

**PRECEDENT**

**SECTION 38 AGREEMENT (industrial) with performance security**  
WP REF: Precedents/S38 agmt (industrial) with performance security

**DATE APPROVED:**

**13.06.2006**

**Amended 04.09.2006 – new Clause 13.1.6**  
**Amended 04.09.2006 – new Clause 14(vii)**  
**Amended 21.05.07 – Schedule 1 – Part 4**  
**Amended 28.01.08 – Page numbering**  
**Amended 05.03.08 – Clause 6**  
**Amended 16.04.08 – Schedule 2**  
**Amended 30.04.08 – Schedule 1 – Part 4**  
**Amended 01.12.08**

**NOT TO BE ISSUED**

DATED

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THE KENT COUNTY COUNCIL (1)

- and -

(Developer) (2)

*[-and-*

*(Mortgagee) (3)]*

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## **AGREEMENT**

made under Section[s] 38 *[and 184]* of the Highways Act 1980  
and Section 111 of the Local Government Act 1972  
in connection with development at *[site]*

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model Sec38 ind  
with ps  
(Issued 01/12/2003)  
(amended 01.05.2004)  
(amended 01.05.2005)  
(amended 30.04.08)  
(amended 01.12.08)

WP REF: Precedents/S38 agt (industrial) with PS



**NOW** in pursuance of Section[s] 38 [and 184] of the Highways Act 1980 (and Section 305 shall apply to any expenses recoverable by the Council) Section 111 of the Local Government Act 1972 and all other powers enabling the Council

**IT IS HEREBY AGREED AND DECLARED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

**IN** this Agreement the following terms shall have the meanings set out below:

“the Development Site”

(*insert description of land*) for the purpose of identification only shown edged red on the Site Plan

“the Site Plan”

the Drawing numbered [ ]

“the Drawings“

the Site Plan and the Section Drawings numbered [ ] signed by the Proper Officer together with such other drawings as the Proper Officer may from time to time agree shall be used in addition to or in substitution for the Plan and the said Section Drawings

“the Estimated Cost”

the sum of [ ] pounds (£[ ]) being the amount which is in the opinion of the Proper Officer the cost of carrying out the Works within the period specified in Clause 2.2(iv)

“the Performance Security”

an amount equal to the Estimated Cost

“the Maintenance Period”

the period of twelve calendar months [or until 60% of the total floor area of the units to be erected on the Development Site are occupied and in use whichever is the longer period] [from the date of the commencement of the Works] [or the date of this Agreement whichever is the earlier]

“the Part 1 Works”

the works set out in Part 1 of the First Schedule

“Part 1 Certificate”

the Certificate to be issued under Clause 10 on satisfactory completion of the Part 1 Works

“the Part 2 Works”

the works set out in Part 2 of the First Schedule

“Part 2 Certificate”

the Certificate to be issued under Clause 12 on satisfactory completion of the Part 2 Works

“Final Certificate”

the Certificate to be issued under Clause 14 on satisfactory completion of the Works

“Proper Officer”

the officer for the time being appointed by the Council for the purposes of this Agreement or of any provision contained in it

“Traffic Signal Engineer”

the Council’s Traffic Signal Engineer 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 the Council may from time to time nominate

“the Road or Roads”

the carriageways and footways of the private road or roads shown coloured pink on the Site Plan (“the Pink Land”) including any off-site highway drainage shown on the Drawings and the footpaths street lighting all verges services strips [*Structures and/or Non-Structures Soakaways to be adopted as listed in Part 3 of the First Schedule*] *Traffic Signal Equipment Non-Standard Traffic Systems Equipment Soft Landscaping Works Non-standard street lighting and Non-standard or enhanced surfacing and street furniture as listed in Part 4 of the First Schedule* vehicular crossings road surface water drainage system (if any) and all other things ancillary thereto

[“Soft Landscaping Works”

*the works of [insert description of soft landscaping works] on the land shown [edged /hatched [ ] ] on Drawing number [ ] together with such other drawings and documents as the Proper Officer may from time to time agree shall be used in addition thereto or in substitution therefor*

“the Specification”

the August 2006 edition of the publication entitled The Kent Design Guide a copy of which the Developer acknowledges as being in the Developer’s possession

