WEE152 C/11/69687 00366/13

DATED 22 may 2013

HAMPSHIRE COUNTY COUNCIL

- and -

LINDEN ~~HOMES~~ Limited

- and -

NATIONAL HOUSE BUILDING COUNCIL

- and -

HSBC BANK PLC

-and-

SOUTHAMPTON CITY COUNCIL

Deed of Agreement relating to the construction of a highway at
Romill Close West End Southampton
pursuant to (inter alia) S.38 Highways Act 1980

HCC File Ref: PT32A304

I hereby certify that this is a true copy

[redacted]

Head of Legal Services

Kevin Gardner LLB, Solicitor
Head of Legal Services
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ

1.11.12

HAMPSHIRE COUNTY COUNCIL

SECTION 38 DEED OF AGREEMENT

Date: 22 May 2013

PARTIES:

1. **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester [redacted] Hampshire SO23 8UJ ("**the County Council**")
2. **LINDEN ~~HOMES~~ LIMITED** (Company Registration Numbe[redacted] 1108676) whose registered office is situated at Cowley Busi[redacted] Park Cowley Uxbridge UB8 2AL ("**the Developer**")
3. **NATIONAL HOUSE BUILDING COUNCIL** (Company Registration Number 00320784) whose registered office is situated at NHBC House Davy Avenue Knowlhill Milton Keynes Bucks MK5 8FP ("**the Surety**")
4. **HSBC Bank PLC** (Company Registration Number 00014259) whose registered office is situated at *8 Canada Square London E14 5EQ* ("**the Mortgagee**")
5. **SOUTHAMPTON CITY COUNCIL of** Civic Centre, Southampton, SO14 7LY ("**the City Council**")

WHEREAS

A. The County Council is the Highway Authority for Hampshire and the City Council is the Highway Authority for the City of Southampton and the Site and the Works are located in both Hampshire and the City of Southampton

B. The Developer is the registered proprietor with title absolute of the Site registered at Land Registry under Title Number HP 753828 SAVE for any individual parcels which may have at the time of this Deed

previously been disposed of subject to a Charge in favour of the Mortgagee

C. The Developer has been granted Planning Permission to develop the Site and proposes to construct on part of the Site the Works for public use in the positions identified on the Drawings to facilitate the erection of and access to the Development and desires that the Works become highway maintainable at public expense on the terms and conditions hereinafter contained

D. The County Council has approved the Drawings for the carrying out of the Works and subject to compliance with the terms and conditions of this Agreement the Works shall become highway maintainable at public expense

E. The Mortgagee has an interest in the Site pursuant to the Charge

NOW THIS DEED OF AGREEMENT WITNESSETH as follows:

Definitions and interpretation

1. In this Agreement:

1.1. the following expressions shall have the following meanings:

"CMD Regulations"		Means the Construction (Design and Management) Regulations 2007
"Charge"		Means a legal charge dated 28 September 2012 in favour of the Mortgagee
"Chartered Engineer"		Means a person registered as an

		engineer with the Engineering Council as having the technical knowledge and practical experience to satisfy its preferred requirements
"CGMS"		Means the 'Companion Guide to Manual for Streets – adopted April 2010' published by the County Council (as modified extended or replaced by supplements or revisions issued by the County Council from time to time)
"Development"		Means the development of residential dwellings at Romill Close
"Drawings"		Means the drawing as set out in Schedule 3 (or such others as shall be approved in writing by the County Council) together with the Location Plan identifying the Works by reference to the colours orange blue brown red green
"HMMP"		Means the document 'Highway Maintenance Management Plan – April 2004' published by the County Council (as modified

		extended or replaced by supplements or revisions issued by the County Council from time to time)
"Head of Legal Services"		Means the County Council's Head of Legal Services or such other officer as shall responsible for the provision of legal advice to the County Council
"Highway Condition Survey"		Means a highway condition survey which will identify the current condition of the highway in the vicinity of the Site (the extent of which shall be agreed by the County Council) and such condition survey are in accordance with Appendix 3 paragraph 3.1.7 of the CGMS
"Location Plan"		Means the plan reference *P589/002* annexed to this Agreement which identifies the Site being the location of the Works
"Maintenance Period"		Means a period of at least 12 months following the date of issue of the Part 2 Certificate



[redacted]

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Rev.	Date	Description	Drawn	Checked

Client
gleeson

Project
Land to the East of Romill Close
Swaythling, Eastleigh SO18 3NE

Drawing Title
Location Plan

Scale 1:1250 @ A2 Drawn DGP Checked DGP
Date June '08 File Location Plan Drawing Status
DrgFile P589/002 Rev. – Preliminary

AAP Architecture Ltd, Unit A, Monument Business Centre, Monument Way East, Woking, Surrey, GU21 5LY. Tel: 01483 727345 Fax: 01483 727375
Web: www.aap-arch.co.uk E-mail: projects@aap-arch.co.uk

This drawing is the copyright of AAP Architecture Ltd.

