

**PRECEDENT**

SECTION 278/38 AGREEMENT

[Composite including Soft Landscaping  
Bond / Performance Security]

2010 to April 2011

**MODEL SECTION 278 HIGHWAYS AGREEMENT**

wef 1 April 2010

**DATED** \_\_\_\_\_ **20--**

THE KENT COUNTY COUNCIL (1)

[-and-]

[DEVELOPER] (2)

[-and-]

[MORTGAGEE (3)]

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**DEED OF AGREEMENT**  
**UNDER SECTION 278 AND SECTION 38**  
**OF THE HIGHWAYS ACT 1980**

relating to highway works at

[ \_\_\_\_\_ ]

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Legal & Democratic Services  
Commercial and Environmental Group  
Kent County Council  
County Hall  
Maidstone  
Kent ME14 1XQ

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THIS DEED OF AGREEMENT is made the [ ] day of [ ] Two Thousand and ten BETWEEN THE KENT COUNTY COUNCIL of Sessions House County Hall Maidstone Kent ME14 1XQ ("**the Council**") (1) [and] [ ] [(Company Regn No ) ] whose registered office is at [ ] ("**the Developer**") (2) [and [ ] [(Company Regn No )] [of] / [whose registered office is at [ ] ("**the Mortgagee**"\*) (3)]

**1. DEFINITIONS AND INTERPRETATION**

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 1990 Act"

the Town and Country Planning Act 1990

"the 1991 Act"

the New Roads and Street Works Act 1991

"Bridge Manager"

the Council's Structures Manager and shall be deemed to mean the officer of the Council from time to time holding that appointment or (if no officer holds that appointment) the person carrying out the duties of that appointment or such suitably qualified person as he may from time to time nominate

"the Bond"

a bond substantially in the form set out in the Fourth Schedule

"the Bond Figure"

the sum of [ ] pounds (£ [ ] )

"Commencement"

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\* Note that there may be circumstances in which the Mortgagee of the Development Site and the Mortgagee of the Section 38 Land are different. In such circumstances this distinction will need to be made throughout the Agreement and the appropriate consents, obligations and licences given by both Mortgagees

the date upon which a material operation as defined in section 56 of the 1990 Act shall be carried out in respect of the Development and the terms "Commence" and "Commencement" shall be construed accordingly

"the Contract"

the Contract to be let by the Developer under Clause 9 for the construction of the Highway Works [and the Soft Landscaping Works]

"the Development"

the development of the Development Site pursuant to the Permission

"the Development Site"

[the Development Site] at [ ] Kent for the purpose of identification only shown [edged red] on the plan marked "Site Plan"

"the Estimated Cost"

the sum of [ ] pounds (£[ ]) being the amount which is in the opinion of the Managing Director the cost of carrying out the Highway Works

"the Highway Works"

the works which are described in the First Schedule and shown on the Drawings; such other works which are ancillary to the works described in the First Schedule as the Council may reasonably require; and works which may as a consequence of any of the above be required to be carried out to statutory undertakers' and telecommunications apparatus and any other equipment under in or over the highway (subject to receipt of the relevant statutory undertaker's consent); [and the Soft Landscaping Works]

"the Highway Works Land"

the land together comprising the Section 38 Land and the Section 278 Land, on which the Highway Works are to be carried out

"the Drawings"

Drawing[s] numbered [ ] approved by the Managing Director as part of the Programme together with such other drawings and documents as the Managing Director may from time to time agree shall be used in addition thereto or in substitution therefor

"the First Certificate"

Certificate issued by the Managing Director under Clause 7.1

["the Fourth Certificate"

Certificate issued by the Council under Clause 7.7]

[Land Compensation Bond]

["the Land Transfer Plan"

Drawing Number ]

"the Managing Director"

the Council's Managing Director of Environment Highway and Waste and 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

"Non-Structure(s) Soakaways"

any soakaway which is not within the highway boundary or does not fall within the definition of Structure(s)

"the Part 1 Claims"

any claims for compensation made pursuant to Part 1 of the Land Compensation Act 1973

"the Performance Security"

the sum of [ ] pounds (£ [ ])

"the Permission"

planning permission for the Development [to be] granted by [ ] Council  
Reference [ ]

"the Professional Costs"

all legal, administrative, surveying, inspection, testing, design and management costs incurred by the Council or on behalf of the Council in relation to the design or construction of the Highway Works [and the Soft Landscaping Works] and in relation to the monitoring and enforcement of the terms of this Agreement and the Bond

"the Programme"

in respect of the Highway Works the programme and details prepared by appropriately qualified engineers, to include all designs, materials, documents, drawings, specifications, tender documents and Stage 1 and Stage 2 Safety Audit specifications together with the Developer's arrangements for the supervision of the Highway Works and the programme for the Highway Works incorporating a statement of the overall sequence in which the elements of the Highway Works are to be carried out and a description of the contractual arrangements and methods of construction which the Developer is to adopt, together with an estimate of the amount of time to be spent by the Developer in carrying out and completing the Highway Works (including the times during the day when the works are to be carried out, having regard to the Council's requirements) and which may from time to time in accordance with the terms of paragraph 1.3.1 of the Second Schedule be varied to meet the Developer's programme for the completion of the Development

"the Second Certificate"

Certificate issued by the Managing Director under Clause 7.4

"the Safety Audit"

the safety audit to be undertaken in accordance with document HD 19/03 Road Safety Audit Volume 5 Design Manual for Roads and Bridges published by The Stationery Office unless specifically instructed in writing by the Managing Director in which case the Safety Audit shall be undertaken in accordance with KCC Guidance Note on the Provision of Safety Audit

"the Section 38 Land"

the land shown coloured Pink on the Land Transfer Plan, being land which is owned by the Developer and which is not highway at the date hereof

"the Section 38 Works"

such of the Highway Works as are to be carried out on the Section 38 Land

"the Section 278 Land"

land which is existing highway and/or land owned by the Council at the date hereof

"the Section 278 Works"

such of the Highway Works as are permitted to be carried out on the Section 278 Land

["Soft Landscaping Works"]

the works of [ ] on the land shown [edged [ ] /  
hatched [ ] ] on drawing number [ ] together with such other  
drawings and documents as the Managing Director may from time to time agree shall be  
used in addition thereto or in substitution therefor]