**“Structure(s)”**

any structure(s) built in under or over the Road or Roads where the aggregate span dimension(s) at any point is equal to or exceed(s) 0.9m 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 3.66m of the Road or Roads which support(s) the Road or Roads or ground above it or them and where the retained height either above or below the Road or Roads is 1.4m or more This includes amongst others retaining walls headwalls basements and cellars etcetera

**“Non-Structure(s) Soakaways”**

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

**“Non-Standard Traffic Systems Equipment”**

*other traffic / signage system equipment eg lit signs variable message signing interactive speed signage public transport real time information etcetera which is to be designed supplied installed and commissioned in accordance with the provisions of Part 5 of the First Schedule*

**“Non-Standard Surfacing Materials”**

*non-standard or enhanced higher cost maintenance materials as agreed with the Proper Officer*

**“Street Lighting”**

*street lighting as defined in the Specification*

**“Non-Standard Street Lighting”**

*non-standard street lighting as agreed with the Proper Officer*

**“Undertaker(s)”**

any person company corporation board or authority whose apparatus is at the date of this Agreement already installed in under over or upon the land on which the Works are to be carried out pursuant to a statutory right or licence granted under Section 50 of the New Roads and Street Works Act 1991 PROVIDED THAT such expression shall include the authorised successor to any such person company corporation board or authority and to the assignee or the successor in title to any such person

**“the Works”**

the works specified in Part 1 and Part 2 [and Part 3] of the First Schedule for the making up of the Road or Roads

## 1.2 Interpretation

1.2.1 Where the context so admits the expressions “the Council” [and] “the Developer” [and “the Mortgagee”] shall include their respective successors in title

1.2.2 Unless the context otherwise requires reference to any recital clause sub-clause schedule drawing or plan without further designation is a reference to the recital clause sub-clause schedule drawing or plan of (or in the case of a Drawing or Plan annexed to) this Agreement so numbered

1.2.3 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended re-enacted or consolidated and all statutory instruments or orders made pursuant to it

1.2.4 Words denoting the singular number only shall include the plural and vice versa words denoting any gender include all genders and words denoting persons shall include firms and corporations

1.2.5 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation thereof

## 2. DEVELOPER'S LIABILITY

2.1 **WITHOUT** expense to the Council and contemporaneously with the execution of this Agreement [at least fourteen days prior to commencement of the Works] to deposit the Performance Security in an interest bearing account in the name of the Council with National Westminster Bank Plc of 91 High Street Maidstone Kent in the sum of the Estimated Cost for the due performance of the Developer's obligations under this Agreement

2.2 **THE** Developer shall carry out and complete the Works at the Developer's expense:

- (i) in a good and workmanlike manner and with materials approved by the Proper Officer;
- (ii) in accordance in all respects with the Specification and the Drawings;
- (iii) to the satisfaction of the Proper Officer; and
- (iv) within twelve calendar months

2.3 **SAVE** as provided in Clause 13.1.3 the Developer shall maintain the Road or Roads until the issue of the Final Certificate

2.4 At any time after the Works have commenced the Council may serve a written notice on the Developer requiring the land transfer to be completed within a period specified in the said notice. Failure to comply with the said notice may result in a breach of this Agreement resulting in a call on the Bond.

### **3. CONDITIONALITY**

**THIS** Agreement (other than Clauses 17.1.3 and 17.1.4) is conditional upon the Developer having made prior full disclosure to the Council of all Structures including those that overhang or which will overhang the site of the Road or Roads and those that will be privately maintained.

### **4. DECLARATION**

**THE** Developer hereby declares and warrants to the Council that the Developer has and will maintain throughout the duration of this Agreement full right and liberty and consent to carry out such works as may be deemed by the Council to be necessary to connect the Road or Roads to a vehicular highway or highways that is or are or that will be maintainable at the public expense.

