



Nottinghamshire County Council

THE NOTTINGHAMSHIRE COUNTY COUNCIL (1)

-and-

DOOBA DEVELOPMENTS LIMITED (2)

Highways Act 1980
Section 278 Agreement

**Relating to off-site highway works for development
Of land at junction of Shireoaks Road and Sandy Lane Worksop**

Nottinghamshire County Council

County Hall

West Bridgford



Section 278 Agreement Summary

Site Junction of Shireoaks Road and Sandy Lane, Worskop
Titles Nos NT394898 and NT482042
Date 22/07/14
Description of Works Junction improvements at Shireoaks Road
and Sandy Lane, Worskop

Parties

1. NOTTINGHAMSHIRE COUNTY COUNCIL,

Address for service of notice:

Corporate Director Environment and Resources, County Hall, West
Bridgford, Nottingham NG2 7QP

2. DOOBA DEVELOPMENTS LIMITED

Address for service of notice:

(c/o Commercial Estates Group Harrogate) 3rd Floor, Barclays House,
Victoria Street Douglas Isle of Man IM1 2LE

Reduction on 1st Certificate: (75%)
Reduction on 2nd Certificate: (15%)
(Reduction on 3rd Certificate: (10%)

THIS DEED OF AGREEMENT is made this (22) day of (JULY) two thousand and fourteen **BETWEEN**

- (1) **THE NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall West Bridgford Nottingham NG2 7QP ("the Council") and
 - (2) **DOOBA DEVELOPMENTS LIMITED** ("the Developer") of (c/o Commercial Estates Group Harrogate) PO Box 213 4th Floor Queen Victoria House Victoria Street Douglas Isle of Man IM99
- (collectively "the Parties")

RECITALS

- A The Developer is the freehold owner of the Site under title number NT394898
- B The Council is the freehold owner of the Site under title number NT482042
- C The Council is the local highway authority under the 1980 Act for the area in which the Site is situated and has agreed to enter into this Agreement with the Developer for the purpose of securing the carrying out of the Works at no cost to the Council and being satisfied that this will be of benefit to the public
- D The Developer has agreed to carry out the Works in accordance with the Permission and the terms of this Agreement
- E The Developer has agreed subsequent to the completion of the Works and prior to the issue of the First Certificate to dedicate the land required by the Council as public highway
- F The Council has agreed that upon the Works being completed and maintained by the Developer in accordance with the provisions of this Agreement thereafter to maintain the Works at public expense

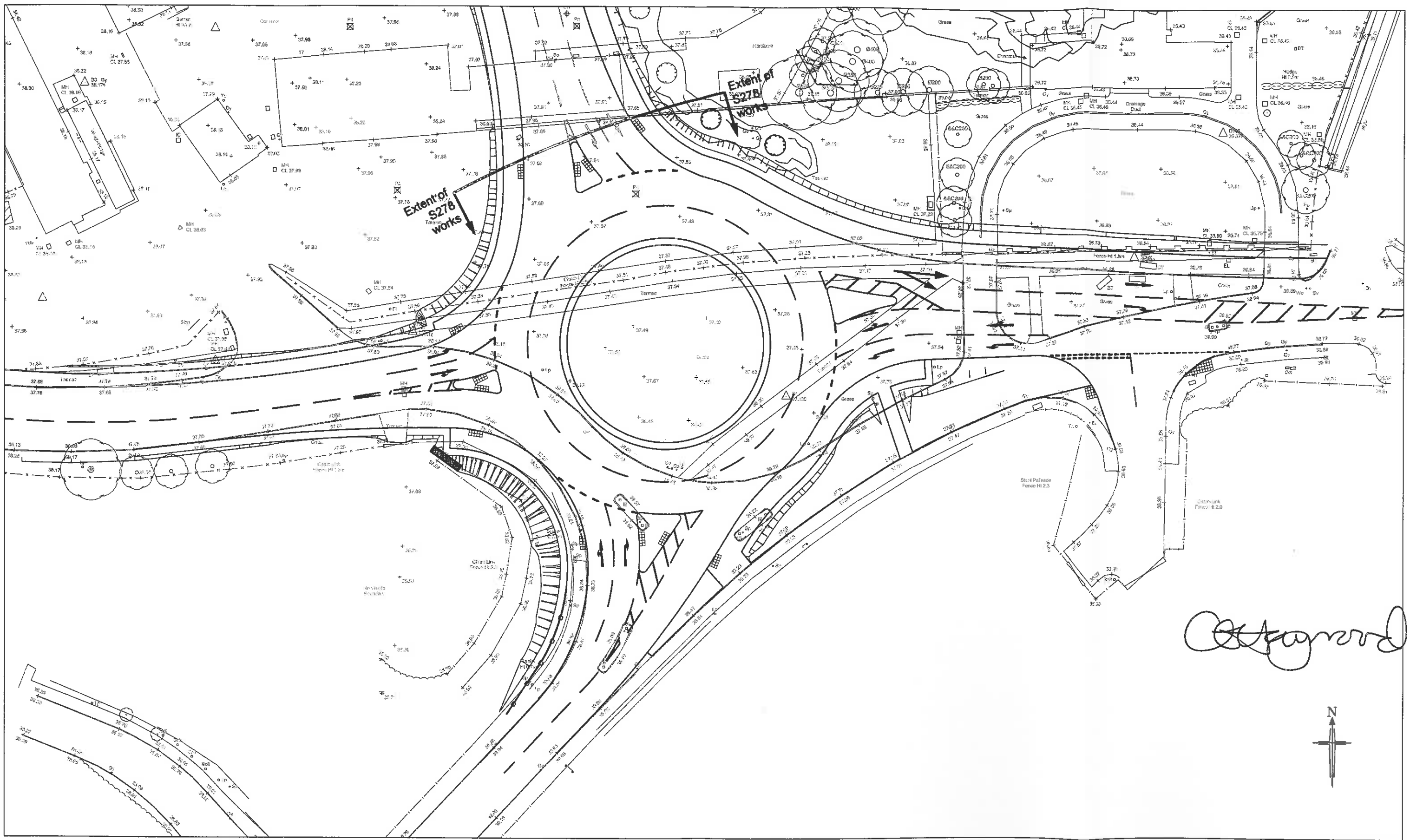
1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 In this Agreement the following expressions (arranged in alphabetical order and in certain instances incorporating in their definitions expressions defined elsewhere in this Clause) shall have the meanings set out below:-