"the Specification"

the Highways Agency "Specification for Highway Works" (1998 Edition) as modified and  
extended by supplements published on behalf of the Highways Agency and as modified  
by the Council's standard additional and supplementary clauses as at the date of  
preparation of the tender documentation for the Contract

"Stage 2"

the Council's stage 2 technical assessment and review of the Safety Audit of the  
Highway Works

"Statutory Undertaker(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 Highway Works  
are to be carried out **PROVIDED THAT** such expression shall include the authorised  
successor to any such person company corporation board or authority

"Structure(s)"

any structure(s) built in under or over any public highway or public highway to be  
constructed as part of the Highway Works where the least internal span dimension is  
equal to or exceeds 0.9 metres (aggregate spans for multiple pipes/structures) This  
includes amongst others bridges footbridges pipe gantries culverts pipes tunnels  
chambers cellars shafts soakaways manholes and storm water balancing tanks  
etcetera; or

any structure(s) built in or within 3.66 metres of any public highway or public highway to

be constructed as part of the Highway Works which support(s) any public highway or public highway to be constructed as part of the Highway Works or ground above it or them and where the retained height either above or below the said public highway or public highway to be constructed as part of the Highway Works is 1.4 metres or more This includes amongst others retaining walls headwalls basements cellars and reinforced earth where the face is at an angle of 70° or more etcetera; or miscellaneous structures including projecting or spanning buildings environmental barriers high mast lighting CCTV masts and portal and cantilever sign / signal gantries etcetera

"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

["Third Certificate"

Certificate issued by the Managing Director under Clause 7.6]

"VAT"

Value Added Tax and any tax of a similar nature substituted for it or in addition to it

"working day(s)"

any day(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

1.2 Reference in this Agreement to any clause sub-clause paragraph schedule drawing or plan without further designation shall be a reference to the clause sub-clause paragraph schedule drawing or plan of (or in the case of a drawing or plan annexed to) this Agreement so numbered

1.3 Reference to any statute or order shall include any statutory extension modification or re-enactment thereof and any order regulation or bye-law made thereunder

1.4 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders



1.5 The headings in this Agreement and the front cover are for convenience only and shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof

## **2. RECITALS**

2.1 The Developer is registered as proprietor at H M Land Registry with Freehold Absolute title under Title No[s] [K ] of the [Section 38 Land and the Development Site]

2.2 The Council is the local highway authority under the 1980 Act for the area in which the Highway Works are to be situated and has agreed to enter into this Agreement with the Developer for the purpose of securing the carrying out of the Highway Works by the Developer on behalf of and at no cost to the Council, the Council being satisfied that this will be of benefit to the public

2.3 [Subject to the grant of the Permission] the Developer has agreed to carry out the Highway Works and the [Soft Landscaping Works] in accordance with the [Permission and the] terms of this Agreement

[ 2.4 [The Mortgagee is the Registered Proprietor of a charge dated [ ] referred to in Entry No [ ] of the Charges Register of the Title to the [Development Site/Section 38 Land] and enters into this Agreement for the purposes of giving the obligations, consents and licence contained in Clauses 13.8, 13.9, 13.10 and 13.11]

## **3. STATUTORY PROVISIONS**

3.1 This Agreement is made pursuant to Section 278 and Section 38 (in so far as is necessary for the adoption of the Highway Works) of the 1980 Act Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 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 the provisions of Section 278 and Section 38 of the 1980 Act shall apply and Section 305 of the 1980 Act shall apply to any expenses recoverable by the Council

## **4. DEVELOPER'S COVENANTS**

4.1 The Developer hereby covenants with the Council as follows:-

### **Commencement and Completion of Highway Works**

- 4.1.1 To give to the Council at least [10 working days] prior written notice of the Developer's intention to Commence the Development
- 4.1.2 To give to the Council at least [one month's] prior written notice of the Developer's intention to commence the Highway Works [and the Soft Landscaping Works] on behalf of the Council and thereafter diligently to proceed with the Highway Works [and the Soft Landscaping Works] at no cost to the Council in accordance with the provisions of the Second Schedule and without prejudice to the foregoing to keep to a minimum the period of occupation of the public highway so as to ensure the safety of traffic and pedestrians and the minimum disruption to users of and traffic flow on the public highway
- 4.1.3 To complete the Highway Works [and the Soft Landscaping Works] (which date of completion shall for the purposes of this clause be evidenced by the issue of the First Certificate [and the Third Certificate]) in accordance with the Programme and Specification to the satisfaction of the Managing Director prior to [occupation or use of the Development pursuant to the Permission] and in any event within [ ] months of commencement of the Highway Works [and the Soft Landscaping Works]
- 4.1.4 In respect of the Highway Works, to undertake stages 1 to 3 of the safety audit in accordance with H.D 19/03 (Road Safety Audit)

**Provision of Bond**

- 4.2 Prior to commencement of the Highway Works [and the Soft Landscaping Works] and without expense to the Council to procure from the Surety a Bond in the Council's favour for the Bond Figure for the due performance of the Developer's obligations under this Agreement including the payment of all invoices and costs, all Professional Costs and all Part 1 Claims associated with the Highway Works [and the Soft Landscaping Works]

**AND/OR Provision of Performance Security**

- 4.2 Prior to commencement of the Highway Works [and the Soft Landscaping Works] to deposit the Performance Security in an interest bearing account in the name of the Council with National Westminster Bank plc 91 High Street Maidstone Kent for the due performance of the Developer's obligations under this Agreement including payment of all invoices and costs, all Professional Costs and all Part 1 Claims associated with the

Highway Works [and the Soft Landscaping Works]

**Indemnities**

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

- (a) the execution or the use of the Highway Works [and the Soft Landscaping Works] by the Developer (which indemnity for the avoidance of doubt shall in respect of the Highway Works continue to bind the Developer for a period of [20 years] following the issuing of the Second Certificate)
- (b) the adoption and/or use of the Highway Works carried out by the Developer as highway maintainable at the public expense including any Part 1 Claims; and
- (c) any liability to HM Revenue & Customs for any stamp duty land tax which accrues from any land transaction made pursuant to the terms of this Agreement

**PROVIDED THAT** the Council shall notify the Developer forthwith upon receipt of any such claim and 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

**[Land Transfer**

4.4 4.4.1 Before the issue of the Second Certificate to transfer to the Council as local highway authority at no cost to the Council and free from encumbrances other than such as shall already have been created prior to the date of this Agreement (with the exception of any purely financial charge) the freehold interest in the land shown [edged in red] / tinted pink on the Land Transfer Plan as public highway such transfer to be in the form of the draft Transfer annexed hereto (or such other form of transfer as may be prescribed from time to time by H M Land Registry) and to pay the Council's legal costs and disbursements in connection with such transfer

4.4.2 If the Developer has not transferred the land within 12 months of the issue of the First Certificate then the County Council may choose not to proceed with the transfer of

the land.]