"Management Plan"		Means a works management plan produced by the Developer showing how in the course of planning and construction of the Works the Developer will: (i) minimise disruption to all types of traffic; (ii) avoid instances of newly surfaced highway having to be re-excavated or have further works carried out on them; (iii) minimise the number of closures/diversions required by the Works; (iv) ensure that it takes into consideration the safety of all types of traffic that may be diverted or affected by the Works.
"Part 1 Certificate"		Means a certificate issued by the County Council in accordance with the provisions of Clause 15
"Part 2 Certificate"		Means a certificate issued by the County Council in accordance with the provisions of Clause 17
"Part 1 Works"		Means those parts of the Works as set out in Schedule 1 annexed

		to this Agreement
"Part 2 Works"		Means those parts of the Works as set out in Schedule 2 annexed to this Agreement
"Planning Permission"		Means the planning permission reference C/11/69687 granted by Eastleigh Borough Council for the development of the Site requiring the Works
"Programme"		Means the programme for execution of the Works agreed in writing by the County Council
"Site"		Means certain land at Romill Close shown edged red on the Location Plan having the benefit of the Planning Permission
"Specification"		Means the CGMS the HMMP and (if applicable) the document Manual for Streets 2007 and Design Manual for Roads and Bridges published by the Department for Transport (as modified extended supplemented or revised including any replacement thereof) and any

		other applicable document published by the County Council or the Department of Transport all as in force at the date of commencement of the Works
"Street Lighting PFI"		Means the South Coast Street Lighting Private Finance Initiative
"Structure(s)"		Means any structure or structures (as the context so requires) as defined in the HMMP
"SWMP Regulations"		Means Site Waste Management Plan Regulations 2008
"TSO"		Means The Stationery Office Limited (03049649) and whose registered office is at 10 Eastbourne Terrace, London W2 6LG being formerly Her Majesty's Stationery Office
"Working Day"		Means any day Monday to Friday inclusive excluding bank holidays between the hours of 0830 and 1630 and the expression 'Working Days' shall be construed accordingly
"Works"		Means a road for mechanically

		propelled vehicles including Structures highway drainage system swales footpaths and footways street lighting grass as shown on the Drawings identifying the Works by reference to the colours orange blue mauve brown red green

1.2. In this Agreement where the context so admits the singular number shall include the plural number and the masculine and neutral genders shall include the feminine gender and vice-versa

Statutory Powers

2. This Deed of Agreement is made pursuant to Sections 38 251 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 Sections 2 3 and 4 of the Local Government Act 2000 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers and

2.1. for the purposes of Section 251 of the Highways Act 1980 the County Council certifies that this Agreement is made in connection with its functions as Highway Authority under the Highways Act 1980 and;

2.2. all the covenants contained in this Agreement shall be binding upon the Developer and its successors in title to the Site and assigns

General Matters

3. Where any agreement certificate or approval is to be given by the County Council under the terms of this Agreement then the same shall be in writing and not be unreasonably withheld or delayed

4. Any notice or other communication to be served by the Developer under the terms of this Agreement shall be in writing and shall not be deemed to be given until received by the County Council at The Castle, Winchester, Hampshire SO23 8UJ and addressed to the Director of Economy Transport and Environment or to such addressee as the County Council may from time to time stipulate

5. Consent of the City Council

(i) The City Council hereby authorises the County Council to carry out the City Council's powers duties and functions as Highway Authority for the City of Southampton in respect of that portion of the Works which lie within the City of Southampton

(ii) The City Council hereby authorises the Developer to carry out that portion of the Works at the Developer's expense which lie within the City of Southampton strictly in accordance with the terms of this Agreement.