"the 1980 Act"	the Highways Act 1980
"the 1991 Act"	the New Roads and Street Works Act 1991
"Act of Insolvency"	being declared bankrupt; going into administration or receivership or entering any arrangement with creditors for the discounting of its debts
"the Bond"	the bond referred to in Clause 3.2 and substantially in the form annexed to this Agreement at the Third Schedule
"the Bond Account"	account number 61140019 at Co-Op Bank Sort Code 08-90-74 being an interest bearing deposit account in the name of the

	Council
"the Bond Figure"	the sum of One Million Two Hundred Thousand pounds adjusted in accordance with any increase in the Index between the date the sum is agreed and a date being ten working days prior to commencement of the Works to the intent that the adjusted figure shall constitute the Bond Figure
"Certificate to Commence"	certificate issued by the Director under Clause 7.1
"the Contract"	the Contract to be let by the Developer under Clause 4.2 for the construction of the Works
"Date of Commencement"	date to be issued by the Director on the Certificate to Commence from which works can start
"the Development"	the construction of a 4-arm roundabout at the junction of Shireoaks Road/Sandy Lane, Worksop pursuant to the Permission hereinafter recited
"the Director"	the Council's Corporate Director of Environment and Resources which shall be deemed to mean the officer of the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment or such suitably qualified person as he may from time to time nominate
"the Drawings"	drawing numbers 13/368/DE/100/001 and 07/390/APP/001 annexed hereto together with such other drawings and documents as the Director may from time to time specify or agree shall be used in addition thereto or in substitution thereof
"the Easement Plan"	The drawing to be prepared and agreed between the parties prior to the Date of Commencement showing the land the subject of the easements in accordance with Clause 3.7
"First Certificate"	Certificate issued by the Director under Clause 7.2
"the Index"	means the Resource Cost Index of Road Construction (ROCOS) published by the Department for Business Innovation and Skills as part of the Quarterly Building and Cost Indices for Public Sector Construction Works or if for any reason such index is amended or abolished then for the purposes of this Agreement the Index shall be such index as is published in substitution thereof by or under the authority of any Ministry or Department of Her Majesty's Government or if no such substitute index is published the Index shall be such other index as the Director shall specify that he considers most closely reflects changes in the costs of public works (roads)
"the Land Dedication Plan"	The drawing to be prepared and agreed between the parties prior to the Date of Commencement showing the land the subject of the dedication in accordance with Clause 3.6
"Notice to Complete"	notice issued in accordance with paragraph 8.1 and 8.2 of the Second Schedule



Handwritten signature

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It is the contractor's responsibility to ensure full compliance with the Building Regulations. Do not scale from this drawing, use figured dimensions only. It is the contractor's responsibility to check and verify all dimensions on site. Any discrepancies to be reported immediately. IF IN DOUBT ASK.

Materials not in conformity with relevant British or European Standards/Codes of practice or materials known to be deleterious to health & safety must not be used or specified on this project.

Status: FOR APPROVAL

Project: SECTION 278 HIGHWAY WORKS
SANDY LANE, WORKSOP

Client: COMMERCIAL ESTATES GROUP

Scale: 1:250
A1 - 804 x 841

Drawn: MA

Checked: RB

Title: GENERAL ARRANGEMENT

Drawing No: 13/368/DE/100/001

Revision: A

Job No: 13-368

Date: 03.12.13

A 04.07.14 Drawing amended to revised kerb layout. MA RPB
Rev: Date: Amendment: DRN CLK

BRYAN & HALL

Site: 88 | Joseph Wall

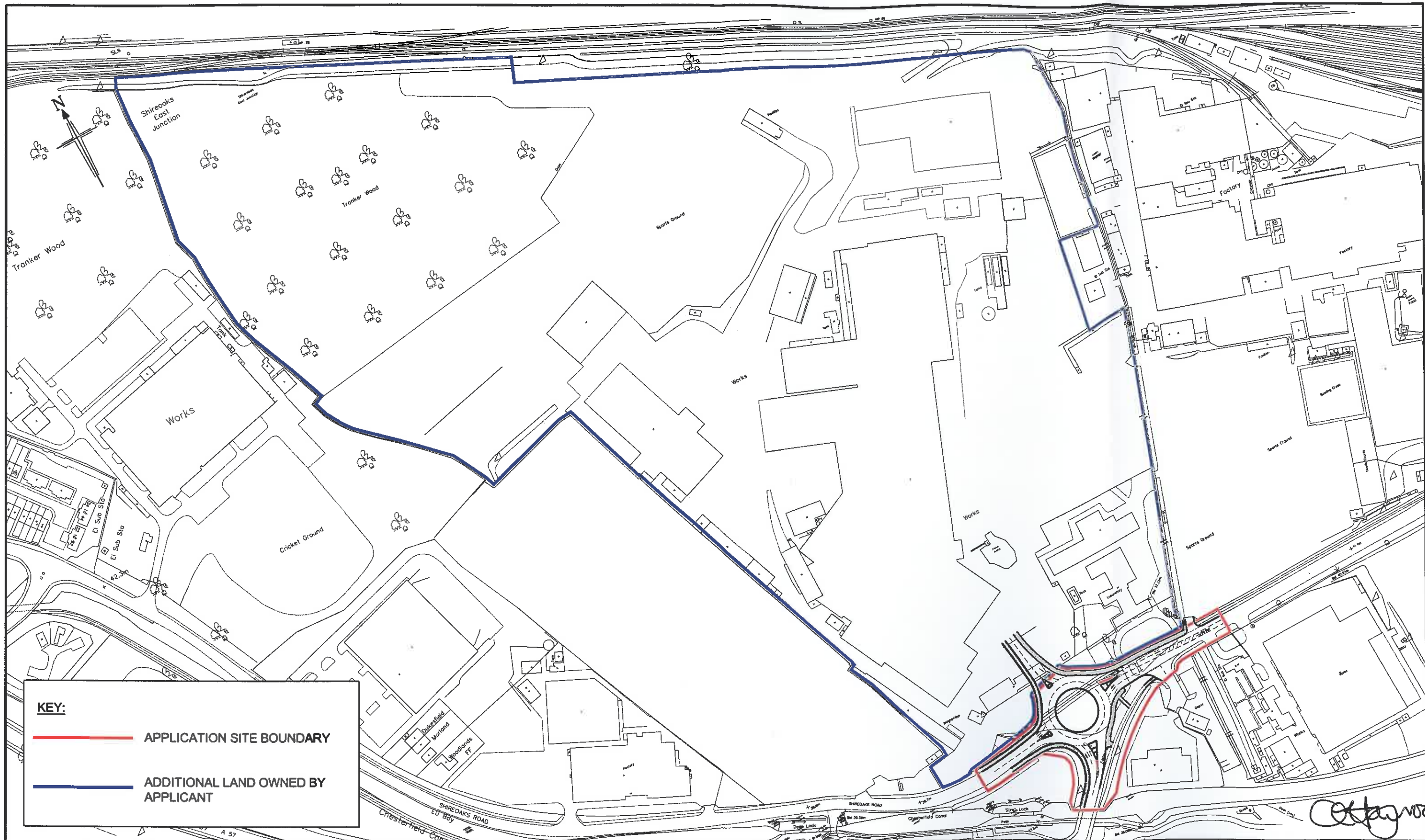
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26/26 Wharfedale Road
LONDON | N1 9BT
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KEY:

— APPLICATION SITE BOUNDARY

— ADDITIONAL LAND OWNED BY APPLICANT

Client DOOBA DEVELOPMENT LTD

BRYAN · G · HALL
consulting civil & transportation planning engineers

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Project VESUVIUS, SANDY LANE,
WORKSOP

Title APPLICATION PLAN

Rev	Amendments	Drawn	Chkd	Appr	Date
Scale	1/2500	Date	11/07/08	Doc Sheet No	
Drawn	CSB	Checked	DJP	Approved	
Job No	07-390	Drawing No	07/390/APP/001	Rev A	

"the Permission"	Planning Permission dated 18 December 2008 Application No. 02/08/00321 and updated by permission 13/00825/FUL
"the Programme"	a statement of the overall sequence in which the Works are to be carried out which shall include a general description of the arrangements and methods of construction which the Developer proposes to adopt thereof together with an estimate of the amount of time to be spent by the Developer in carrying out and completing the Works and which may from time to time in accordance with the terms of paragraph 1.1 of the Second Schedule be varied to meet the Developer' programme for the completion of the Development
"the Second Certificate"	certificate issued by the Director under Clause 7.6
"the Site"	all that land identified shown edged red on Drawing Number 07/390/APP/001 annexed hereto and being registered at H.M Land Registry under Title Numbers NT394898 and NT482042
"Soft Landscaping Works"	(the Works referred to in paragraph (D) of the First Schedule
"the Specification"	the "Specification for Highway Works" published by Her Majesty's Stationery Office (HMSO) as Volume I of the Manual of Contract Documents for Highway Works in December 1991 as modified and extended by supplements published by HMSO and by the Council's standard additional and supplementary clauses as at the date of preparation of the tender documentation for the Contract
"Statutory Utilities(s)"	any person company corporation board or authority whose apparatus is pursuant to a statutory right or to a licence granted under Section 50 of the 1991 Act at the date of this Agreement already installed in under over or upon the land on which the Works are to be carried out PROVIDED THAT such expression shall include the authorised successor to any such person company corporation board or authority
"the Surety"	such bank or other financial institution as may be nominated by the Developer and approved by the Council for the purposes of the Bond
"the Third Certificate"	Certificate issued by the Director under Clause 7.8
"the Water Authority"	any person company corporation board or authority authorised by any enactment to carry on an undertaking for the supply of water
"Working Day(s)"	any days(s) upon which clearing banks in the City of London are /or would be(but for a strike lock-out or other stoppage affecting a particular bank or banks generally) open during banking hours
"the Works"	those off-site highway works for identification purposes only shown on the Drawings and specified in the First Schedule and all other things ancillary thereto including all road water drainage systems and sewers and shall (where the context so admits)

Interpretation

- 1.2 Where the context so admits the expressions "the Council" "the Developer" and "the Surety" shall include their respective successors in title or assigns
- 1.3 Reference to any contractor shall include any sub-contractor
- 1.4 Reference to this Agreement shall be interpreted as including the Schedules of this Agreement
- 1.5 Reference in this Agreement to any clause sub-clause paragraph schedule drawing or plan without further designation shall be a reference to a clause sub-clause paragraph schedule drawing or plan contained in (or in the case of a drawing or plan annexed to) this Agreement so numbered
- 1.6 Reference to any statute statutory instrument regulation or order shall include any statutory extension modification or re-enactment thereof and any order regulation or bye-law made thereunder
- 1.7 Words importing the singular only shall include the plural and vice versa and words importing any particular gender shall include all genders
- 1.8 The clause headings summary and front cover of this deed are for convenience only and shall not be taken into consideration in the interpretation or construction of this Agreement
- 1.9 All consents permissions licenses and notices referred to in this Agreement shall be in writing unless it is specifically stated to the contrary and shall not in any event be unreasonably withheld or delayed
- 1.10 Unless expressly stated nothing in this Agreement shall create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties
- 1.11 Nothing in this Agreement shall be interpreted as acting to fetter the discretion of the Council in the exercise of any duty or power whether imposed by statute statutory instrument order regulation or other enactment
- 1.12 To the extent that any provision of this Agreement shall be found to be void voidable or partially or wholly unenforceable by a court or other tribunal of competent jurisdiction the remainder of the Agreement shall remain in force

2. STATUTORY PROVISIONS

- 2.1 This Agreement is made pursuant to Section 278 and Section 38 (in so far as is necessary for the adoption of the Works) of the 1980 Act, Section 111 of the Local Government Act 1972, and section 33 Local Government (Miscellaneous Provisions) Act 1982 and all other powers enabling the Council in that behalf and the covenants on the part of the Developer hereinafter contained shall be covenants to which such provisions shall apply and this Agreement is conditional on the granting of the Permission for the Development

3. DEVELOPER'S OBLIGATIONS

- 3.1 The Developer hereby covenant with the Council as follows:-

- 3.1.1 not to commence the Works until the date specified on the Certificate to Commence; and