### **Consents**

- 4.5 Before commencement of the Highway Works and at no expense to the Council to obtain such consents licences or permissions as may be required for the purposes of carrying out the Highway Works (including all requirements under the Traffic Management Act 2004) and to comply with the Highway Authority's requirements for booking the necessary time and permits to carry out the Highway Works) and to indemnify and keep the Council indemnified from and against all liabilities costs claims actions demands or expenses which may arise from the Developer's failure to obtain or to comply with such consents licences or permissions

### **[ Deed of Grant**

- 4.6 Before the issue of the Second Certificate to execute and complete or to procure the execution and completion by all necessary parties without cost to the Council of 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 (including Non-Structure(s) Soakaways) as are situate outside the limits of Highway Works and such other easements as may be required by the Council for the future maintenance of any Structure forming part of the Highway Works as constructed ]

### **Payment of the Council's Costs**

- 4.7 To pay to the Council upon the execution hereof:
- 4.7.1 the Council's legal and administrative costs in connection with the preparation and completion of this Agreement and
  - 4.7.2 a fixed sum consultancy fee of [£5,000/10,000/15,000] in respect of the highway management and transportation advice and assistance given to the Developer prior up the approval of the Stage 1 process
  - 4.7.3 in respect of Professional Costs incurred by the Council in relation to the Highway Works [and the Soft Landscaping Works], including the costs and expenses incurred by the Council in project management checking the design of and carrying out periodic site inspections of the Highway Works [and the Soft

Landscaping Works] and administration (excluding any cost and expenses covered by the fixed sum consultancy fee paid pursuant to Clause 4.7.2 and fees relating to supplementary items listed in the First Schedule ) the sum of [

] Pounds (£[ ]) being nine per centum (9%) of the Estimated Cost [for Highway Works valued up to £500k plus a further 2% of the marginal cost for Highway Works valued at greater than £500k] subject to a minimum fee of £1000 less any sum paid to the Council prior to the date of this Agreement in respect of such costs and expenses; and

4.7.4 the commuted sum(s) specified in the second column of the Third Schedule in respect of the future maintenance and/or replacement of the corresponding item described in the first column of the same Schedule

4.8 To pay to the Council within 20 working days of demand

4.8.1 any Professional Costs incurred by the Council in relation to the supplementary items listed in the First Schedule and are not included in the fees payable under clause 4.7.3 such as the costs and expenses incurred in project management checking the design of and carrying out periodic site inspections of the works [and the Soft Landscaping Works] for the supplementary items, as certified by the Managing Director's finance officer for the time being (excluding any cost and expenses covered by the fixed sum consultancy fee paid pursuant to Clause 4.7.2)

4.8.2 from time to time during the course of the Highway Works the costs and expenses incurred by the Council in the testing of any materials carried out by the Council

4.8.3 any costs incurred by the Council in connection with the diversion and/or protection of the apparatus of Statutory Undertakers as evidenced by copies of their invoices (as certified by the Managing Director)

[4.8.4 any costs incurred by the Council in making and implementing any traffic regulation order[s] (as defined in the Road Traffic Regulation Act 1984 and any other statute) which the Managing Director deems [is] / [are] necessary because

of the Highway Works and whether made or implemented prior to during or following the completion of the Highway Works]

- 4.8.6 any interest on overdue payments payable pursuant to Clause 11; and
- 4.8.7 any sums due by way of the indemnities given by the Developer in Clause 4.3 or elsewhere in this Agreement
- 4.8.8 Any additional professional and/or legal costs incurred by the Council as a result of unforeseen circumstances resulting from the implementation of this Agreement
- 4.9 To pay any reasonable incidental legal and administrative costs that may arise following the implementation of this agreement in particular in respect of monitoring and release of the bond.

## **5. THE COUNCIL'S COVENANTS**

Without prejudice to the Council's duty not to fetter its discretion, the Council hereby covenants with the Developer that it will at the request and cost of the Developer and subject to its statutory duties from time to time and then as expeditiously as possible use such powers as are reasonably available to the Council to assist the carrying out of the Highway Works (including highway drainage)

## **6. ACCESS TO THE PUBLIC HIGHWAY**

6.1 Provided that the Developer has:

- (a) provided the [Bond/Performance Security] in accordance with Clause 4.2
- (b) paid all sums due or demanded pursuant to Clauses 4.7 and 4.8
- (c) provided evidence that a relevant notice under the 2004 Act has been issued by the Developer [on behalf of the Council] in relation to the Highway Works, and
- (d) provided evidence that all necessary consents have been obtained (including permits under Part 3 of the Traffic Management Act 2004) in relation to the Highway Works, the Council, without prejudice to its statutory powers and duties and the provisions of any permit issued pursuant to Part 3 of the Traffic Management Act 2004, grants to the Developer licence to enter and to remain upon with or without workmen plant and machinery the Highway Works Land and so much other public highway under the Council's control as the Managing Director shall agree is 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 highway

## **7. CERTIFICATION AND ADOPTION OF THE WORKS**

### **First Certificate**

7.1 When the Highway Works [and Soft Landscaping Works] have been completed including items raised at Stage III Safety Audit to the satisfaction of the Managing Director then Provided That:-