Developer's Covenants

6. The Developer hereby covenants with the County Council and the City Council as follows:

Execution of Works

6.1. To carry out at its own expense and at no cost to the County Council or the City Council the Works in accordance with the Drawings and in accordance with the Programme agreed by the County Council after compliance by the Developer with its obligations contained in Clauses 7 and 9

6.2. To carry out the Works in accordance with the Specification

6.3. To notify the County Council that the Works have commenced the next Working Day following commencement thereof and to thereafter notify the County Council (giving at least two Working Days notice) of the commencement of all stages of excavation and concrete operations concerned with any Structures forming part of the Works

6.4. To carry out the Works to the complete satisfaction of the County Council and having complied with the requirements required and referred to in Clauses 6 and 8 hereof that it shall:-

6.4.1. properly sewer level pave flag kerb channel metal and otherwise make good the site of the carriageway of the Works including all such works as may be required by the County Council to secure the connection of the Works with the highway known as Mansbridge Road

6.4.2. provide the street lighting in accordance with the Street Lighting Policy Guide of the County Council in force at the date hereof and in accordance with any other requirements of the County Council in the positions as shall be determined by agreement with the County Council and maintain same until the Works become highway maintainable at public expense

6.4.3. properly construct footpaths and footways for pedestrians and any shared surfaces and cycle tracks together with vehicle and pedestrian crossings in accordance with the Drawings

6.4.4. lay out the open spaces forming a road island and any verges and landscape works if shown on the Drawings

6.4.5. provide road signs (including illuminated signs) and road markings to the specifications of and in the positions determined by the County Council and street name plates as agreed by the District Council

6.4.6. acquire all easements and consents requisite for providing and maintaining disposal systems for surface water highway drainage from the Works and for providing a proper out-fall for such systems

6.4.7. include in any transfer conveyance lease or other disposition of the Works or part of the Works appropriate covenants not to build any structure or other construction on the Works and covenants to provide all easements necessary for the proper maintenance drainage and lighting of the road or roads to be adopted and in particular (provided that buildings do not immediately abut the adoptable highway) where there will be no adopted verge or footway within which communal services may be laid to include in every conveyance transfer or lease of the Works or any part thereof an exception and reservation in the following or substantially the following terms:-

"**EXCEPT AND RESERVED** in fee simple unto the

Transferor the Highway Authority and the suppliers of mains gas water electricity telephone telecommunications and drainage services on not less than seven days previous written notice to the Transferee (but without notice in case of emergency) the right to maintain and renew such of those services including highway drainage as are already existing and the right within the period of eighty years herefrom to lay and install such services in the areas coloured brown green or orange on the Drawings with full right and liberty on giving notice as aforesaid to enter onto the said strip for the purpose of maintaining renewing laying and installing the said services"

6.4.8. cause all foul sewers surface water sewers highway drains gas and water mains electric cables television telecommunication cables and/or ducting which are to be laid under the proposed highway together with all necessary connections from them to the highway boundary to be laid to the satisfaction of the County Council before the foundations of the Works are laid and also cause the connections from electric cables to the street lamps to be laid before the paving of any footpath footway or cycle track is carried out

6.4.9. during the progress of the Works give the County Council free access to every part of the site of the Works for the purposes of testing and/or inspecting the Works as they proceed and all materials for use therein and if the County Council shall require the Developer so to do he shall uncover or open up any Works to enable the same to be inspected and if required tested at the expense of the Developer and if so required the Developer shall

remove any work or materials which are in the opinion of the County Council defective unsuitable or not in accordance with the Drawings and the Specification and all other approvals given by the County Council as hereinbefore mentioned and at the expense of the Developer re-execute any such works and substitute proper and suitable materials to the complete satisfaction of the County Council

6.4.10. with regard to any Structures prepare for the County Council detailed contract drawings for technical approval in accordance with Department for Transport document BD2/05 and the HMMP or any amendment/replacement thereof

6.4.11. ensure that the structure design and checking procedure for any Structure is carried out by a Chartered Engineer familiar with Department for Transport Standards who shall state on Form AIP or any amendment/replacement thereof the documents which will be applicable and which will need to be agreed. The procedure document HMMP applicable to highway structures shall be obtained from the County Council before details are submitted for approval

6.4.12. complete an unmetered connection agreement with the relevant Distribution Network Operator(s) for the unmetered public lighting supply of electricity in respect of street lighting