### **5. UNDERTAKERS - CONNECTIONS TO EXISTING SERVICES**

**THE** Developer shall before carrying out the Works and connecting the Road or Roads with any existing highway or highways maintainable at the public expense give notice to each Undertaker of any service or services laid in upon or under such highway or highways of the proposal to carry out the Works and to make such connection as if the connection were a work to be executed for road purposes and/or major highway works as defined in Section 86 of the New Roads and Street Works Act 1991 and shall bear the cost of any works or measures deemed necessary by the Undertakers in consequence of the proposal to carry out the Works and to make such connection and the Developer shall indemnify the Council in respect of the cost of any works or measures considered necessary by any Undertakers in consequence of such proposal.

### **6. INDEMNITY**

**THE** Developer hereby indemnifies the Council in respect of all actions, claims, demands, expenses and proceedings arising out of or in connection with or incidental to the carrying out of or the use of the Works including any claims under the Land Compensation Act 1973.



other than those arising out of or in consequence of any negligent act default or omission on the part of the Council

**7. APPROVED MATERIALS**

**BEFORE** commencement and during the construction of the Works to submit for approval to the Council a list of suppliers from whom the Developer wishes to obtain materials for incorporation in the Works together with test certificates for such materials and at the Developer's own cost to provide the Proper Officer with any samples of materials the Proper Officer may request for testing purposes and the Proper Officer shall have power at his discretion to test or require the testing of materials plant workmanship used or proposed to be used in the Works at the sole expense of the Developer and at a testing laboratory approved by the Council and to reject any materials plant or workmanship so tested which is found to be not in accordance with the Specification and Drawings

**8. ACCESS TO THE SITE**

**THE** Developer will during the carrying out of the Works give to the Proper Officer and any other officer of the Council access to every part of the Works and the sites thereof for the purpose of inspecting the Works and all materials used or intended to be used therein

**9. GRANT OF EASEMENTS**

**BEFORE** the issue of the Final Certificate but after completion of the Transfer referred to in Clause 13.1.5 the Developer shall without cost to the Council execute and complete or procure the execution and completion by all necessary parties of:

- (i) such deeds (in the form set out in the Second Schedule) as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such part or parts of the surface water drainage system of the Road or Roads as are situate outside the limits of the Road or Roads and
- (ii) such other deeds of easement as may be required by the Council for the future maintenance by the Council of any street furniture situate outside the limits of the Road or Roads [*and the Structures and/or Non-Structure(s) Soakaways as listed in Part 3 of the First Schedule together with any street lighting and traffic signal equipment non-standard traffic systems equipment non-standard street lighting and street furniture as listed in Part 4 of the First Schedule*]

and shall pay the Council's legal costs and disbursements in connection with such deeds of easement and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the completion of any such Deeds

**10. PART 1 CERTIFICATE**

**ON** completion of the Part 1 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue the Part 1 Certificate to the Developer

**11. OCCUPATION OF INDUSTRIAL / COMMERCIAL UNITS**

**NO** unit erected by the Developer or on the Developer's behalf fronting adjoining or abutting on to the Road or Roads shall be occupied until:

- (i) the Proper Officer has agreed that such part or parts of the Road or Roads as will provide the occupier of the said unit with both pedestrian and vehicular access to a highway maintainable at the public expense has or have been constructed to at least base course standard the vision splays cleared and the street name plates erected and
- (ii) the Road or Roads or that part or parts of the Road or Roads referred to in (i) above has or have columns erected and in lighting in accordance with the Specification and the Drawings

**12. PART 2 CERTIFICATE**

12.1 **ON** completion of the Part 2 Works to the satisfaction of the Proper Officer in all respects in accordance with Clause 2.2 the Proper Officer shall if any sewer constructed under the Road or Roads under an Agreement under Section 104 of the Water Industry Act 1991 has been certified as being or having been on maintenance issue the Part 2 Certificate to the Developer

12.2 **FROM** the date of the issue of the Part 2 Certificate the Maintenance Period shall begin to run and the Road or Roads shall become highway or highways open for use by public at large **PROVIDED THAT:**

- (i) the said highway or highways shall not be regarded as being highways maintainable at the public expense; and
- (ii) the Developer shall remain the street manager for the purposes of Section 49(4) of the New Roads and Street Works Act 1991 until the issue of the Final Certificate

**13. OBLIGATIONS DURING THE MAINTENANCE PERIOD**

13.1 **DURING** the Maintenance Period:

- 13.1.1 the Developer at the Developer's own expense shall maintain the Works including all grassed and planted areas and carry out such routine maintenance including sweeping gully emptying and snow clearance
- 13.1.2 the Developer at the Developer's own expense shall clear all abandoned vehicles rubbish or other unauthorised materials as may be necessary to facilitate use by vehicles pedestrians and other users and for inspection of the Works for the purposes of the issue of any Certificate under this Agreement
- 13.1.3 the Council at the Council's own expense shall undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs when energised;
- 13.1.4 the Developer shall deliver to the Proper Officer in accordance with the Specification:
- (i) two sets of coloured drawings showing to a scale of 1:500 the Works as constructed;
  - (ii) two copies of the Health and Safety File maintained by the Developer relating to the Works pursuant to the Construction (Design and Management) Regulations 1994;
  - (iii) highways inventory data in the form specified by the Proper Officer;
  - (iv) "as-built" records for all Structures; and
  - (v) *information relating to traffic signal equipment non-standard traffic systems equipment and/or non-standard or enhanced surfacing*
- 13.1.5 **BEFORE** the issue of the Part 2 Certificate without cost to the Council to execute and complete or procure the execution and completion by all necessary parties of a Transfer of the Pink Land to the Council such Transfer to be 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) and which are not inconsistent with the use of the Pink Land for the highway purposes or the proper management and maintenance of the Pink Land such Transfer to be in the form annexed hereto and shall pay the Council's legal costs and disbursements in connection with such Transfer

13.1.6 The Developer has paid all accrued costs associated with conducting surveys for inventory

#### **14. FINAL CERTIFICATE**

**BEFORE** the expiration of the Maintenance Period the Developer shall following a site meeting with the Proper Officer forthwith at the Developer's own expense reinstate and make good any defect or damage to the Works which may have arisen from any cause whatsoever or be discovered during the Maintenance Period (including any defect in or damage to the road surface water drainage system) of which the Developer has been notified in writing by the Proper Officer at any time before or after the said site meeting so that the Works comply with the Specification

#### **AND THEN PROVIDED THAT:**

- (i) the Developer has delivered to the Proper Officer the drawings the Health and Safety File the data and the "as-built" records referred to in Clause 13.1.4;
- (ii) the Developer has paid to the Council all amounts due to the Council under this Agreement including the commuted sums as listed in Part 4 of the First Schedule;
- (iii) the Developer has carried out any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer;
- (iv) the Developer has completed or procured to the satisfaction of the Council the Transfer of the Pink Land to the Council and paid all incidental costs consequent upon registration thereof; [and]
- (v) the Developer has obtained and delivered to the Council all necessary Deeds of Grant pursuant to Clause 9 [and
- (vi) the Council has issued the Second Certificate under the Agreement referred to in Recital (4)]
- (vii) the Developer has undertaken all stages of the Safety Audit in accordance with H.D. 19/03 (Road Safety Audit) and addressed all issues raised therein to the satisfaction of the Proper Officer

the Proper Officer shall issue the Final Certificate to the Developer and shall release to the Developer the remaining balance of the Performance Security together with all interest accrued thereon

#### **15. PROCEDURE FOR INSPECTION AND ISSUE OF CERTIFICATES**

**WITHIN** twenty eight days of receipt of written application from the Developer for the issue of any Certificate or part Certificate under this Agreement the Proper Officer shall inspect the

Works and where necessary provide the Developer with a definitive list in writing of any remedial works required to be carried out before the issue of the relevant certificate. Any such remedial works shall be subject to the same inspection procedure detailed in this Clause 15 until such remedial works have been completed to the satisfaction of the Proper Officer who shall within twenty eight days thereafter issue the relevant Certificate

## **16. ADOPTION**

**UPON** the issue of the Final Certificate the Road or Roads shall become a highway or highways maintainable at the public expense

## **17. LEGAL AND OTHER COSTS**

17.1 **ON** the execution of this Agreement or within 14 days of a written demand the Developer shall pay to the Council:

17.1.1 in respect of the costs and expenses incurred or to be incurred by the Council in connection with the technical assessment safety audit and inspection of the Works (excluding Structures) the sum of [ ] Pounds (£[ ]) being eight per centum (8%) of the Estimated Cost 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

17.1.2 the Council's legal costs and disbursements in connection with the preparation completion and registration of this Agreement

17.1.3 the costs and expenses incurred or to be incurred by the Council in connection with the technical approval of design and of construction in relation to Structures (excluding non-Structures soakaways) whether or not to be adopted; [and]

17.1.4 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 Proper Officer deems necessary because of the Works and whether made or implemented before during or after completion of the Works; [and]

*[17.1.5 the commuted sum specified in the second column of Part 4 of the First Schedule in respect of the future maintenance and/or replacement of the corresponding item described in the first column of the same Schedule*

17.1.6 any costs incurred by the Council in connection with the testing or approval of any non-standard traffic systems equipment and/or non-standard or enhanced surfacing

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

## 18. **DETERMINATION BY THE COUNCIL**

**WITHOUT** prejudice to any other right or remedy it may have the Council may determine this Agreement by notice to the Developer such notice to take effect as specified in the notice if the Developer

- (i) fails to perform or observe any of the conditions stipulations or obligations and liabilities on the Developer's part contained in this Agreement; or
- (ii) has an administrative receiver or receiver appointed over the whole or part of the Developer's assets or suffers the appointment of an administrator; or
- (iii) has a winding up order made or (except for the purpose of amalgamation or reconstruction) passes a resolution for voluntary winding up; or
- (iv) enters into any arrangement agreement or composition with and for the benefit of its creditors; or
- (v) being an individual is the subject of a bankruptcy petition or order

## 19. **PART OR PARTS**

19.1 **NOTWITHSTANDING** anything contained in this Agreement the Developer may from time to time during the currency of this Agreement apply to the Proper Officer for the Part 1 Certificate or the Part 2 Certificate in respect of any part of the Road or Roads (being the whole width of the Road or Roads between points to be defined in the application and as agreed by the Proper Officer)

19.2 If the Proper Officer is satisfied that the part of the Road or Roads so defined is in all respects suitable to be treated as a separate road for the purposes of construction and adoption in accordance with the several provisions contained in this Agreement then the Proper Officer shall at his discretion issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of the said part of the Road or Roads as if the said part were the subject of a separate Agreement under which the terms of this Agreement applied to the

said part separately from the remainder of the Road or Roads but without prejudice to the application of this Agreement to the remainder of the Road or Roads

## **20. RELEASE OF PERFORMANCE SECURITY**

20.1 **WITHIN** 28 days of the issue of the Part 1 Certificate the Council shall release to the Developer forty per centum (40%) of the Performance Security

20.2 **WITHIN** 28 days of the issue of the Part 2 Certificate the Council shall release to the Developer a further thirty five per centum (35%) of the Performance Security

20.3 **WITHIN** 28 days of the date of issue of the Final Certificate the Council shall release to the Developer the remaining balance of the Performance Security together with all interest accrued thereon

## **21. ASSIGNMENT**

**THIS** Agreement may not be assigned by the Developer without the written consent of the Council

## **22. NOTICES**

**ALL** notices to be given under this Agreement shall:

- (a) be in writing;
- (b) be signed by the Proper Officer;
- (c) be delivered personally or sent by pre-paid recorded delivery post addressed to the party to be served at the address set out in this Agreement or such other address as may from time to time be notified for the purpose by notice in writing; and
- (d) be deemed to have been served in the case of a notice delivered personally at the time of delivery or in the case of a notice sent by pre-paid recorded delivery post at the expiration of 48 hours after the notice was delivered into the custody of the postal authorities

## **23. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from such Act

## **24. REGISTRATION**



**IMMEDIATELY** after completion of this Agreement the Council will arrange for an entry relating to the covenants contained in Clauses 9 and 13.1.5 to be made in the appropriate register[s] of Title No(s)

**[25. MORTGAGEE CONSENT**

*THE Mortgagee joins herein to consent to the terms of this Agreement but without liability save in the event that the Mortgagee becomes successor in title to the Developer at any time before the obligations on the part of the Developer contained in this Agreement have been performed in full]*

