter from the Developer for the issue of a Part 1 Certificate or Final Certificate pursuant to this Agreement and within twenty-eight days of a written application by letter from the Developer for the

issue of a Part 2 Certificate pursuant to this Agreement the Proper Officer shall inspect the works to which the application relates and where necessary provide the Developer with a definitive list in writing by letter of any remedial works required to be carried out before the issue of that Certificate and any such remedial works shall be subject to the same inspection procedure detailed in this Agreement until such time as they shall be completed to the satisfaction of the Proper Officer who within twenty-eight days shall issue the relevant Certificate

14. Part 1 Certificate:

ON the completion of the Part 1 Works to the satisfaction of the Proper Officer including confirmation of a satisfactory Illuminated Equipment Inspection the Proper Officer shall issue his Part 1 Certificate to the Developer

15. Occupation of Buildings:

NO dwelling erected by the Developer or on its behalf fronting adjoining or abutting or having access on to the Road shall be occupied until;

- (a) the Proper Officer has issued his Part 1 Certificate in respect of the Road or such part of the Road 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 Road or such part of the Road has operational street lighting columns erected in accordance with the Section 38 Works Specification and the Drawing

16. Part 2 Certificate:

ON completion of the Part 2 Works to his satisfaction the Proper Officer shall:

- (a) if any sewer constructed under the Road under an Agreement under Section 104 of the Water Industry Act 1991 has been certified as being or having been on maintenance; and
- (b) on receipt (in electronic format unless agreed otherwise by the Proper Officer) of an Electrical Connection Certificate
- (c) on confirmation of a satisfactory Illuminated Equipment Inspection
- (d) on completion of the Stage 3 Safety Audit remedial works (if any) to his satisfaction issue his Part 2 Certificate to the Developer and from the date of the Part 2 Certificate;

- (i) the Maintenance Period shall commence to run for a period of twelve calendar months or in the event of construction vehicles continuing to travel along the Road such longer period as the Proper Officer may determine
- (ii) the Road or Roads shall become a highway and remain forever open for use by the public at large
- (iii) 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 Road shall become a highway maintainable at the public expense

17. Obligations During the Maintenance Period:

DURING the Maintenance Period:

- (a) the Developer at its own expense shall maintain the Section 38 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

18. Final Certificate:

PRIOR to the expiration of the Maintenance Period the Developer shall without delay and at its 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 system) of which it has been notified in writing by the Proper Officer so that the Works comply with the Section 38 Works Specification and then provided that:

- (a) the Developer has paid to the Council all amounts due to the Council under this Agreement; *including for the avoidance of doubt the commuted maintenance payment payable under clause 29;*
- (b) any necessary reinstatement or other works (including the Stage 3 and/or Stage 4 Safety Audit remedial works if any) have been completed to the satisfaction of the Proper Officer;
- (c) the Road connects directly to a vehicular Highway;

- (d) the Developer has delivered to the Proper Officer drawings showing the Section 38 Works as constructed and an electronic plan showing the layout of the Road in accordance with the format described in the Second Schedule;
 - (e) any sewers constructed under the Road under an agreement under Section 104 of the Water Industry Act 1991 have been certified as being adopted by the Statutory Undertaker and verification of such certification having been provided by the Developer at its own expense to the Proper Officer
 - (f) the Council's Street Lighting Service Provider has provided confirmation of a satisfactory Illuminated Equipment Inspection,
- the Proper Officer shall issue his Final Certificate relating to Section 38 Works to the Developer and shall release the Surety from all liability in connection with Works

19. Adoption:

UPON the issue of the Final Certificate the Road shall become a highway maintainable at the public expense

20. Part or Parts:

- 20.1 **DESPITE** anything previously contained in this Agreement the Developer may from time to time during the currency of this Agreement apply to the Proper Officer for his Part 1 Certificate or his Part 2 Certificate in respect of any part of the Road (being the whole width of the Road between points to be defined in the application) and if the Proper Officer shall be satisfied that the part so defined is in all respects suitable to be treated as a separate road for the purposes of construction and adoption in accordance with the several provisions contained in this Agreement then he shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that part
- 20.2 **THE** same proceedings may then be taken in respect of the said part of the Road 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 Road but without prejudice to the application of this Agreement to the remainder of the Road and the liability of the Surety shall be reduced as agreed by the Proper Officer with the Developer