6.4.13. complete a supply agreement with the relevant electricity supply company in respect of the street lighting and pay for all electricity supplied up to the time the Works shall become a highway maintainable at public expense

6.5. Complete the Works within 36 months of their commencement (or such longer period as the Council may at its absolute discretion agree in writing and subject to any additional costs as the Council may reasonably require)

6.6. Not at any time give consent to the erection by any telecommunications operator of telegraph or telephone poles or of telephone kiosks or by the Post Office of letter boxes or to the erection by any company whether public or private (including statutory undertakers) or to any firm or individual of any overground or underground equipment or apparatus or bus stops and/or shelters and any other street furniture without the consent in writing of the County Council first having been obtained

Public Liability Insurance

6.7. That is shall without prejudice to its liability under Clause 5.8 and 5.9 hereof to indemnify the County Council be insured for the duration of the Works and the Maintenance Period against public liability risks for a sum of at least £10,000,000 in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured against public liability risks and the Developer or any person authorised by it to carry out the Works shall on request by the County Council or the City Council produce for inspection the relevant policies of insurance together with receipts for the premiums paid

Indemnity

6.8. The Developer shall indemnify and keep indemnified the County Council and the City Council against all liabilities actions charges costs claims demands and expenses arising under Parts I and II of the Land Compensation Act 1973 (as amended) and regulations made thereunder or any statutory modification or re-enactment thereof for the time being in force (including for the avoidance of doubt claims the County Council determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations) arising from or incidental to the construction adoption use or lighting of the Works or resulting from or in consequence of any alteration or use of existing roads or lighting required by the highway authority

6.9. The Developer shall indemnify and keep indemnified the County Council and the City Council against all liabilities actions charges costs claims demands and expenses arising prior to and/or during the Maintenance Period arising out of or in connection with the carrying out of the Works and any works required by any Statutory Undertaker

Dedication

6.10. That it hereby dedicates so much of the site of the Works as lies within the Site to the use of the public as highway including where appropriate a right for mechanically propelled vehicles such dedication to be effective from the date of the Part 2 Certificate hereinafter referred to **PROVIDED THAT** should the County Council enter the Site in order to complete the Works pursuant to Clause 24 then dedication shall be effective from the date of such entry

Restrictions on commencement of Works

7. The Developer shall not commence the Works until:

Notices

7.1. it has notified any statutory undertaker in writing at least 4 months prior to the commencement of any work connected with statutory undertakers equipment located in on or under any existing highway or which might be affected by the Works of the proposal to carry out the Works or which might be required in consequence of the Works and shall place orders and pay any costs to all statutory undertakers for all works to their mains or services necessitated by the Works and shall relocate all street furniture affected to the satisfaction of the County Council;

7.2. notified the County Council in writing at least 4 months prior to the commencement of the Works of its intention to proceed with the Works and further notified the County Council at least 10 clear Working Days prior to commencement of the Works

7.3. the Programme has been approved by the County Council in writing

7.4. any necessary licences have been obtained and notices pursuant to the New Roads and Street Works Act 1991

7.5. the Developer has demonstrated to the satisfaction of the County Council how it will comply with the Code of Practice for the Co-ordination of Street Works for Road Purposes and Related Matters 1992 and has submitted to the County Council a Management Plan and such Management Plan has been approved in writing by the County Council

7.6. the Developer has submitted to the County Council and the County Council has approved a Highway Condition Survey

7.7. the Developer has demonstrated to the satisfaction of the County Council the disposal of the highway run-off via a suitable highway drainage system including the provision if necessary of all necessary easements with third party land owners and discharge rights to private water courses

Payments

8. The Developer further covenants with the County Council to pay to the County Council:

On the date of the Agreement

8.1. On the date hereof the whole of the reasonable costs incurred by the County Council in the preparation and administration of this Deed

Prior to commencement of the Works

8.2. On demand and in any event prior to commencement of the Works a sum equal to 10 per cent of the cost of the Works as estimated by the County Council or £2,000 (whichever is the greater) being a sum on account of the County Council's reasonable costs incurred by the County Council in:

(a) approving the detailed contract Drawings for the Works including the cost of approval of preliminary design check Drawings and structural approvals; and