- (a) the Council has been provided with the Highway Adoption Drawings as described in and pursuant to paragraph 11 of the Second Schedule the "As-built" drawings as described in and pursuant to paragraph 12 of that Schedule and with the Health and Safety File relating to the Highway Works in accordance with paragraph 13 of that Schedule
- (b) the Developer has paid all accrued costs associated with conducting surveys for inventory
- (c) the Developer has reinstated and made good defects any damage due to faulty survey design material or workmanship which may have arisen or been discovered (including any defects in or damages to the road surface water drainage system) to the satisfaction of the Managing Director

the Council shall issue a First Certificate to that effect

### **Dedication**

7.2 Upon the issue of the First Certificate such of the Highway Works (with the exception of the Highway Works referred to in paragraph (m) of the First Schedule [and the Soft Landscaping Works]) the Section 38 Land shall be deemed dedicated as highway but the Developer shall remain the Street Manager for the Section 38 Land for the purposes of Section 49(4) of the 1991 Act and shall otherwise be responsible for maintaining the Section 38 Works until the date of issue of the Second Certificate

### **Maintenance Period**

- 7.3 The Developer shall at its own expense maintain the Highway Works for a period of twelve months from the date of the issue of the First Certificate or until issue of the Second Certificate (if later) [and shall at its own expense maintain the Soft Landscaping Works for the period of [thirty six] months from the date of the issue of the First Certificate or until issue of the Third Certificate (if later)] and during such period[s] the Developer shall reinstate and make good any defects or damage due to faulty survey design materials or workmanship which may have arisen or be discovered during such period (including any defect in or damage to the road surface water drainage system) to the satisfaction of the Managing Director

### **Second Certificate**

- 7.4 At the expiration of the maintenance period referred to in Clause 7.3 then PROVIDED THAT

- 7.4.1 in relation to the Highway Works, any necessary reinstatement, rectification of defects or other works have been completed to the satisfaction of the Managing Director in accordance with Clause 7.3
- 7.4.2 all monies due to be paid to the Council under this Agreement have been paid
- 7.4.3 the transfer of any land and / or the grant of any easements (if requested by the Council) is made to the Council under this Agreement has been completed and
- 7.4.4 the Council has been provided with details of all changes to the Highway Adoption Drawings as described in and pursuant to paragraph 11 of the Second Schedule the "As-built" drawings as described and pursuant to paragraph 12 of that Schedule and with the Health and Safety File relating to the Highway Works in accordance with paragraph 13 of that Schedule

the Managing Director shall issue a Second Certificate to that effect at the cost of the Developer [(notwithstanding that the obligation regarding the maintenance of the Soft Landscaping Works remains to be fulfilled)] but in the event that the obligations in this Clause 7.4 have not been discharged at the expiry of the maintenance period, the Developer shall continue to maintain the Highway Works in its capacity as Street



Manager until such time as these obligations have been complied with as evidenced by the issuing of the Second Certificate

**Adoption**

7.5 The Council agrees that upon the issue of the Second Certificate the Highway Works (with the exception of that part of the Highway Works referred in paragraph (m) of the First Schedule) shall become highway maintainable at the public expense with effect from the date on which the Second Certificate is issued

**[Third Certificate]**

[7.6 In the case of the Soft Landscaping Works at the expiration of the [thirty six] month maintenance period referred to in Clause 7.3 or (if later) when any necessary reinstatement or other works necessary to rectify defects have been completed to the satisfaction of the Managing Director in respect thereof the Managing Director shall issue a Third Certificate to that effect and upon the issue of the Third Certificate the Soft Landscaping Works shall become maintainable at the public expense at the cost of the developer]

**[Fourth Certificate]** *If no Third Certificate, this becomes Third Certificate*

[7.7 At the expiry of seven years from the issue of the Second Certificate, provided the Developer has satisfied all Part 1 Claims and paid over all sums due to the Council by way of indemnity in respect of such Part 1 Claims, the Managing Director shall issue the *Fourth* Certificate at the cost of the Developer]

**8. RELEASE OF THE BOND**

8.1 Within twenty working days of the issue of the First Certificate the Council shall release the Developer and the Surety from their obligations under the Bond to the extent of [ ] per centum ( [75/80 % ] ) thereof

8.2 Within twenty working days of the issue of the Second Certificate the Council shall release the Developer and the Surety from [all remaining liability under the Bond] / [their obligations under the Bond to the extent of [ ] per centum ( % ) thereof

[8.3 Within twenty working days of the issue of the Third Certificate the Council shall release

the Developer and the Surety from [all remaining liability under the Bond] / [their obligations under the Bond to the extent of [ ] per centum ( % ) thereof]

[8.4 Within twenty working days of the issue of the Fourth Certificate the Council shall release the Developer and the Surety from all remaining liability under the Land Compensation Bond]

OR

## **8. RELEASE OF THE PERFORMANCE SECURITY**

8.1 Within twenty working days of the issue of the First Certificate the Council shall release to the Developer [ ] per centum ( [75/80 % ] ) of the Performance Security

8.2 Within twenty working days of the issue of the Second Certificate the Council shall release to the Developer [[ ] per centum ( % ) of the Performance Security] / [the balance of the Performance Security]

[8.3 Within twenty working days of the issue of the Third Certificate the Council shall release to the Developer [ ] per centum ( )% of the Performance Security]/the balance of the Performance Security]

[8.4 Within twenty working days of the issue of the Fourth Certificate the Council shall release the balance of the Land Compensation Performance Security]

8.5 Upon the release of the balance of the Performance Security pursuant to this Clause 8, the Council shall pay to the Developer any interest accrued on the Performance Security.