- 3.1.2 to give to the Council at least five weeks written notice and a separate ten day's written notice of the Developer's intention to commence the Works (to be no earlier than the date to be specified on the Certificate to Commence) and thereafter diligently to proceed with the Works at no cost to the Council in accordance with the provisions of the Second Schedule; and
- 3.1.3 to procure at the cost of the Developer from the Council the design of all traffic signal controlled geometric road layouts, diagrammatic electrical specifications, signal timings, traffic signal controller units and other equipment (including alterations to existing facilities) required by the Director; and
- 3.1.4 prior to commencement of the Works to obtain all consents licences easements and permissions ("the Consents") from any third parties (including adjoining landowners and Statutory Utilities) that are reasonably required to construct and thereafter maintain the Works; and
- Access**
- 3.1.5 the Developer shall during the progress of the Works give or procure for the Director unfettered access to every part of the Works and to places where materials or plant for the Works may be stored or in the course of preparation manufacture or use and permit inspection of the Works as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper direction given by the Director to conform to the Drawings and/or the Programme and the Specification; and
- Supervision**
- 3.1.6 that the Works to be executed by the Developer (whether carried out by the Developer or contractor) shall at all times be supervised by a Chartered Civil Engineer or other suitably qualified person who has been approved by but who shall act independently of the Council; and
- Conduct of the Works**
- 3.1.7 that the Works described in the First Schedule to this Agreement shall be carried out in accordance with:
- 3.1.7.1 the Programme, Specification and Drawings listed on the Certificate to Commence or such other Drawings and documents as may be approved from time to time by the Director; and
- 3.1.7.2 all conditions and requirements imposed by the local planning authority pursuant to the Permission in respect of the Works; and
- 3.1.7.3 all conditions stipulations and requirements reasonably imposed by any Statutory Utilities in respect of any of their apparatus affected by the Works; and
- 3.1.7.4 the Construction (Design and Management) Regulations 2007 (and the Developer shall make available to the Director on demand the relevant information on the Health and Safety file); and
- 3.1.7.5 the Electricity at Work Regulations 1989; and

3.1.7.6 the Second Schedule; and

3.1.7.7 all statutory and other legal requirements

Grampian Covenant

3.1.8 to complete the Works (which date of completion shall for the purposes of this sub-clause be evidenced by the issue of a First Certificate) within twelve months of commencement of the Works and Condition 9 of the planning permission 02/09/00033 granted by The Secretary of State for Communities & Local Government shall be complied with by the Developer as if it had given a separate obligation to the Council to the same effect in this Agreement; and

Bond

3.2 that prior to the Commencement of the Works it shall secure the Works to the satisfaction of the Director by procuring the Bond from the Surety or by way of cash deposit in the sum of the Bond Figure for the due performance of the Developer's obligations under this Agreement including the payment of all invoices and costs incurred by the Council in accordance with the terms of this Agreement; and

Indemnities

3.3 to indemnify the Council from and against all actions costs liabilities charges demands and expenses whatsoever arising or which may arise out of or be incidental to:

(a) the execution of the Works by the Developer including the Works within the existing public highway; and

(b) any costs incurred by the Council arising out of any work undertaken by it pursuant to this Agreement and including any costs incurred in the collection of pre-development noise readings which may be undertaken at the Director's sole discretion; and

Land Compensation Act 1973

(c) any claims under the Land Compensation Act 1973 (or any re-enactment or amendment thereof) and any Regulations made there under including the Noise Insulation Regulations 1975 (or any re-enactment or amendment thereof) **PROVIDED THAT** the Council shall notify the Developer forthwith upon receipt of any such claim and provide details of such claim to the Developer and shall in settling any such claim act reasonably and properly and with due regard to any representation made by the Developer in respect thereof and following acceptance or settlement of any such claim (which shall be determined as to both liability and quantum wholly at the discretion of the Director of the Council acting through his designated officers) shall promptly notify the quantum thereof to the Developer the indemnity provided by this Clause shall not apply in respect of any action cost claim demand charge or expense whatsoever arising or which may arise out of or be incidental to any negligent or defective act default or omission on the part of the Council its Agents workmen or employees; and

New Roads and Street Works Act 1991

(d) to indemnify the Council against any costs arising from the Works as a result of the application of the 1991 Act and any other Act or statutory instrument or common law provision relating to Statutory Utilities' apparatus; and

Dedication, Adoption Agreements and Easements

(e) any costs arising from or incidental to the failure of the Developer Owner to comply with clauses 3.6, 3.7 and 3.8 including without limitation any costs associated with the Council exercising its compulsory purchase powers

Licences

- 3.4 before commencement of the Works and at no expense to the Council to obtain such consent licences or permissions as may be required for the purposes of carrying out the Works and to comply with the same and indemnify and keep the Council indemnified from and against all liabilities costs claims actions demands or expenses which may arise from the Developer' failure to obtain or to comply with such consents licences or permissions; and

Insurances

- 3.5 that prior to the Date of Commencement it shall effect public liability insurance to insure (or shall procure that any Contractor carrying out the said Works shall insure) against death damage loss or injury which may occur arising from or out of the execution of the Works (otherwise than due to any negligent or reckless act or omission of the Council) with an approved insurer on terms approved by the Council in at least the sum of five million pounds (£5,000,000) with an excess not exceeding one thousand pounds (£1000) arising out of any one incident; and

Dedication

- 3.6 prior to the issue of the First Certificate (as notified by the Director) to dedicate (or to procure dedication by the then owner thereof) to the Council as local highway authority and at no cost to the Council and free from encumbrances other than such as shall already have been created prior to the date of the Agreement (with the exception of any purely financial charge) the land shown edged in red on the Land Dedication Plan or such revised area as is required by the Director following completion of the works should the highway boundary differ from that shown on the Land Dedication Plan; and

Drainage Easements

- 3.7 prior to the issue of the First Certificate to execute and complete with all necessary parties without cost to the Council such Deeds of Grant as are necessary to secure to the Council full and exclusive drainage rights in respect of such parts of the surface water drainage system as are situate outside the limits of the public highway adopted or to be adopted and such other easements as may be necessary and reasonably required by the Council for the future maintenance of any structure forming part of the Works as constructed as shown on the Easement Plan; and

Sewers

- 3.8 to complete and copy to the Director any requisite sewer adoption agreement with the Water Authority prior to and as a condition of the issuing of the First Certificate; and

Payment

- 3.9.1 to pay to the Council upon the execution hereof the Council's reasonable and proper legal and administrative costs in connection with the preparation, negotiation and completion of this Agreement and bond; and
- 3.9.2 to pay to the Council prior to the Date of Commencement an administration design checking and site inspection fee charged at 10% of the Bond Figure up to £100,000 plus a further charge of 6% of the Bond Figure for any excess over £100,000