**IN WITNESS** whereof the parties have executed and delivered this Agreement as a deed the day and year first before written

## **THE FIRST SCHEDULE**

### **PART 1**

1. All highway drainage (including drainage situated outside the Road or Roads)
2. All other drainage contained within the highway
3. All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and  
pram-ramps and sub-base and base course surfacing to pedestrian way
4. Carriageway sub-base road base and vehicle crossings (where appropriate)
5. Carriageway base course surfacing and all vehicle crossings (where appropriate)
6. Demarcation of sight lines and clearance of vision splays
7. Street lighting
8. Structures
9. Non-Structure soakaways
10. Street Name Plates (where appropriate)

### **PART 2**

11. All outstanding kerbing not completed in Part 1
12. Pedestrian ways
13. Cycleways
14. Carriageway wearing course (including non-standard or enhanced surfacing) and  
outstanding carriageway base course including (where appropriate) speed restraint  
measures
15. Vision splays and (where appropriate) verges and service strips
16. All outstanding street name plates and (where appropriate) street furniture
17. Road markings where appropriate
18. Traffic signs where appropriate
19. *Non-Standard Traffic Systems Equipment (where appropriate)*
20. All other works described in the Specification and shown on the Drawings

### **PART 3**

*(Structures to be adopted)*

[(Non-Structures Soakaways to be adopted)]

[PART 4

**Commuted Sums**

<u>Item</u>	<u>Amount</u>
Structure(s)	The costs of inspection maintenance repair and eventual replacement of the Structure(s) for a period of [120] years from the date of the Part 2 Certificate [£ ]
Non Structure(s) Soakaways	The costs of inspection maintenance and repair for a period of 15 years from the date of the Part 2 Certificate – a minimum basic sum of £5,000 multiplied by 1.5 to 3.0 depending upon the complexity of construction type and location of each soakaway
Traffic Signal Equipment	The sum of £60,000 for a single traffic signal junction and £30,000 for a single pelican crossing to cover inspection and maintenance over 15 years from the date of the Part 2 Certificate
Non-Standard Traffic Systems Equipment	Commuted sum for inspection and maintenance over 15 years from the date of the Second Certificate [£ ]
Soft-Landscaping Works	Commuted sum for inspection and maintenance over [ 15 ] years – a period from the date of Second Certificate [£ ]
Non-standard street lighting as	Commuted sum if non-standard higher cost

agreed with the Proper Officer

maintenance equipment is accepted and installed –  
[amount determined specific to scheme]

Non-standard or enhanced surfacing  
and street furniture as agreed with  
the Proper Officer

Commuted sum if non-standard higher cost  
maintenance materials are accepted and installed  
[amount determined specific to scheme]

[PART 5

**(Traffic Signal Equipment)**

**[and Non-Standard Traffic Systems Equipment]**

- 1. Within one calendar month from receipt of a written request from the Developer together with acceptable drawings and a computer data file detailing the proposed layout of the [insert description / name of the junction[s] / crossing[s]] the Traffic Signal Engineer shall commence the detailed design specification and preparation of tender documents for the traffic signal equipment [and Non-Standard Traffic Systems Equipment] for connection to the Kent Urban Traffic Control System or Remote Monitoring and diligently complete the same for the agreement of the Developer*
- 2. The drawings and computer data file showing the [junction[s] / crossing[s]] layout[s] shall be based on a detailed geometric survey showing existing and proposed detail to be carried out by the Developer and shall cover an area including at least 100 metres from the proposed stop-line on each approach subject to a speed limit up to and including 30 miles per hour and 200 metres from the proposed stop-line on each approach subject to a speed limit greater than 30 miles per hour The drawings shall include at least one drawing to 1:500 scale showing the proposed layout of [the]/each [junction] / [crossing] The computer data file shall be in a form fully compatible with AUTOCAD Release 14 or otherwise by agreement with the Traffic Signal Engineer The data shall be structured so that separate layers are used for each type of detail as agreed with the Traffic Signal Engineer*
- 3. Prior to inviting tenders for the traffic signal equipment [and Non-Standard Traffic Systems Equipment] the Traffic Signal Engineer shall send to the Developer drawings or a computer*