## **9. DELEGATION OF DEVELOPER'S OBLIGATIONS**

9.1 It is hereby agreed and declared that the performance of the obligations on the part of the Developer to carry out the Highway Works on behalf of the Council may be delegated to a contractor or sub contractors on the Council's list of approved contractors

### **PROVIDED THAT:-**

9.1.1 the Developer shall remain liable to the Council for the due performance and observance of this Agreement;

9.1.2 the Contract by which the obligations contained in this Agreement are delegated shall incorporate the New Engineering Contract or such other conditions disclosed to and approved by the Managing Director prior to the date hereof which are no less stringent

than the said New Engineering Contract but shall in any event contain terms and conditions no less stringent than the terms and conditions contained in this Agreement and shall incorporate the Specification a description of the Highway Works and the Drawings and/or such other drawings (consistent with the Drawings) as may be deemed by the Managing Director to be contract drawings for the purposes of the Contract

9.1.3 the Developer shall give the Council the opportunity and reasonable time as provided in paragraphs 1.2.1 and 1.2.2 of the Second Schedule to comment upon the documentation for the Contract and shall have regard to any reasonable representations made before letting the Contract and

9.1.4 the Developer shall ensure that for the purposes of the Contract the amount of insurance cover against losses and claims for injuries or damage to persons or property arising out of or in consequence of the Highway Works shall be not less than five million pounds (£5,000,000) in respect of any one incident or such other sum as may be specified by the Council in writing

## **10. NOTICES**

10.1 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 on its face value it is signed on behalf of the Council by an officer or duly authorised signatory thereof

## **11. INTEREST ON OVERDUE PAYMENTS**

11.1 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 three per cent above the National Westminster Bank plc base lending rate from time to time in force from the due date to the date of actual payment

## **12. ASSIGNMENT**

12.1 The Developer shall not have the right to assign or transfer the benefit of this Agreement or any part thereof save to the Mortgagee or any other funder of the Developer and only with the Council's prior approval and the Council shall not be obliged to require performance of this Agreement by any person other than the Developer

## **13. MISCELLANEOUS PROVISIONS**

13.1 Any approval or documentation, drawings or works given by the Council shall not relieve the Developer of his responsibility to design and construct the Highway Works in accordance with current standards and legislation at the time of the execution of those Highway Works

13.2 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

### **Termination**

13.3 If construction of the Highway Works shall not have commenced within [one year]<sup>†</sup> from the date hereof this Agreement shall cease to have effect

### **Rights of Third Parties**

13.4 It is not intended that any person who is not a party to this Agreement shall be able to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999

### **Mortgagee Covenants, Consents and Licence**

13.5 The Mortgagee covenants that if at any time it takes possession of the Development Site, it will be bound by the Developer's obligations under this Agreement including liabilities for any existing breaches of this Agreement.

13.6 The [Developer] [and the Mortgagee] consents[s] to the Council applying to the Chief Land Registrar for an entry on form AN1 under the Land Registration Act 2002 relating to the covenant contained in Clause [4.4] to be made in the appropriate register of Title No[s] [K ] ] [AND / OR]

13.7 The covenant on the part of the Developer contained in Clause [4.4] shall be registered as an estate contract in the central register maintained by the Land Charges Department

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<sup>†</sup> In the event that a longer period is provided for the Council may wish to consider indexing the Bond Figure

of the Land Registry and the Mortgagee consents to such registration]

- 13.8 The Mortgagee covenants that in the event that the Council requires access to the Section 38 Land to carry out any remedial works pursuant to paragraphs 9.1-9.4 of the Second Schedule and at such time the Mortgagee is in possession of the Section 38 Land, the Mortgagee hereby grants the Council a licence to enter and remain upon the Section 38 Land with or without workmen plant and machinery for the purpose of carrying out such works and consents to the Section 38 Land becoming dedicated as public highway following the completion of the Section 38 Works to the Council's satisfaction as evidenced by issue of the First Certificate.

**Access to Section 38 Land in the Event of Default by the Developer**

- 13.9 The Developer covenants that in the event that the Council requires access to the Section 38 Land in order to carry out remedial works pursuant to paragraph 9.1 – 9.4 of the Second Schedule, the Developer hereby grants the Council a licence to enter and remain upon the Section 38 Land with or without workmen plant and machinery for the purpose of carrying out such works

**IN WITNESS** of which this Agreement has been duly executed as a deed and delivered on the date first before written

## FIRST SCHEDULE

- 1.1 [brief description of the Highway Works]
- 1.2 The Highway Works shall be carried out in accordance with the Specification the Drawings and the Programme and shall include the following elements of construction work:-
- (a) excavation to reduce levels including breaking out existing carriageways and footways where necessary
  - (b) all necessary alterations to the existing road drainage systems including the provision and installation of new road gullies and pipeworks
  - (c) all necessary alterations to Statutory Undertakers plant and equipment
  - (d) the provision and installation of all necessary ducts
  - (e) the construction of new carriageways including all necessary kerbing the planning of areas of existing carriageways at the junctions with new carriageways and the necessary regulating courses and resurfacing of those carriageways
  - (f) any reconstruction or overlay of the existing carriageway(s) necessary to ensure the structural integrity of the highway(s) affected by the Highway Works
  - (g) the construction of new footways including all necessary edgings; the breaking out of all redundant areas of carriageway and their reinstatement with top soil and seeding
  - (h) the provision of new columns lamps lanterns and cabling where necessary including the lighting of any new traffic islands [and roundabouts] and including any necessary modification to existing columns lamps lanterns and cabling
  - (i) the provision and installation of all necessary road signs safety barriers and markings including any necessary modification to existing signs barriers and markings
  - (j) the regarding of verges topsoiling and the provision and laying of new grass or landscaping within the proposed highway boundaries
  - (k) all site clearance including removal of trees shrubs bushes and fences
  - (l) all placing compaction and grading of suitable fill materials

- (m) any other minor items of accommodation works including (without prejudice to generality) noise attenuation measures necessary to complete the Highway Works

1.3 Supplementary Items

[Major Geotechnical works]

[Structures]

[Traffic signals]

[SUDS]