(b) in inspecting the Works

(less any pre-check fees already paid to the County Council) on account of such costs AND further shall pay any balance of the whole of the County Council's reasonable costs incurred in approving the

detailed contract Drawings and inspecting the Works such balance being due within 14 days following receipt of an invoice from the County Council

8.3. On demand and in any event prior to commencement in the case of the design and specification of the landscaping and street lighting an approval fee of £1,000 as approved by the County Council

8.4. On demand and in any event prior to commencement of the Works the full cost to the County Council of any traffic regulation orders/ road hump notices required to facilitate the Works or required in consequence of the Works plus any additional works required by the County Council in consequence thereof

Prior to issue of Adoption Certificate

8.5. Prior to the issue of the Adoption Certificate and in respect of the future maintenance of:-

8.5.1. highway structures (being swales) in the sum of £7.43 per sq m (total area 172 sq m)

8.6. On demand and in any event prior to the issue of the Adoption Certificate the costs of all design checks and inspections together with a fee of £40 per lighting unit to permit all Street Lighting PFI compliant illuminated signs and street lighting columns to be accrued into the Street Lighting PFI

8.7. On demand and in any event prior to the issue of the Adoption Certificate any additional inspection fees being 2.5% of the outstanding bond if the timescale noted in Clause 6.5 is exceeded.

Notice to Statutory Undertakers

9. The Developer shall before connecting the Works with any highway or highways whether or not maintainable at the public expense give notice to each person board or authority being the statutory undertaker for the time being of any service or services laid in upon or under such highway or highways of the proposal to make such connection as if the connection were a work to be executed for road purposes as mentioned in the New Roads and Street Works Act 1991 and shall indemnify the County Council in respect of the costs of any works or measures considered necessary by any statutory undertaker in consequence of the proposal to make such connection

Authority granted to Developer

10. The County Council and the City Council hereby authorise the Developer to carry out the Works within the public highway subject to and strictly in accordance with the terms and conditions of this Agreement

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

12. **It is further agreed between the parties that:**

12.1. In accordance with Regulation 8 of the CDM Regulations the Developer hereby elects to be the only client for the purposes of the CDM Regulations for any part of the Works as may be within the public highway and the County Council consents to such an

election and for the avoidance of doubt the County Council shall have a duty only under Regulations 5(1)(b) 10(1) 15 and 17 of the CDM Regulations insofar as those duties relate to health and safety information in the County Council's possession as a Highway Authority relating to the public highway

12.2. Where in accordance with Regulation 2(3) of the CDM Regulations the Works are notifiable the Developer as the only client shall prior to commencement of the Works provide to the County Council:-

12.2.1. written details of the CDM co-ordinator and the principal contractor

12.2.2. a copy of the Notification of Project (form HSE10) to the HSE pursuant to Regulation 21 of the CDM Regulations

12.2.3. confirmation that a construction phase plan has been provided to the CDM co-ordinator and the CDM co-ordinator has advised that such plan is suitable for the Works

12.3. If the SWMP Regulations apply to the Works then the Developer is the client pursuant to the SWMP Regulations and only client and all duties and responsibilities on the part of the client for the purposes of the SWMP Regulations shall be the responsibility of the Developer

12.4. If any part of the Works are within the public highway and the SWMP Regulations apply to the Works the Developer shall prior to commencement of the Works prepare a site waste

management plan appoint a principal contractor and provide to the County Council details of the principal contractor

12.5. If required by the County Council if any part of the Works are within the public highway such part of the Works shall be signed and protected to at least the standards of Traffic Signs Manual Chapter 8 2nd Edition published by TSO in March 2009 and the proposed arrangements shall be approved in writing by the County Council and the Police before the Works commence

12.6. If required by the County Council prior to the commencement of the Works the Developer shall arrange for a noise survey and assessment to be undertaken by a competent noise expert approved by the County Council in accordance with the advice and instruction contained in the technical memorandum entitled '*Calculation of Road Traffic Noise*' published June 1988 by the TSO (as may be amended from time to time) in such manner and at such times and locations approved by the County Council and a copy of the survey and assessment shall be given to the County Council and the Developer shall undertake prior to the commencement of the Works all and any requirements arising therefrom at its own expense

12.7. The Developer shall prior to commencement of the Works submit to the County Council for its approval a Highway Condition Survey which will identify the current condition of the highway in the vicinity of the site. Details of the condition survey are in accordance with Clause 3.1.7 of the Council's Companion Guide to Manual for Streets