- 3.10 to pay to the Council within 10 Working Days of demand:-

3.10.1 the actual costs and expenses incurred by the Council in the testing of

any materials associated with the Works; and

- 3.10.2 any costs incurred in the collection of pre development noise readings as required by the Director at his sole discretion; and
- 3.10.3 any costs incurred by the Council in connection with the design ordering supply testing installation (and) commissioning (and future maintenance) of traffic control or other equipment; and
- 3.10.4 any costs incurred by the Council in connection with the diversion and/or protection of the apparatus of Statutory Utilities as evidenced by copies of their invoices (as certified by the Director); and
- 3.10.5 a commuted sum to be agreed prior to the Date of Commencement calculated in accordance with the 6Cs Design and Guide Section MC19: Schedules of commuted sums for maintenance of works under Section 38 and Section 278 Agreements current at the date of this Agreement which sum shall be adjusted in accordance with any increase in the Index between the date this sum is agreed and the date of its payment to the Council. ("the Commuted Sum"); and
- 3.10.6 an administration design checking and site inspection fee of 3% of the Bond Figure per annum pro-rata for each day exceeding that specified in clause 3.1.8 with a minimum charge of £1000; and
- 3.10.7 an administration and inspection charge of £500 should more than two years have elapsed from the date of the First Certificate and the issue of the Second Certificate; and
- 3.10.8 any additional costs incurred by the Council arising out of any work undertaken by the Council pursuant to this Agreement and including any Bond supplementary Deed or Agreement (including any variation or release thereof) all Traffic Regulation Order and public consultations costs properly incurred by the Council as a consequence of this Agreement and which may be carried out at the Director's sole discretion; and
- 3.10.9 the actual costs and expenses incurred by the Council in checking the design of and carrying out periodic site inspections of structures as certified by the Director's highway officer for the time being such payments to be calculated on a time attendance basis at regular requisite intervals; and

Work in Default

- 3.11 that in the event of any failure by the Developer to perform its covenants and or obligations under this agreement OR if the Developer shall perform any Act of Insolvency this shall entitle the Director at his reasonable discretion to issue a Notice to Complete pursuant to the provisions contained in paragraph 8 of the Second Schedule to this Agreement

Recovery of Costs

- 3.12 It is agreed that the cost of any works in default undertaken by the Director shall be a debt immediately due from the Developer to the Council and may be invoiced accordingly. Alternatively at the sole discretion of the Director the

cost of such works may be recovered from the Bond with any excess expenditure actually incurred by the Council being a debt due immediately from the Developer

4. DELEGATION OF DEVELOPER'S OBLIGATIONS

4.1 It is agreed that with prior consent of the Director the performance of the Developer's obligations under this Agreement may be delegated to a contractor or sub contractors with the prior approval of the Director PROVIDED THAT the Developer shall remain liable to the Council for the due performance and observance of this Agreement;

4.2 The contract by which the obligations contained in this Agreement are delegated shall contain terms and conditions no less stringent than the terms and conditions of this Agreement and shall incorporate the Specification the description of the Works appearing in the First Schedule and the Drawing and/or such other drawings (consistent with the Drawings) as may be deemed by the Director to be contract drawings for the purposes of the Contract

Assignment

4.3 the Developer may assign or transfer the benefit of this Agreement or any part thereof with the prior written approval of the Council such approval not to be unreasonably withheld or delayed

5. THE COUNCIL'S OBLIGATIONS

5.1 To carry out the design of or any alterations required by the Director to all traffic signal controlled road layout and equipment at the cost of the Developer

5.2 Periodically to undertake site inspections of the Works in progress

5.3 To report defects and or omissions in the Works to the Developer expeditiously and in writing and to provide such clarification as the Developer reasonably requires

5.4 To act reasonably when considering any request or submission of the Developer

5.5 To exercise its powers to facilitate the Development where this would not conflict with any statutory or other duty and where the Council is satisfied that this would be in the best interests of the public

6. ACCESS TO PUBLIC HIGHWAY

6.1 The Council without prejudice to its statutory powers and duties hereby gives to the Developer licence to enter and to remain upon with or without workmen plant and machinery so much of the public highway under the Council's control as is reasonably necessary for the Developer to carry out its obligations under this Agreement and it is hereby agreed and declared that such licence extends to breaking open (subject where appropriate to making good its surface) and without limitation to the foregoing carrying out works in on or under the said land (including excavation drainage works to utilities and maintenance)

7. CERTIFICATION AND ADOPTION OF THE WORKS

Certificate to Commence

- 7.1 The Council shall issue the Certificate to Commence upon the Developer satisfying all the Director's reasonable pre-commencement requirements

First Certificate

- 7.2 Upon the Director being satisfied that the Works are completed in accordance with the Drawings and Specifications the Director will issue a First Certificate to that effect subject to:-

(a) The receipt of Street Lighting Electrical Test Certificates and corresponding schematic electrical drawings

(b) A Stage 3 Safety Audit having been undertaken by the Council and any issues having been addressed to the Director's satisfaction

(c) Receipt of three sets of as built drawings as set out in paragraph 10 of the Second Schedule

(d) A copy of the Health and Safety File in accordance with paragraph 11 of the Second Schedule having been provided

(e) Proof of dedication and or easements by way of registration on the title and the supply of fresh office copy entries of the title

(f) any traffic regulation orders are in place

(g) The receipt of copies of completed requisite Agreements with the Water Authority as made necessary by the works

- 7.3 Upon the issue of the First Certificate the Works that are not part of the public highway shall become public highway but the Developer shall remain the street manager for the purposes of Section 49(4) of the 1991 Act until the date of issue of the Second Certificate (with the exception of the soft Landscaping Works which shall remain the responsibility of the Developer until issue of the Third Certificate)

Maintenance Period

- 7.4 At no cost to the Council the Developer shall maintain or shall otherwise keep in a good state of repair the Works for the period of twelve months (with the exception of the Soft Landscaping Works) from the date of the issue of the First Certificate (and at the Developers expense maintain the Soft Landscaping Works for a period of 3 years from the date of issue of the First Certificate)

- 7.5 Upon the expiration of such respective periods in accordance with Clause 7.4 the Developer shall forthwith commence and as soon as reasonably practicable complete the reinstatement and making good any defects or damage due to faulty survey design materials or workmanship which may have arisen or be discovered during such respective periods (including any defect in or damage to the road surface water drainage system) to the satisfaction of the Director

Second Certificate

- 7.6 At the expiration of the twelve months maintenance period for the Works referred to in Clause 7.4 and when any necessary reinstatement or other works have been completed to the satisfaction of the Director in accordance with Clause 7.5 the Director shall issue a Second Certificate to that effect subject to:-

- (a) All information required in accordance with Clause 7.2 being received
- (b) Payment of all outstanding fees in accordance with Clauses 3.10 and 3.12
- (c) Evidence of sewer adoption by the Water Authority
- (d) Payment of the commuted sum