21. Grants of Rights of Drainage:

21.1 **BEFORE** the issue of his Final Certificate by the Proper Officer the Developer shall without cost to the Council execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Road that are situate outside the limits of the Road

21.2 **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 referred to in Clause 21.1

22. Easement

THE Developer and their successors in title HEREBY GRANT unto the Council its servants agents and workmen the right to enter upon the land shown coloured orange on the Drawing with or without plant machinery in order to inspect maintain repair renew or replace the Highway Drainage and the Developer hereby covenants that in the event of the sale of its freehold interest in the land coloured orange on the Drawing or any part thereof it will be made a condition of sale that the purchaser of the land coloured orange on the Drawing or any part thereof shall grant the aforesaid right to the Council at no cost to the Council AND require any subsequent purchaser of the freehold interest of the land coloured orange on the Drawing or any part thereof to grant the aforesaid right to the Council at no cost to the Council

23. Proper Officer's Powers:

SUBJECT to Clause 38 any decision of the Proper Officer under the provisions of this Agreement shall be final and binding upon the parties to this Agreement

24. The Management of Health and Safety at Work:

24.1 **THE** Developer shall comply with the Health and Safety at Work etc Act 1974 and all other current relevant legislation approved codes of practice British-European Harmonised Standards and relevant industry best guidance applicable to the safe undertaking of the Section 38 Works

24.2 **THE** protection of the general public is to be given paramount importance by the Developer and the particular attention of the Developer is drawn to the following non-exhaustive list of legislation most applicable to highway works and with which the

Developer is to comply as a condition of this Agreement:

1. Chapter 8 – Traffic Signs Manual 2009
2. The New Roads and Street Works Act 1991 and Approved Code of Practice – Safety at Street Works and Road Works (2013)
3. The Construction (Design and Management) Regulations 2007 and Approved Code of Practice and Guidance 2007, The Construction (Design and Management) Regulations 2015 and suite of guidance notes, The Construction (Design and Management) Regulations 2015: Transitional arrangements
4. Traffic Signs Regulations and General Directions 2002
5. The Lifting Operations and Lifting Equipment Regulations 1998
6. Provision and Use of Work Equipment Regulations 1998
7. The Management of Health and Safety at Work Regulations 1999
8. The Control of Substances Hazardous to Health Regulations 2002
9. The Control of Substances Hazardous to Health (amendments) Regulations 2004

FOR THE AVOIDANCE OF DOUBT by entering into this Agreement the Developer confirms that he has provided to the Council evidence in writing of his informing the Health and Safety Executive that the Developer has been appointed as Client for the purposes of the CDM AND that the County Council shall have no responsibility to act as Client under the said CDM

25. Competence of Contractors Engaged on Highway Works:

- 25.1 **THE** Developer shall have suitable and sufficient safe working systems in place for ensuring that all contractors engaged on the Section 38 Works are competent to fulfil their relevant functions pursuant to the CDM and any other applicable legislation and subsequent amending legislation and evidence of the existence of such systems shall be provided to the satisfaction of the Proper Officer at the Proper Officer's request
- 25.2 **THE** Developer shall ensure that a Competent Person in Health and Safety is employed until the issue of the Final Certificate
- 25.3 **THE** Developer shall appoint a supervisor qualified in accordance with the provisions of Section 67 of the New Roads and Street Works Act 1991 and any subsequent amending legislation until the issue of the Final Certificate

26. Periodic Inspection of the Works:

- 26.1 **THE** Developer shall permit the Proper Officer to have unfettered access to all parts of the Section 38 Works and the Land for the purpose of the giving of health and safety advice and taking any action deemed necessary by him to ensure the protection of the general public employees of the Council and others as applicable having regard to the principal/main contractor's obligations and responsibilities under health and safety legislation
- 26.2 **THE** right of the Proper Officer to enter upon the site of the Works and his taking or requesting actions that in his absolute discretion are necessary for reasons of health and safety shall not in any way lessen the primary obligation of the Developer or that of any contractor in its employ to comply with all health and safety legislation