Records

13. The Developer shall maintain records throughout the construction of the Works and provide to the County Council upon request and in event at least three months prior to the issue of the Adoption Certificate:-

13.1. in respect of Structures:

13.1.1. a maintenance manual to include suitable scale electronic data sets and paper sets of "as built" Drawingss soil reports records of materials tested Health and Safety file revised forms AIP and associated certificates

13.2. and in respect of the Works generally:

13.2.1. Health and Safety files in electronic form

13.2.2. accurate 1:500 scale of "as-built" Drawingss supplied electronically on disc as an image file j-peg and as a CAD Drawings in .dwg format and one paper set of "as built" Drawingss

13.2.3. if required by the County Council records of the earthworks showing sources of material used in areas of fill description of fill materials descriptions of sub-grades in cut areas copies of results of tests of material carried out as part of the supervision of the construction of the Works

13.2.4. if required by the County Council records of the sources of supply of all other manufactured materials (eg. drainage goods fencing materials traffic signs electrical components and cables etc.)

13.2.5. up to date Electrical Installation Certificate and schedule of test results in accordance with BS 7671 or any amendment/replacement thereof and which certificate shall be signed by a competent person in accordance with Appendix 6 of the BS 7671 in a format approved by the County Council

Road Safety Audit

14. Immediately prior to the issue of the Part 2 Certificate (and also if required by the County Council prior to issue of the Adoption Certificate on site road safety audits shall be carried out by the Developer or suitably qualified representative in the presence of the County Council and arising therefrom the County Council shall be at liberty to require such alterations to the Drawings together with such necessary statutory consents and any other Drawings approved pursuant to this Agreement and to the Works at the expense of the Developer as may be reasonably required to ensure the safety of users of the highway

Issue of Part 1 Certificate

15. The Developer shall on completing the Part 1 Works provide to the County Council a CCTV survey of all highway drainage including gullies, manholes and catchpits and shall thereafter carry out any remedial works required by the County Council in respect of all aforesaid highway drainage

16. On completion of the Part 1 Works to the reasonable satisfaction of the County Council in all respects (and subject always to the requirements of Clause 15 having been first complied with) the County Council shall issue a Part 1 Certificate

Issue of Part 2 Certificate

17. On completion of the Works to the reasonable satisfaction of the County Council in all respects (and subject always to Clause 17) the County Council shall issue a Part 2 Certificate PROVIDED THAT the County Council shall be at liberty to delay the issue of a Part 2 Certificate if any sewer or sewage disposal works constructed under or otherwise within the site of the Works under an agreement made pursuant to Section 104 of the Water Industry Act 1991 (as amended) has not been certified by the sewerage undertaker party to such agreement to be completed and placed on maintenance

18. The Developer shall remain the street manager for the purposes of Section 49(4) of the New Roads and Street Works Act 1991 until such time as the Works shall become maintainable at public expense as hereinafter provided under Clause 21

Public Usage

19. Upon issue by the County Council of a Part 2 Certificate the Works shall immediately and automatically be open to all traffic at all times and for all appropriate purposes

Maintenance of the Works

20. The Developer shall:

20.1. fully maintain the Works to the satisfaction of the County Council for the Maintenance Period from completion of the Works and reinstate and make good any defect or damage or safety issues which may arise from any cause whatsoever or which may be discovered at any time and further until such time as the Works

become a highway maintainable at public expense as hereinafter provided under Clause 21

20.2. for the purposes of Sub-Clause 20.1 above the Maintenance Period shall be deemed to commence when all of the Works have been completed to the satisfaction of the County Council as evidenced by the issue by the County Council of a Part 2 Certificate in accordance with Clause 17

Issue of Adoption Certificate

21. Upon the issue of the Part 2 Certificate and on the Works having been maintained in the manner hereinbefore contained for the Maintenance Period and upon any defects in the Works arising or safety issues identified during the Maintenance Period hereinbefore mentioned having been made good and all sums due under this Agreement having been paid and upon production of all easements and consents required and evidence that any sewers have been vested in the appropriate sewerage undertaker under this Agreement the County Council shall upon request from the Developer thereupon issue an Adoption Certificate PROVIDED THAT the County Council shall be at liberty to delay the issue of the Adoption Certificate if in its opinion the Works are likely to be used by heavy or other construction vehicles driven by or on behalf of the Developer or its servants and agents or contactors or other developers in connection with road or building works carried out on the site or on adjoining land and in which case the Maintenance Period shall be extended accordingly