7.7 Upon the issue of the Second Certificate the Works including any areas previously dedicated in accordance with 3.6 hereof (with the exception of the Soft Landscaping Works) shall become maintainable at the public expense by virtue of Section 38 of the 1980 Act with effect from the date on which the Second Certificate is issued (insofar as the Works are not already so maintainable at the public expense)

(7.8 In the case of the Soft Landscaping Works at the expiration of the 3 years maintenance period referred to in clause 7.4 and when any necessary reinstatement or other works have been completed to the satisfaction of the Director in respect thereof the Director shall issue a Third Certificate and upon the issue of the Third Certificate the Soft Landscaping Works shall become maintainable at the public expense by virtue of Section 38 of the 1980 Act)

8. RELEASE OF THE BOND

8.1 Upon the issue of the First Certificate the Council shall subject to receipt by the Council of the information referred to in Clause 7.2 reduce or release (as applicable) either:-

(a) the Developer and the Surety partially from their obligations under the Bond; or

(b) the monies in the Bond Account from its charge in either case to the extent of (75) per centum (75%) thereof

8.2 Upon the issue of the Second Certificate the Council shall (as applicable) reduce or release either the Developer and the Surety partially from their obligations under the Bond; or the monies in the Bond Account from its charge to a total extent of 90per centum 90% thereof **PROVIDED THAT** all monies due to be paid to the Council under this Agreement have been paid and all information required pursuant to clause 7.6 have been provided to the Director

8.3 Upon the issue of any appropriate Third Certificate the Council shall (as applicable) release either:-

(a) the Developer and the Surety from all remaining liability under the Bond; or

(b) the balance of all monies remaining in the Bond Account

PROVIDED THAT all moneys due to be paid to the Council under this Agreement have been paid and all information required pursuant to clause 7.6 have been provided to the Director

8.4 Interest earned on monies held in the Bond Account shall belong to the Developer and be subject to due deduction of any tax due on such interest

9. NOTICES

9.1 Any notice or other written communication to be served by one party upon another pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for the purpose by notice in writing AND any such notice or other written communication to be given by the Council shall be deemed valid and effectual if it is signed on behalf of the Council by an officer or duly authorised signatory thereof

10. INTEREST ON OVERDUE PAYMENTS

10.1 In the event of any delay in the making of any payment required to be made by the Developer to the Council under this Agreement interest shall be payable thereon at the rate of four per cent above the Cooperative Bank base lending rate from time to time in force from the due date to the date of actual payment

11. MISCELLANEOUS PROVISIONS

11.1 Where any agreement certificate consent permission or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed

11.2 Where there is any conflict between the provisions of the First and Second Schedules and the Specification the provisions of the First and Second Schedules shall prevail

11.3 If construction of the Works has not commenced by 22 April 2016 this Agreement shall cease to have effect

12. VALUE ADDED TAX

12.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax (VAT) properly payable in respect thereof

12.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

13. COUNCIL'S STATUTORY POWERS AND DUTIES

13.1 Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and its rights powers duties and obligations under all public and private statutes by-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement

14. ARBITRATION

- 14.1 The Parties hereby agree that any differences and questions which arise between the Parties in connection with this Agreement shall be referred for determination by an independent person in accordance with the following provisions:-
- 14.2 Where such dispute relates to the construction of this or any other Deed or document it shall be referred to a Solicitor or Barrister agreed upon by the Parties or in default of agreement appointed on the application of either Party by or at the direction of the President for the time being of the Law Society
- 14.3 Where such dispute relates to engineering construction or the highway works it shall be referred to a Chartered Civil Engineer agreed upon by the Parties or in default of agreement appointed on the application of either Party by or at the direction of the President for the time being of the Institution of Civil Engineers
- 14.4 Where such dispute relates to the valuation of property they shall be referred to a Chartered Surveyor agreed upon by the Parties or in default of Agreement appointed on the application of either Party by or at the direction at the President for the time being of the Royal Institute of Chartered Surveyors

15. DEVELOPERS OBLIGATION

- 15.1 The Developer covenants that (unless there has been a dedication in accordance with clause 3.6 or the Director confirms to the Developer in writing that no dedication is required) it will not transfer, dispose of or otherwise alienate its interest in any part of the Site adjacent to or within (5 metres) of the Site's boundary with the highway or any part thereof without the written approval of the Council which may be withheld if the Director considers that any land is required by the Council in connection with the Developer's obligation contained in clause 3.6

Executed as a deed by the parties and delivered on the date first written above

THE COMMON SEAL of THE)
 NOTTINGHAMSHIRE COUNTY COUNCIL)
 was hereunto affixed in the presence of:-)
 Authorised Signatory)



SEAL REGISTER
 NO. 40556

Signed as a deed on behalf of Dooba Developments Limited, a company incorporated in The Isle of Man, by [SEAN PATRICK SULLIVAN & PAUL ANDREW HOWLANDS] being [2] person[s] who, in accordance with the laws of that territory, [is OR are] acting under the authority of the company

Authorised signatory [Signature]
 Authorised signatory [Signature]

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~~Attorney~~

FIRST SCHEDULE

Construction of a 4-arm roundabout at the junction of Shireoaks Road/Sandy Lane, Worksop as indicated on the Drawings.

The Works shall be carried out in accordance with the Specification the Drawings and the Programme and the Programme shall inter alia include the following elements of construction work:-

- (A) All those works as specified by the Director and the extent of which are indicated on the Drawings
- (B) The removal of redundant accesses and their replacement with footway/verge
- (C) All road drainage works reasonably required by the Director to be made within the Site and to the highway made necessary by the Works and indicated on the Drawings
- (D) The provision of new and/or making good to footways and verges and all landscaping made necessary by the Works
- (E) The provision of new and/or resiting/upgrading and/or necessary alterations required by the Director be made to street lighting columns in the highway made necessary by the Works
- (F) The provision of new and/or resiting/upgrading and/or necessary alterations reasonably required by the Director to be made to street furniture to the highway made necessary by the Works
- (G) The provision of new and/or alterations required by the Director to be made to carriageway markings linings and traffic signs to the highway made necessary by the Works and or the Development
- (H) The carrying out of any works arising from the provisions of the 1991 Act where applicable and any other Act or statutory instrument or common law provision which are required as a result of any Statutory Utility being affected by any of the Works referred to in this clause
- (I) The performance of any alternative or additional works on land within the Developers or public highway maintainable at the public expense in or around the immediate environs of the Site as the Director shall reasonably consider necessary and arising out of the Works