27. Health and Safety File:

- 27.1 **THE** Developer confirms that he has the competence to perform the duties imposed on a client by the CDM
- 27.2 **THE** Developer is hereby appointed pursuant to regulation 4 of the CDM to act as the only client in respect of the Section 38 Works
- 27.3 **UPON** the issue of the Final Certificate the Developer shall provide the Council with information from the health and safety file (as defined by the CDM) which is relevant to the Section 38 Works
- 27.4 **THE** information content shall be as defined by the Approved Code of Practice and Guidance to the CDM and as specified by the Proper Officer

28. Administration and Inspection Fee:

- 28.1 **ON** or before the execution of this Agreement the Developer shall pay to the Council the sum of one hundred and twenty nine thousand six hundred and fifty six pounds (£129,656) in respect of the costs incurred by the Council in administration and in inspecting the Section 38 Works being 9 per cent of the total of the Estimated Section 38 Works Cost of which the Developer has already paid sixty four thousand six hundred and nineteen pounds and ninety six pence (£64,619.96)
- 28.2 **RECEIPT** by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon it 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 Section 38 Works by the Council

29. **Commuted Maintenance Payment:** *Issue of the Final Certificate*

ON or before the ~~execution of this Agreement~~[✓] the Developer shall pay to the Council the sum of one hundred and thirty three thousand six hundred and seventy pounds (£133,670) based upon the Council's estimated extraordinary costs of maintaining the following things:

- (a) 31 soakaways at £4,100 each; and
- (b) 73 trees at £90 each.

30. **Surety's Obligations:**

30.1 IF the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement or if a receiving order in bankruptcy is made in respect of the Developer's estate 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 reconstruction or amalgamation) the Director of Law Assurance and Strategy may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement send to the Surety notice in writing (the "Default Notice") containing details of the work (the "Default Work") to be carried out in order that the Works may be executed or completed as the case may be in accordance with this Agreement together with the following sums (the "Default Cost"):-

- (a) an estimate by the Proper Officer of the cost of carrying out the Default Work including where necessary provision for a Stage 4 Safety Audit; and
- (b) the cost of maintaining the Section 38 Works for the Maintenance Period; and
- (c) a statement of the amount of the usual establishment charges of the Council which cost
 - (i) shall not exceed the sum of one million four hundred and forty thousand six hundred and thirty one pounds (£1,440,631) being the Estimated Section 38 Works Cost
 - (iii) shall not exceed the sum of seven hundred and twenty thousand three hundred and fifteen pounds and fifty pence (£720,315.50) on and after the issue of the Part 1 Certificate

- (iii) shall not exceed the sum of three hundred and sixty thousand one hundred and fifty seven pounds and seventy five pence (£360,157.75) on and after the issue of the Part 2 Certificate

30.2 **WITHIN** twenty-eight days after the Surety has received the Default Notice the Surety shall –

- (a) pay the Default Cost to the Council; or
- (b) send to the Council notice in writing (the “Surety’s Counter Notice”) of the intention of the Surety to carry out the Default Work

30.3 **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 without delay pay the Default Cost to the Council with simple interest thereon at a rate of two per cent above the three month London Interbank Offer Rate calculated from the date on which the Surety received the Default Notice

30.4 **IF** the Surety having sent the Surety’s Counter Notice to the Council starts the Default Work and the Default 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 Proper Officer the Surety shall subject to Clause 30.5 on demand by the Director of Law Assurance and Strategy pay to the Council without delay 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 a period of twelve months prior to the Road becoming maintainable at the public expense as may be the case (or as being the cost of both) and also pay to the Council the amount determined by the Proper Officer and the Director of Law Assurance and Strategy as being the amount of the appropriate usual establishment charges of the Council

30.5 **THE** sum payable under Clause 30.4 shall not exceed the Default Cost and the covenant in Clause 33 shall apply with respect to such sum and on the issue of the Final Certificate the Surety shall be released from all liability under this Agreement

31. Determination by the Council:

IF the Developer fails to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement or if a receiving order in bankruptcy is made against it 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 their rights claims or

remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 30 32 and 33) by notice in writing signed by the Director of Law Assurance and Strategy and delivered to the Developer or sent by post to the address stated in this Agreement.