*data file showing the duct runs and location of inspection pits traffic signal posts the electricity distribution pillar the controller and other equipment for [the]/[each] [junction] / [crossing] together with standard drawings showing installation details and a schedule of signal company requirements for inclusion in the tender documents for the execution of the Works*

- 4. Unless within 10 working days of the date the drawings or computer data file referred to in paragraph 3 above are sent to the Developer the Developer shall request otherwise the Traffic Signal Engineer shall as soon as possible thereafter invite tenders for the supply and installation of the traffic signal equipment [and Non-Standard Traffic Systems Equipment] under a fixed price contract from companies that supply such equipment of type approved by the Department of the Environment Transport and the Regions and compatible with the Kent Urban Traffic Control System or Remote Monitoring and shall notify the Developer that he has done so The tender period shall be no greater than six weeks and tenders will require to be valid for acceptance within a period of sixty working days from the required return date*
- 5. On receipt of tenders the Traffic Signal Engineer shall as soon as possible check and assess these and advise the Developer which tenders should be accepted and seek authority from the Developer to place orders for the traffic signal equipment [and Non-Standard Traffic Systems Equipment]*
- 6. Within 10 working days of receiving written authority from the Developer as aforesaid the Traffic Signal Engineer shall place orders for the traffic signal equipment [and Non-Standard Traffic Systems Equipment] and the Developer shall within 10 working days of written demand pay the Traffic Signal Engineer" costs to date for designing preparing tender documents and contracting for the equipment estimate to be £ [ ] (but for the avoidance of doubt the Developer will pay the actual costs incurred)*
- 7. Following acceptance of tenders by the Council the Developer shall within 10 working days of written demand pay to the Council the full tender price for the supply installation and commissioning of the traffic signal equipment [and Non-Standard Traffic Systems Equipment]*
- 8. At no cost to the Council the Developer shall ensure that:*
- 8.1 all traffic signal poles are erected with the cable entry in the base of each pole exposed and facing the nearest access to the duct network as directed by the Traffic Signal Engineer*

- 8.2 *the controller cabinets and roots are fixed in position adjacent to the electricity distribution pillars with power supplies connected as required in preparation for installing cables*
- 8.3 *all ducts junctions pits and junction boxes are in place with draw strings in each duct*
- 8.4 *labour is provided for assistance during cable pulling operations and to expose ducts in the carriageway for loop tails prior to slot cutting*
- 8.5 *signing watching lighting and traffic management measures are provided throughout the period of installation and slot cutting operations at [the]/[each] site and*
- 8.6 *a mains pressure water supply is available for slot cutting at [the]/[each] site if no fire hydrant is available a water bowser will be required to be supplied*
9. *The Traffic Signal Engineer shall supervise the controller programming acceptance testing installation and commissioning of the traffic signal equipment [and Non-Standard Traffic Systems Equipment] and ensure that this is tested installed and commissioned in accordance with the accepted tender documentation and as expeditiously as possible in accordance with the Programme following which the Developer shall within 10 working days of demand pay the Traffic Signal Engineer's costs to date in supervising the controller programming acceptance testing installation and commissioning of the traffic signal equipment [and Non-Standard Traffic Systems Equipment] estimated as being £[ ] (but for the avoidance of doubt the Developer will pay the actual costs incurred) together with the commuted sum in respect of the future maintenance by the Council of the traffic signal equipment [and Non-Standard Traffic Systems Equipment]*
10. *As the tender price quoted by the traffic signal company will include a variable item for loop detector cutting and minor alterations to the traffic signal equipment [and Non-Standard Traffic Systems Equipment] as may prove necessary during installation and commissioning a small variation in price may occur but this is estimated to be no more than  $\pm 10\%$  of the tender price A final account or refund in respect of such variation shall be sent to the Developer within 20 working days of receipt of the same from the traffic signal company and any additional sum due from the Developer shall be paid to the Council within 10 working days of demand*
11. *The Council shall not be held responsible for any failure of the traffic signal company to deliver the traffic signal equipment [and Non-Standard Traffic Systems Equipment] within the stated period but shall use all reasonable endeavours to ensure that it is so delivered*