SECOND SCHEDULE

(Terms and Conditions for the execution of the Works)

1. Design Approval

- 1.1 Not less than three calendar months before commencement of the Works the Developer shall submit to the Director in writing for his approval all designs documents drawings specifications tender documents and the Programme for the construction of the Works together with the Developer's proposed arrangements for the supervision of the Works and commission the Council to carry out the design of all traffic signal controlled layouts and associated electrical equipment
- 1.2 The Director shall submit to the Developer his written comments upon those matters referred to in paragraph 1.1 of this Schedule as soon as reasonably practicable from receipt and the Developer shall not commence the Works prior to the Directors approval and issue of the Certificate to Commence
- 1.3 The Works shall be executed by the Developer in accordance with the Specification the Drawings and the Programme for construction and supervision as prepared by the Developer and approved by the Director on issue of the Certificate to Commence
- 1.4 If the Developer wishes to revise the Programme it shall first notify the Director in writing of any proposed revisions to the Programme at least 10 Working Days before implementing such revisions AND the Director shall approve or submit to the Developer written comments in full upon those matters referred to in paragraph 1.4 of this Schedule within 10 Working Days of receipt

2. Access to and Opening of the Works

- 2.1 During the construction of the Works the Developer shall not cover up or put out of view any part or parts of the Works without the approval of the Director and shall afford full opportunity for the Director to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least 5 Working Days notice to the Director whenever such work or foundations is or are ready or about to be ready for examination
- 2.2 The Director shall promptly (unless he considers it unnecessary and advises the Developer accordingly) attend when required by the Developer upon at least 5 Working Days notice for the purpose of examining such foundations

- 2.3 The Director may if any part of the Works have been covered up without prior notice issue instructions to the Developer to open up or expose any part of such Works which have been so covered up without previously being inspected by the Director and all reasonable and proper cost in respect of such uncovering inspections and of reinstating of the part or parts of the Works so uncovered shall be borne by the Developer
- 2.4 Should the Developer fail to comply with any such instructions pursuant to paragraph 2.3 of this schedule the Council may so open up or expose the Works causing as little damage or inconvenience as is possible to or in respect of any other part or parts of the Works and the reasonable and proper cost of such taking up or exposure and reinstatement shall be met by the Developer

3. Testing Materials

- 3.1 Before commencement and during the construction of the Works the Developer shall submit for approval to the Director a list of suppliers from where it wishes to obtain materials for incorporation in the Works together with test certificates for such materials and shall at no cost to the Council provide the Director with any samples of materials reasonably requested for testing purposes
- 3.2 The Director shall at his reasonable discretion at the Developer's expense test or require the testing of materials plant or workmanship used or proposed to be used in the Works and may reject any materials plant or workmanship so tested which the Director may reasonably and properly find not to be in accordance with the Specification and the Drawings
- 3.3 The Developer shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found to be not in accordance with the Specification and the Drawings with materials, plant and workmanship which comply with the Specification and Drawings
- 3.4 The Developer shall as soon as is reasonably practicable remove such materials plant and workmanship as are rejected by the Director pursuant to paragraph 3.2 of this Schedule which are not capable of repair or remedy from the site of the Works and if the Developer shall wish to continue to store such rejected irreparable materials plant and workmanship on the site of the Works they shall be stored separately from those materials plant and workmanship which have not been so rejected or which the Developer shall wish in future to use in execution of the Works

4. Statutory Utilities

- 4.1 Prior to the commencement of the Works the Developer shall give notice to Statutory Utilities of the proposal to carry out the Works as if they were works for road purposes or major highway works as defined in Section 86(3) of the 1991 Act
- 4.2 (i) The Developer shall at no cost to the Council carry out or procure the carrying out of any works or measures as are reasonably and properly required by Statutory Utilities in consequence of the proposal to carry out the Works to the plant and equipment of Statutory Utilities on the site of the Works and shall pay the costs of any diversions or new installations required by the Statutory Utilities

(ii) The Works referred to in the First Schedule shall be deemed not to have been completed until the cost of any such diversions or new installations has been paid by the Developer **PROVIDED THAT** in the event that any requirement made by any Statutory Utility appears to the Council to be unreasonable it may at the reasonable request of the Developer join with the Developer in resisting such requirements

4.3 the Developer shall cause all highway or other drains or sewers gas and water mains pipes electric (if any) or telephone cables (if any) which are to be laid by the Developer under the Works together with all necessary connections from them to the boundaries of the Works to be laid in so far as is practicable under the Works before the foundations of the Works are laid and shall also so far as is practicable cause the connections from electric cables to any street lamps to be laid before the paving of any footways comprised in the Works is carried out and shall secure all necessary sewer adoption agreements with the Water Authority prior to issue of the First Certificate

5. Prevention of mud being carried on the public highway

5.1 The Developer shall at no cost to the Council prevent the deposit of mud dust and other materials on public highways by vehicles and plant leaving the site of the Works

6. Traffic Control

6.1 The Works shall not commence or continue unless or until the Developer implements measures to maintain the flow and safety of traffic and pedestrians in the vicinity of the Works which have been first approved in writing by the Director including any temporary site access arrangements and the Developer shall use reasonable endeavours to procure that site traffic in respect of the Works and the Development adhere to such route or routes and access arrangements when approaching or departing the site of the Works as may be from time to time be agreed by the Director

7. Road Safety

7.1 During the period over which the Works are being executed the Developer shall comply with the provisions of Chapter Eight of the Department of Transport's Road Traffic Signs Manual 2009 (published by HMSO) and any amendment thereto for lighting and signing the Works and any further reasonable requirements of the Council

8. Remedial Works

8.1 Subject to paragraphs 8.2 8.3 and 8.4 of this Schedule if the Works or any part or parts of them (including without prejudice to generality failure to make good defects) are not executed or completed in accordance with the terms of this Agreement or the Developer has performed an Act of Insolvency the Council may execute or complete the relevant part or parts of the Works in accordance with a Notice to Complete served in accordance with the provisions of this Agreement by its own employees or by contractors and shall recover its reasonable and proper costs (including costs referred to in Clause 3.10 of this Agreement and paragraphs 3.2 and 4.2 of this Schedule) from the Surety