32. Power to Execute Works in Default:

WITHOUT prejudice to Clauses 4 and 31 if the Developer fails to execute or complete the Works in accordance with the Developer's obligations contained in this Agreement the Council shall after not less than twenty-eight days notice in writing to the Developer be entitled to execute or complete the Section 38 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

33. Council's Covenants:

THE Council hereby covenants with the Developer and with the Surety for the benefit of all building plots fronting adjoining or abutting or having access onto the Road and for each and every one of them:

- (a) to use its best 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 apply all monies received from the Surety towards the expenditure involved in executing or completing the works to which the payment relates and maintaining and making good all defects for a period of twelve months after completion and the amount so received shall be deducted from any sum which would otherwise be recoverable from the owners of premises fronting the Road 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 set out in this Agreement together with the amount of the Council's usual establishment charges to repay to the Surety within twenty-eight days after the Road become maintainable at the 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

- (d) 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

34. Specification to Take Precedence:

IN the event of any conflict between any provision of the Section 38 Works Specification and anything shown on the Drawing including any details or particulars the provisions of the Section 38 Works Specification (together with any applicable supplemental specification details not covered by the Section 38 Works Specification) shall take precedence over any such thing details or particulars and over any specification produced by the Developer or its agent

35. Indemnities:

- 35.1 **THE** Developer shall indemnify the Council in respect of any actions charges claims costs damages demands expenses or proceedings (including claims relating to the infringement or disturbance or destruction of any right easement or privilege) arising out of or in connection with or incidental to the carrying out of the Works and their subsequent use other than those arising out of or in consequence of any act or default of the Council
- 35.2 **THE** Developer shall indemnify the Council in respect of claims for compensation under Section 10 of the Compulsory Purchase Act 1965 and claims under Parts I and II of the Land Compensation Act 1973 arising out of or in connection with or incidental to the carrying out of the Works and their subsequent use other than those arising out of or in consequence of any act or default of the Council
- 35.3 **FOR** the avoidance of doubt such indemnification referred to in Clause 35.2 includes compensation payments under Part I of the Land Compensation Act 1973 and all fees reasonably incurred by claimants and those of the Council or its agent or contractor in negotiating any claims (together with Value Added Tax payable upon the claimants' professional advisors' fees) and statutory interest payments to claimants and their professional advisors together with the Council's reasonable legal costs in making such payments of compensation fees and interest

36. Materials Sampling and Testing:

THE Developer shall pay for the cost of sampling and testing the materials used or intended to be used in the Works as required by the Proper Officer whether carried out by the Developer or in his absolute discretion by the Proper Officer and the Developer shall if it has carried out such sampling and testing send to the Proper Officer without delay the results of such tests for his approval

37. Adherence to the Specification:

THE Developer shall at its own expense produce any evidence that the Proper Officer may require in order to verify that it has constructed the Works in accordance with the Section 38 Works Specification

38. Arbitration:

IN the event of any dispute as to the construction of the Works the dispute shall be referred to an independent expert who shall be a chartered civil engineer 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 whose decision shall be final and binding on the parties to this Agreement 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

39. Transfer of Land:

39.1 FOLLOWING the completion of this Agreement the Developer shall without delay and at its own cost if called upon to do so by the Council execute and complete or procure the execution and completion by all parties of a transfer with full title guarantee and at nil consideration to the Council or its nominee for a consideration of one pound of the freehold estate in the land comprising the Road (the "Road Land") and the Developer shall assist in any application to the Chief Land Registrar both for the noting of the right granted by this Clause and for the registration of the Council with title absolute in respect of the Road Land

39.2 THE Developer shall not without the consent in writing of the Council make a disposal of the whole or any part of the Road Land to any other person or persons or grant any rights thereover except a right of way for all purposes in accordance with any planning permission granted by the local planning authority in respect of the Road Land