## **SECOND SCHEDULE**

### **Terms and Conditions for the execution of the Highway Works**

- 1.1 The Highway Works shall be executed by the Developer in accordance with the Specification the Drawings and the Programme which shall have been prepared by a consultant on the Council's list of approved consulting engineers
- 1.2.1 Not less than two calendar months before inviting tenders for the Highway Works the Developer shall submit to the Managing Director in writing for his approval all designs documents drawings specifications tender documents and the Programme for the construction of the Highway Works together with the Developer's proposed arrangements for the supervision of the Highway Works
- 1.2.2 The Managing Director shall approve or submit to the Developer his written comments in full upon those matters referred to in paragraph 1.2.1 of this Schedule as soon as possible and not later than two calendar months from receipt and the Developer shall not commence the Highway Works until the Managing Director's written approval has been obtained pursuant to paragraph 1.2.1 of this Schedule
- 1.3.1 If the Developer shall wish to revise the Programme it shall notify the Managing Director in writing of any revisions to the Programme at least 10 working days before implementing such revisions
- 1.3.2 The Managing Director shall approve or submit to the Developer his written comments in full upon those matters referred to in paragraph 1.3.1 of this Schedule within 10 working days of receipt
- 1.4 If the Managing Director does not propose to give his approval in relation to any of those matters referred to in paragraph 1.2.1 or 1.3.1 of this Schedule he shall as soon as possible within the respective periods referred to in paragraphs 1.2.2 and 1.3.2 of this Schedule in writing so inform the Developer
- 1.5 In addition to the requirements of paragraphs 1.1 to 1.4 (inclusive) of this Schedule the Developer shall in respect of any Structure comprised in the Highway Works comply fully with the Technical Approval Procedure for Highway Structures as issued by the



Managing Director

- 1.6 Before commencing the design of any such Structure the Developer shall obtain details of the procedures referred to in paragraph 1.5 of this Schedule from the Bridge Manager and comply with the requirements contained therein. Subsequent submissions should be addressed to the Council marked "for the attention of the Bridge Manager"
- 1.7 Full "as built" records must also be provided as required by the Managing Director for any Structure covered by paragraph 1.5 of this Schedule

### **Access**

- 2.1 The Developer shall during the progress of the Highway Works give or procure for the Managing Director and any person or persons duly authorised by him unfettered access to every part of the Highway Works and permit him or them to inspect the same 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 Managing Director to conform to the Drawings and/or the Programme and the Specification
- 2.2 The Developer shall not cover up or put out of view any part of the Highway Works without the approval of the Managing Director and shall afford full opportunity for him 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 2 working days notice to the Managing Director whenever any such work or foundations is or are ready or about to be ready for examination
- 2.3 The Managing Director shall without unreasonable delay unless he considers it unnecessary and advises the Developer accordingly attend when required by the Developer upon at least 2 working days notice for the purpose of examining and measuring such works or of examining such foundations

### **Testing of Materials**

- 3.1 Before commencement and during the construction of the Highway Works the Developer shall submit for approval to the Managing Director a list of suppliers from whom it wishes to obtain materials for incorporation in the Highway Works together with test certificates

for such materials and shall at its own cost provide the Managing Director with any samples of materials he may reasonably request for testing purposes

- 3.2 The Managing Director shall have power in his reasonable discretion to test or require the testing of materials plant workmanship used or proposed to be used in the Highway Works and to reject any materials plant or workmanship so tested which he may reasonably and properly find to be not 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 not in accordance with the Specification and the Drawings with such as are so in accordance
- 3.4 The Managing Director shall for the purposes of paragraph 3 of this Schedule be allowed reasonable access and admission to the Highway Works or the places where materials or plant for the Highway Works may be stored or in the course of preparation manufacture or use
- 3.5 The Developer shall as soon as is reasonably practicable remove such materials plant and workmanship as are rejected by the Managing Director pursuant to paragraph 3.2 of this Schedule which are not capable of repair or remedy from the site of the Highway Works and if the Developer shall wish to continue to store such rejected irreparable materials plant and workmanship on the site of the Highway 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 Highway Works

#### **Opening of the Highway Works**

4. During the construction of the Highway Works and prior to the issue of the Second Certificate:
  - 4.1 the Managing Director may issue instructions to the Developer to open up or expose any of the Highway Works which have been covered up without previously being inspected by the Managing Director
  - 4.2 should the Developer fail to comply with any such instructions the Council may so take up or expose the Highway Works causing as little damage or inconvenience as is

possible to or in respect of any other part or parts of the Highway Works the reasonable and proper cost of such taking up or exposure and reinstatement to be met by the Developer

4.3 if the Highway Works are covered up by the Developer after giving at least 2 working days notice of its intention so to do and the Managing Director shall have failed to inspect within that period and shall subsequently require the Highway Works or any part of them to be uncovered for the purposes of inspection:-

4.3.1 if inspection reveals that the relevant part or parts of the Highway Works has or have been completed in accordance with the Drawings and the Specification all reasonable and proper costs in respect of such uncovering and inspection and of reinstating the part or parts of the Highway Works uncovered shall be borne by the Council and the Council shall be liable for any consequential costs expenses or damages which shall be directly or indirectly attributable to delay or interference occasioned by such uncovering testing and reinstatement

4.3.2 if inspection reveals that the relevant part or parts of the Highway Works has or have not been completed in accordance with the Drawings and the Specification all reasonable and proper costs in respect of such uncovering and inspection and of reinstating the part or parts of the Highway Works uncovered shall be borne by the Developer

### **Statutory Undertakers**

5.1 Prior to the commencement of the Highway Works the Developer shall give notice to Statutory Undertakers of the proposal to carry out the Highway Works as if they were works for road purposes or major highway works as defined in Section 86 of the 1991 Act and at the same time deliver a copy of such notice to the Managing Director

5.2 The Developer shall at no cost to the Council carry out or procure the carrying out of any works or measures as are required by Statutory Undertakers in consequence of the proposal to carry out the Highway Works to the plant and equipment of Statutory Undertakers on the site of the Highway Works including payment of the costs of any diversions or new installations necessary for their completion and the Highway 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

- 5.3 The Developer shall cause all highway or other drains or sewers gas and water mains pipes electric cables (if any) or telephone cables (if any) which are to be laid by the Developer under the Highway Works together with all necessary connections from them to the boundary of the Highway Works to be laid in so far as is practicable under the Highway Works before the foundations of the Highway Works are laid and shall also in 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 Highway Works is carried out

#### **Prevention of mud being carried on the public highway**

6. Provisions shall be made at no cost to the Council at the site and on the adjoining public highway to prevent the deposit of mud dust and other materials on public highways by vehicles and plant leaving the site of the Highway Works in accordance with the Code of Construction Practice

#### **Traffic control**

7. During the period when the Highway Works are being executed the Developer shall from time to time institute at its own expense reasonable measures approved by the Managing Director (before their implementation) to maintain the flow and safety of traffic and pedestrians on the highways in the vicinity of the site of the Highway Works and shall use reasonable endeavours to procure that contractors site traffic in respect of the Highway Works and the Development shall adhere to such route or routes when approaching or departing from the site of the Highway Works as may from time to time be agreed with the Council