12. *The Council shall maintain the traffic signal equipment [and Non-Standard Traffic Systems Equipment] in good repair from the date of its commissioning*
13. *The estimated costs quoted above may be varied in accordance with the movements in the Association of Consulting Engineers Output Index from the date of this Agreement to the date payment is demanded and do not include VAT which will be applied in accordance with the legislation applicable at the relevant time]*



**THE SECOND SCHEDULE**

DATED

200

**(1)\*[The Developer/Plot Owner]**

**\*[(2) [The Mortgagee]]**

**- and -**

**THE KENT COUNTY COUNCIL \*[(2)/(3)]**

---

**DEED OF GRANT**

of easements and rights as to surface water  
drainage apparatus situate on land at

Kent

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County and District: : KENT :  
Title Number : K  
Property : \*[as in Developer's Title/  
Address of property (formerly known as  
Plot )]

THIS DEED is made the day of [year]

BETWEEN

of

("the Grantor") of the \*[one/first] part

\*[ of

("the Mortgagee") of the second part] and THE KENT COUNTY COUNCIL of Sessions  
House County Hall Maidstone Kent ME14 1XQ ("the Grantee") of the \*[other/third] part

WHEREAS:-

- (1) [The Grantor/name of Developer] has recently developed a housing estate ("the estate") on the land comprised in \*[the above numbered Title/Title Number ] and has constructed on the Estate [a] housing estate road[s] ("the Road[s]") together with [a] surface water drain[s] and soakaway[s] ("the Drainage Works") for the purpose of draining surface water from the Road[s]
- (2) Part of the Drainage Works have been constructed in on or under that part of the land comprised in the above-numbered Title shown coloured brown on the plan annexed hereto which land ("the Land") is (with other land) vested in the Grantor
- (3) The Grantee is the registered proprietor of the land comprised in Title Number [ ] which includes the Road[s] and has requested the Grantor to grant to the Grantee the easements hereinafter mentioned in respect of the Drainage

Works

- (4) The Grantor has agreed to make the grant to the Grantee \*[and the Mortgagee has agreed to confirm the grant] hereinafter contained

**NOW THIS DEED WITNESSETH** as follows:-

1. IN pursuance of the said agreement and in consideration of ONE POUND (£1.00) now paid by the Grantee to the Grantor (the receipt whereof is hereby acknowledged) the Grantor HEREBY GRANTS with full title guarantee \*[and the Mortgagee as Mortgagee hereby confirms] unto the Grantee from time to time and at all times hereafter:
  - (i) full right and liberty unto the Grantee its successors in title and its or their servants and agents to enter upon cross and recross with or without all necessary apparatus and vehicles so much of the Land as may be necessary to enable the Grantee to maintain inspect renew and repair therein the Drainage Works
  - (ii) full right and liberty for the Grantee and its successors in title to use the Drainage Works for the purpose of passing surface water from the Road[s] into the said soakaway[s]

**TO HOLD** the said rights and liberties unto the Grantee in fee simple

2. THE Grantee hereby covenants with the Grantor to exercise the rights hereby granted in such manner as to do as little damage as possible to the Land and to make good all disturbance to the surface of the Land which may arise in connection with the maintenance inspection renewal and repair of the Drainage Works
3. THE Grantor and the Grantee hereby apply to the Chief Land Registrar to enter Notice of the rights hereby granted in the Charges Register of Title Number [K ] and in the Property Register of Title Number [K ]

**IN WITNESS** whereof the parties hereto have duly executed this Deed the day and year first before written

\*

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

Director

Secretary]

\*[SIGNED AND DELIVERED by the )  
Grantor in the presence of:- )]

\*

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

]

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

Authorised Signatory

Member of the Kent County Council

\*Delete as appropriate

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

Authorised Signatory

Member of the Kent County Council

**[For Companies having a Common Seal**

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

Director

Secretary

**[For Companies not having a Common Seal**

SIGNED as a Deed by the DEVELOPER     )  
acting by [a Director and its Secretary     )  
or two Directors]     )

Director

Director/Secretary

*[THE COMMON SEAL of the Mortgagee     )  
was hereunto affixed in the presence of:-     )*