40. Making up of Private Streets:

NOTHING in this Agreement shall prevent or restrict the exercise by the Council of their powers under Part XI of the Highways Act 1980 or any other statutory provision except that this Agreement is intended to be such an agreement as is mentioned in Section 219 (4) of the said Act

41. Rights of Third Parties:

FOR the avoidance of doubt it is agreed and declared that:-

41.1 **NOTHING** in this Agreement shall be construed as expressly providing a right for any third party within the meaning of the Contracts (Rights of Third Parties) Act 1999; and

41.2 **NOTHING** in this Agreement is intended to confer any benefit on any third party (whether referred to herein by name class description or otherwise) or any right to enforce a term contained in this Agreement

41.3 **NOTWITHSTANDING** the provisions contained in Clauses 41.1 and 41.2 a party who is the permitted successor to or an assignee of the rights of a party is deemed to be a party to this Agreement

41.4 **THIS** Agreement may be rescinded or varied without the consent of or the need to give any notice to any person not a party to it

42. Assignment:

THIS Agreement may not be assigned by the Developer without the consent of the Council which consent shall not be unreasonably withheld

THE FIRST SCHEDULE

Part 1 Works

1. All road drainage
2. All other drainage contained within the Road
3. All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps
4. Carriageway sub-base; base; and any supporting structures to the same
5. Carriageway base course surfacing where appropriate
6. Demarcation of sight lines and clearance of vision splays
7. Operational street lighting

Part 2 Works

8. All outstanding kerbing not completed in Part 1
9. Pedestrian ways
10. Carriageway surface course
11. Vision splays and verges
12. All outstanding street lighting and street furniture
13. Street name plates
14. Road markings and signing
15. All other works described in the Section 38 Works Specification and shown in the Drawing

THE SECOND SCHEDULE

Specifications for as "As built" AutoCAD (or DXF or PDF) drawings:-

1. The model units of the drawing must be in accurate OS national grid co-ordinates (ie in the British National Grid Co-ordinate System).
2. The electronic drawings must only contain the layers/features that show the position of the new road(s) and properties - not additional engineering items such as street lighting/drainage etc. Additionally, existing map data must not be included. Alternatively, all new features must be collaborated into distinct layers ie drainage as one layer, properties in one layer, property boundaries in one layer, thus enabling the County Council to turn the other unwanted layers off.
3. The extent of the AutoCAD (or DXF or PDF) drawings must not be larger than the actual extent of the features.
4. Any text must be in a simple Truetype font.
5. The drawing must be in 2D, not a 3D model.

The drawing should be emailed to the Proper Officer in accordance with the provisions of Clause 18.

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

EXECUTED on behalf of BDW TRADING LIMITED

by GAIL WEBSTER
and Tans MURRAY-SADDON

Authorised Signatory

Authorised Signatory

in exercise of the powers conferred on them by
a Power of Attorney dated 21st January 2015

THE COMMON SEAL of WEST SUSSEX
COUNTY COUNCIL was hereunto affixed
in the presence of:

THE COMMON SEAL of NATIONAL
HOUSE BUILDING COUNCIL

was hereunto affixed in the
presence of:

Authorised Signatory

Dated 21st January 2015

General Power of Attorney

By

BDW Trading Limited

Southampton

CERTIFIED TO BE A TRUE
COPY OF THE ORIGINAL



BRATT DEVELOPMENTS PLC

21-1-15

IN WITNESS whereof BDW Trading Limited has executed and delivered this it's Deed on the day
and year first above written.

**Executed as a Deed by
BDW TRADING LIMITED**

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acting by
the signatories

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Marissa Massingham

From: Lauren Anderson <[REDACTED]>
Sent: 24 October 2016 14:06
To: Price, Matthew
Subject: FW: Section 38 Agreement Land East of Roundstone Lane (Phase 1 Swanbourne Park) Angmering
Attachments: 116102413304602657.png; RE: Section 38 Agreement Land East of Roundstone Lane (Phase 1 Swanbourne Park) Angmering
Follow Up Flag: Follow up
Flag Status: Flagged