#### **Road safety**

8. During the period over which the Highway Works are being executed the Developer shall comply with the provisions of Chapter Eight of the Department of Transport's Traffic Signs Manual 2002 (published by HMSO) and any amendment thereto for lighting and signing the Highway Works and any further reasonable requirements of the highway authority

## **Remedial works**

- 9.1 Subject to paragraphs 9.2 9.3 and 9.4 of this Schedule if the Highway Works [or Soft Landscaping 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 the Council may execute or complete the relevant part or parts of the Highway Works [and Soft Landscaping Works] in accordance with the provisions of this Agreement by its own employees or by contractors and recover its reasonable and proper costs in connection with and/or arising from the carrying out of such works (including the costs referred to in Clauses [4.3] [4.5] [4.6] and [4.8] and paragraphs 3.1 and 5.2 of this Schedule and any additional design supervision project management and legal costs) from the Surety/ Performance Security up to the maximum of the Bond Figure or from the Developer
- 9.2 Before starting any works under paragraph 9.1 of this Schedule the Council shall 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 period as may in the circumstances be reasonable of its intention to do so
- 9.3 Any notice served pursuant to paragraph 9.2 of this Schedule shall specify the Highway Works [or Soft Landscaping Works] which have not been executed or completed in accordance with the terms of this Agreement and the period of the notice ("the Notice Period") given thereunder
- 9.4 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 Highway Works [or Soft Landscaping Works] specified in the notice served by the Council under paragraph 9.2 of this Schedule in accordance with the terms of this Agreement the Council shall not be entitled to execute or to complete such Highway Works [or Soft Landscaping Works] unless the Developer then fails to execute and/or complete them within such reasonable period as the Council shall have specified in the notice served under paragraph 9.2.

## **Final Site clearance**

10. On completion of the Highway Works the Developer shall clear away and remove from the site of the Highway Works all constructional plant surplus material rubbish and temporary works of every kind and leave the site of the Highway Works in a workmanlike condition

## **Highway Adoption Drawings**

11. Prior to the issue of the First Certificate the Developer shall provide the Council with two full size paper sets and one copy of pdf computer files on disk of scheme drawings to the satisfaction of the Managing Director showing to a scale of 1:500 (or such other scale as the Managing Director shall reasonably require) and by means of a colour code set out below (or such other colour code required by the Managing Director) the areas of newly adopted highway in relation to the existing highway

- |      |             |  |
|------|-------------|--|
| 11.1 | Pink        | all new highway land   |
| 11.2 | Red hatched | any highway land the use of which has changed (for example verge to carriageway) |
| 11.3 | Blue dotted | all existing drainage  |
| 11.4 | Blue solid  | all new drainage   |
| 11.5 | Red line    | the new highway boundary   |

## **“As built” Drawings**

- 12.1 Prior to the issue of the First Certificate the Developer shall provide the Council with two full size paper sets and one copy of pdf computer files on disk of drawings to the satisfaction of the Managing Director showing to a scale of 1:500 (or such other scale as the Managing Director shall reasonably require) the Highway Works “as built”
- 12.2 The “As built” drawings must include
  - 12.2.1 all departures from the approved Stage 2 drawings
  - 12.2.2 the position of all Statutory Undertakers’ apparatus
  - 12.2.3 any additional levels boreholes records or other information which the Managing Director considers to be useful
  - 12.2.4 separate titled drawings outlining or identifying

- 12.2.4.1 the location direction of flow and construction materials of all new and existing drainage ditches and the location of outfalls or soakaways
- 12.2.4.2 all street lighting illuminated signs and cables distinguishing between private cables and Seaboard cables (and all cables shall be identified by their respective cypher reference numbers)
- 12.2.4.3 the highway boundary by means of red edging
- [12.2.4.4 all shrub areas and grass areas including area measurements and 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]
- [12.2.4.5] those Structures which will be maintained by or on behalf of the Council and those permanently maintained by or on behalf of the Developer
- [12.2.4.6] signs and road markings on highway and location and details of sign face[s]
- [12.2.4.7] all completed finishes on the highway that is (but without limitation) high friction surfacing, wearing course, tactile paving, carriageway, footway finishes and kerb types
- [12.2.4.8] Traffic Signal Equipment

### **CDM Regulations and Health & Safety File**

- 13.1 Prior to the issue of the First Certificate the Developer shall supply to the Council the Health and Safety File relating to the Highway Works pursuant to the Construction (Design and Management) Regulations 2007 together with one copy (or two copies if the Highway Works include Structure(s)) of the said File
- 13.2 The Health and Safety File shall
  - 13.2.1 include a report summarising the construction phase of the Highway Works
  - 13.2.2 identify any significant problems encountered during the construction phase and describe how those problems were overcome
  - 13.2.3 include details of the design options selected by the Developer (including the Developer's Contractor) any significant design changes and the reasons for the changes

- 13.2.4 identify any latent risks which might affect the future use and maintenance of the Highway Works
- 13.2.5 include a report summarising details of the hand over walk through with the officer nominated by the Council to undertake that function (amongst others) together with the date of that activity the names of the attendees a summary of the issues raised and consequential actions
- 14. It is agreed that the Developer is the "client" for the purposes of the CDM Regulations 2007.