- 8.2 Before starting any works under paragraph 8.1 of this Schedule the Council shall in its Notice to Complete first give the Developer 15 Working Days' written notice (or in the event of there being a significant danger to users of the highway such lesser notice period as may in the circumstances be reasonable) of its intention to commence such Works
- 8.3 Any Notice to Complete served pursuant to paragraph 8.1 and 8.2 of this Schedule shall specify the Works which have not been executed or completed in accordance with the terms of this Agreement and the period of notice ("the Notice Period") given thereunder
- 8.4 If before the expiry of the Notice Period the Developer shall serve written notice upon the Council that the Developer intends forthwith to execute and/or to complete the Works specified in the Notice served by the Council under paragraph 8.1 and 8.2 of this Schedule in accordance with the terms of this Agreement the Council shall then not be entitled to execute or to complete such Works unless the Developer then fails to execute and/or complete them within 15 working days

9. Street Lighting

- 9.1 If more than two years have elapsed from the date of issue of the First Certificate and the Second Certificate has not been issued then prior to the issue of the Second Certificate the Developer shall bulk clean lamp change and provide up to date Street Lighting Test Certificates for all illuminated signs and street lighting equipment

10. "As built" Drawings

- 10.1 Prior to the issue of the First Certificate the Developer shall provide the Council with three sets of drawings and one CD ROM to the satisfaction of the Director showing to a scale of 1:500 (or such other scale as the Director shall reasonably require) the Works "as built"

- 10.2 The "As built" drawings must include:-

- 10.2.1 All departures from the approved drawings
- 10.2.2 The position of all Statutory Undertakers' apparatus including details of depths and protection
- 10.2.3 Any additional levels boreholes records or other information which the Director considers to be useful
- 10.2.4 The location direction of flow and construction materials of all new and existing drainage ditches and the location of outfalls or soakaways
- 10.2.5 Detailed drainage plans with sizes depths gully positions new and existing connections long sections manhole and catch pit details with cover and invert levels
- 10.2.6 All street lighting illuminated signs and cables distinguishing between private cables and board cables (and all cables shall be identified by their respective reference numbers)
- 10.2.7 Road works general arrangement including highway boundary by means of red edging visibility splays and forward visibility splays

- 10.2.8 All soft landscaped planting details including grass cutting and watering schedules the date for expiration of the Developer's maintenance obligation together with contact names and telephone numbers of the Developer's personnel responsible for maintenance issues
- 10.2.9 Those Structures which will be maintained by or on behalf of the Council and those permanently maintained by or on behalf of the Developer
- 10.2.10 Signs and road markings on highway and location and details of sign face(s)
- 10.2.11 All completed finishes on the highway that is (but without limitation) high friction surfacing wearing course tactile paving carriageway footway finishes kerb types and including construction and tie in details
- 10.2.12 Fencing Guardrails and Safety Barriers

11. CDM Regulations

11.1 Prior to the issue of the First Certificate the Developer shall supply to the Council the Health and Safety File relating to the Works pursuant to the Construction (Design and Management) Regulations 2007 (two copies if the Works include structures)

11.2 The Health and Safety File shall include:-

11.2.1 Introduction

11.2.2 Description of Works including Ordinance Survey location plan

11.2.3 Responsibilities - Designers Client and Principal Contractor details including Notification of Construction Project to the Health and Safety Executive (F10)

11.2.4 Sub Contractors and Supplier details

11.2.5 Residual Hazards

11.2.5.1 Risk assessments for hazards anticipated post construction including cleaning and maintenance schedules and special requirements

11.2.6 Certificates Warranties and Test Results

11.2.7 Quarry and material compliance certificates

11.2.8 CBR (California Bearing Ratio) and NDM (Nuclear Density Meter) results

11.2.9 Water Authority approvals (104 Agreements) and Environment Agency approvals and/or restrictions

11.2.10 Surfacing and anti skid warranties

11.2.11 Structures approvals and Commuted Sums

11.2.12 Electrical test certificates NIC EIC (National Inspection Council for Electrical Installation Contracts)

11.2.13 Product Information

11.2.14.1 Standard details manufacturer manuals and specifications for the following;

- Fencing/railing/parapets
- Concrete mixes
- Concrete products
- Bituminous mixes
- Natural and recycled aggregates
- Drainage materials
- Ducting
- Manhole drawpit and gully covers
- Brickwork
- Steelwork reinforcement etc.
- Traffic Signs
- Street Lighting beacons bollards lanterns and feeder pillars including electrical specifications
- Traffic Signals including control boxes etc
- Any other products specific to the works

11.3 "As Built" Drawings as set in paragraph 10 of this schedule

12. Working Hours

12.1 Shall be as specified in the Planning Permission

13. Final Site Clearance

13.1 Prior to the issue of the First Certificate the Developer shall clear away and remove from the site of the Works all constructional plant surplus material rubbish and temporary works of every kind and leave the site of the Works in a workmanlike condition

THIRD SCHEDULE

BOND

- (3) **BY THIS BOND DOOBA DEVELOPMENTS LIMITED** whose registered office is situate at 3rd Floor, Barclays House, Victoria Street Douglas Isle of Man IM1 2LE ("the Developer") and () whose registered office is situate at () ("the Surety") are jointly and severally bound to **THE NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall West Bridgford Nottingham NG2 7QP ("the Council") this ____ day of _____ 2014 in the sum of (TBA) pounds (£())* (which sum or any part thereof which has not been released shall be adjusted in accordance with any increase in the Index as defined in the Agreement from the date of this Bond until such time as it is released in full) for the payment of which sum the Developer and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS by an Agreement made pursuant to Section 278 of the Highways Act 1980 and made between the Developer (1), and the Council (2) and dated the () day of () 2014 ("the Agreement") the Developer covenanted with the Council to commence execute perform complete and maintain the Works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the Agreement and also to pay to the Council such sums as therein provided

NOW THE CONDITIONS of this Bond are such that if the Developer and the Owner shall duly observe and perform all the terms provisions covenants conditions and stipulations of the said Agreement on the Developer's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the Developer the Surety shall satisfy and discharge the damages sustained by the Council thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect and no alteration in the terms of the Agreement made by agreement between the Council and the Developer under the Agreement nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Agreement on the part of the Council shall in any way release the Surety from any liability under this Bond

IN WITNESS whereof the Developer and the Surety have caused their respective

Common Seals to be hereunto affixed the day and year first before written.

* Such sum to be determined in accordance with the definition of the Bond Figure contained in the Agreement

THE COMMON SEAL of THE DEVELOPER)

was hereunto affixed in the)

presence of:-)

SIGNED AS A DEED)

For and on behalf of

() BANK PLC)

Acting by

THE COMMON SEAL of THE SURETY)

was hereunto affixed in the)

presence of:-)

Director

Secretary