Hi Matthew,

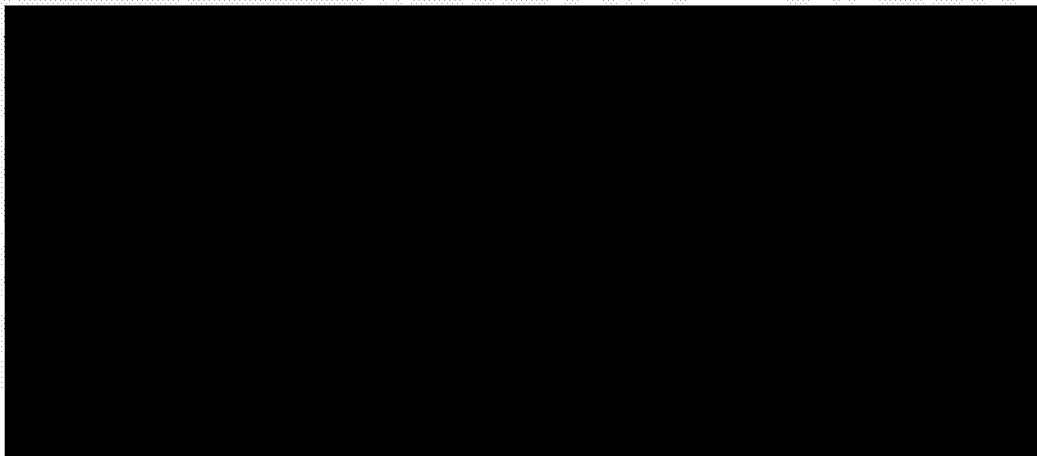
Please see below the surety's authority to make the amendment!

Kind regards,

From: Road & Sewer Bonds [REDACTED]
Sent: Monday 24 October 2016 14:05
To: Lauren Anderson
Subject: FW: Section 38 Agreement Land East of Roundstone Lane (Phase 1 Swanbourne Park) Angmering

Afternoon

Thank you for your email. I can confirm that the NHBC has no objections to the manuscript amendment. Please do not hesitate to contact me if you have any further queries.



Please consider the environment before printing this e-mail
Major changes are being made to the Building Regulations in England (1st October 2015) and in Wales (1st January 2016).
More details, including Transitional Provisions, can be found in [Technical Extra 18](#) or click [here](#).

From: Lauren Anderson [REDACTED]
Sent: 24 October 2016 13:31
To: Road & Sewer Bonds
Subject: Section 38 Agreement Land East of Roundstone Lane (Phase 1 Swanbourne Park) Angmering

Dear Sirs,

I have attached an email regarding the amendments from HCA with regards to the s38 Agreement Swanbourne Park.

Marissa Massingham

From: Lauren Anderson <[REDACTED]>
Sent: 20 October 2016 17:00
To: Price, Matthew
Subject: RE: Section 38 Agreement Land East of Roundstone Lane (Phase 1 Swanbourne Park) Angmering

Hi Matthew,

I can confirm that my client is agreed with the amendments of the s38 agreement. My Client gives authority to change amendments in manuscript.

Kind regards,

From: Price, Ma [REDACTED]
Sent: Thursday 20 October 2016 17:00
To: Lauren Anderson
Subject: RE: Section 38 Agreement Land East of Roundstone Lane (Phase 1 Swanbourne Park) Angmering

Dear Lauren

Further to your e-mail below, I have spoken with my client who is happy to amend the trigger for payment of the commuted sum from "prior to execution of the Agreement" to "prior to issue of the Final Certificate".

I therefore propose to make the following manuscript amendments (additions in green deletions in red) to the Agreement:

1. at proviso (a) of clause 18:

(a) the Developer has paid to the Council all amounts due to the Council under this Agreement including FOR THE AVOIDANCE OF DOUBT the commuted maintenance payment payable under clause 29;

2. at clause 29:

On or before the ~~execution of this Agreement~~ issue of the Final Certificate the Developer shall pay to the Council...

Could you please confirm that the above is acceptable and provide me with authority from your client and the Surety to make the amendment in manuscript?

I look forward to hearing from you.

Kind regards

[REDACTED]