### THIRD SCHEDULE

#### Commuted Sums

<u>Item</u>	<u>Amount [Just insert figure]</u>
Structure(s)	<i>*The costs of inspection maintenance and commuted sum for eventual replacement of the Structure(s) for a period of 120 years from the date of the Second Certificate} [amount determined on a site specific basis] } ]</i>
Non Structure(s) Soakaways	<i>*{The costs of inspection and maintenance for a period of 30 years from the date of the Second Certificate – a minimum basic sum of £5,000 per chamber}</i>
Special Surfacing and street furniture	<i>Cost of inspection and maintenance for 30 years for non-standard higher cost materials: amount determined on a site specific basis.</i>
Soft-Landscaping Works	<i>*[Commuted sum for inspection and maintenance for thirty years – a period from the date of [Second] [Third] Certificate} [amount determined on a site specific basis] } ]</i>
Non-standard street lighting	<i>*Cost of inspection and maintenance for 30 years; [amount determined on a site specific basis}</i>
Traffic Signal Equipment	<i>Cost of inspection and maintenance for 30 years: amount determined on a site specific basis.</i>

]

[\* Note to compiler – Ensure the wording remaining in this column are relevant to the document]

## FOURTH SCHEDULE

### BOND

**BY THIS BOND WE [ ] BANK PLC** of [ ] London [ ] (the "**Surety**") are held and formally bound respectively to:-

**KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ ("**the Council**")

Executed as a Deed this day of 2010

WHEREAS by a s278/s38 Agreement (the "Agreement") dated the day of [ ] 2010 and made between the Council (1) and [ ] ("**Developer**") (2), the Developer agreed with the Council to carry out the Highway Works as defined in the Agreement.

NOW THE CONDITIONS of the above written Bond are that:-

1. Subject always to clause 2 below if the Developer performs fulfils and complies with its obligations under the Agreement then this Bond or obligation shall upon such performance fulfilment and compliance be void, but otherwise will remain in full force and effect.
2. As provided in clause 8.1 of the Agreement the Developer and the Surety shall forthwith and without the need for any further evidence in writing or otherwise upon the issue of the First Certificate (as defined in the Agreement) be released by the Council from their obligations under this Bond to the extent of [ (%) ] of the Bond Figure in respect of the First Certificate.
3. As provided in clause 8.2 of the Agreement the Developer and the Surety shall forthwith and without the need for any further evidence in writing or otherwise upon the issue of the Second Certificate (as defined in the Agreement) be released by the Council from their obligations under this Bond to the extent of [ (%) ] of the Bond Figure in respect of the Second Certificate.
4. As provided in clause 8.3 of the Agreement the Developer and the Surety shall forthwith and without the need for any further evidence in writing or otherwise upon the issue of the Third Certificate (as defined in the Agreement) be released by the Council from their obligations under this Bond to the extent of [ (%) ] of the Bond Figure in respect of the Third Certificate.
5. As provided in clause 8.4 of the Agreement the Developer and the Surety shall forthwith and without the need for any further evidence in writing or otherwise upon the issue of the Fourth Certificate (as defined in the Agreement) be released by the Council from all their remaining liability under this Bond in respect of the Fourth Certificate.
6. Subject to paragraph 10 of this Bond, if there is any failure by the Developer to complete the Highway Works [or the Soft Landscaping Works] (as defined in the Agreement) in accordance with the Agreement, the Council may serve notice in writing on both the Developer and the Surety notifying them of such failure by the Developer and if the Developer shall not have remedied any such failure to the reasonable satisfaction of the Council during the Notice Period (as defined in paragraph 9.3 of the Second Schedule of the Agreement) then the Council may serve notice to that effect on the Surety whereupon the Surety will pay the Council a sum of money not exceeding the Bond Figure and on the basis that the Council will certify the sum of money demanded as being necessary in order to complete the part of the Highway Works [or the Soft Landscaping Works] and to cover any associated costs or expenses incurred by the Council.

7. Subject to paragraph 10 of this Bond, if there is any failure by the Developer to pay any sums due to and demanded by the Council in accordance with Clause 4.8 or any other provision of the Agreement, the Council may serve notice in writing to that effect on the Surety whereupon the Surety will pay the Council the sum of money demanded which shall not exceed the Bond Figure.
8. Upon the Developer (other than for the purposes of consolidation or amalgamation) having a winding up order made against it or upon a resolution being passed for the winding up of the Developer (other than for the purposes of consolidation or amalgamation) the Surety will pay the Council as the case may be a sum of money on demand up to but not exceeding the Bond Figure and on the basis that the Council will certify the sum of money demanded as being necessary in order to complete the part of the Highway Works [or the Soft Landscaping Works] or remedy any defects or any default of the Developer in the performing of its respective obligations to the Council under the Agreement including any costs, claims or expenses due to the Council pursuant to Clause 4.8 or any other provision of the Agreement.
9. The total liability of the Surety to the Council under this Bond will be limited to the Bond Figure.
10. The laws of England and Wales govern this Bond. The parties agree that in the case of dispute not capable of being resolved by them to submit to arbitration under the laws of England and Wales.

EXECUTED AS A DEED BY )  
BANK PLC )  
Under the hand of )  
 )  
being duly authorised )

**FIFTH SCHEDULE**

**Draft Notice to Surety**

To: The Manager

Fax Number: (01622)  
Direct Dial/Ext: (01622)  
E-mail address: @kent.gov.uk  
Ask for:  
Your Ref:  
Our Ref: LS/A/ /  
Date:

**FORM OF DEMAND**

Dear Sir

**BOND NO** [*number of performance bond*]  
**DATED** [ *date* ]  
**ON BEHALF OF** [ *name* ] ("**the Developer**")

We refer to the above Bond signed by you. This is a demand as referred to in the Bond. Terms defined in the Bond shall have the same meaning in this demand.

We hereby certify that an amount equal to £[ *amount of this demand in figures and words*] is due from the Developer under the Section 278 Agreement dated [ *date* ] and is unpaid and we are entitled to claim that amount under this Bond. Therefore, we hereby demand payment from you no later than five (5) business days after receipt by you of this demand in the sum of £ [ *amount of this demand in figures and words*] under the Bond.

Payment should be made to the following account:-

Account Name	The Kent County Council
Account Bank	National Westminster Bank Plc Maidstone Branch P O Box 4 Maidstone Kent ME14 1XU
Sort Code	60-60-08
Account No.	00100013

This demand is governed by English Law.

Yours faithfully

**SIXTH SCHEDULE**

**DRAFT TRANSFER**

THE COMMON SEAL of THE KENT )  
COUNTY COUNCIL was hereunto )  
affixed to this Deed in the presence of:- )

Authorised Signatory

A Member of the Kent County Council

THE COMMON SEAL of THE )  
DEVELOPER was hereunto affixed )  
in the presence of:- )

Director

Secretary

[THE COMMON SEAL of THE )  
MORTGAGEE was hereunto affixed )  
in the presence of:- )]