Adoption

22. Upon the issue of the Adoption Certificate the Works and easements shall be deemed to be accepted by the County Council as a public highway maintainable at public expense

Extraordinary Traffic

23. If after the issue of the Adoption Certificate the Developer shall wish to use on any section of the Works lorries or other heavy vehicles driven on behalf of the Developer in connection with road or building works carried out on the Site or on any adjoining land he shall first consult the Council and any such traffic shall in any event be deemed to be extraordinary traffic for the purposes of Section 59 of the Highways Act 1980 and the Developer agrees to pay to the Council any additional cost of repair or maintenance as may be certified by the Council as being attributable to such extraordinary traffic due allowance being made for the ordinary cost of maintenance of such section of the highway by reason of normal wear and tear

Determination by the County Council

24. If the Developer fails to perform or observe any of the conditions stipulations or obligations on its part contained herein or if a receiving order in bankruptcy is made against it or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the County Council may without prejudice to any of their rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (SAVE for Clauses 25 to 28 inclusive hereof which shall remain in force) by notice in writing signed by

the Head of Legal Services of the County Council and delivered to the Developer or sent by post to the address stated in this Agreement

25. Without prejudice to the terms hereof if the Developer fails to execute or complete the Works in accordance with its obligations hereunder the County Council shall after not less than fourteen days notice in writing to the Developer (or immediately in any case of emergency or danger) be entitled to enter the Site and complete the Works or reinstate the highway or complete such alternative works as the County Council considers appropriate in default with its own employees or by contract or otherwise and to recover the cost as certified by the County Council

Surety's Obligations

26. Without prejudice to Clause 6 and Clause 9 hereof and to the right of the County Council to exercise any of its rights and powers under the Highways Act 1980 or any other statutory provision in the event of non-observance or breach of any of the terms of the covenants on the part of the Developer herein contained the County Council may serve on the Developer written notice of such non-observance or breach indicating action to be taken and a timescale within which such action must be taken in order to remedy the non-observance or breach and if within the stated timescale the action specified has not been taken to the satisfaction of the County Council then notwithstanding the termination of this Agreement by the Council pursuant to Clause 24 in consequence of the non-observance or breach then the County Council shall have:

- the right to remedy the non-observance or breach and complete the Works in default by its own employees or by contract or otherwise; and
- a right of entry to the Site at all times and for all such purposes is hereby irrevocably granted to the County Council; and
- a right to recover the costs incurred by the County Council in remedying the breach or non-observance thereof as certified by the County Council from the Developer or the Surety

AND the Surety shall pay to the County Council upon first demand by the County Council:

26.1. such sum of money as the County Council may certify to be necessary to perform the obligations of the Developer under this Agreement and

26.2. ten per centum of the total sum payable in accordance with the provisions of this Clause 26 or should the cost be larger such greater sum as may be reasonably required in respect of the cost to the County Council of preparing and supervising the execution of an alternative contract and

26.3. such further sum of money as the Head of Legal Services may certify to be necessary fully to reimburse the County Council in respect of any costs and expenses incurred by the County Council in enforcement of the obligations on the part of the Developer and the Surety under this Agreement

PROVIDED THAT the total sums payable by the Surety under this Clause 26 shall not exceed £525542(five hundred and twenty five thousand five hundred and forty two pounds)

27. Upon issue of the Part 1 Certificate the liability of the Surety pursuant to Clause 26 may with the approval in writing of the County Council be reduced down to 50% of the total sums payable in accordance with Clause 26

28. Upon issue of the Part 2 Certificate the liability of the Surety pursuant to Clause 26 shall be reduced down to 15% of the total sums payable PLUS any outstanding commuted sums pursuant to Clause 8 in accordance with Clause 26

29. The County Council shall apply all sums received from the Surety pursuant to Clause 26 solely to the completion of the Works and other purposes referred to in Clause 26

30. If the sum paid by the Surety in accordance with Clause 26 hereof exceeds the final costs of the Works and all other costs incurred by the County Council in enforcement of the Developer's obligations under this Agreement before the Works become highway maintainable at the public expense such surplus money shall be refunded to the Surety and no interest shall be deemed to have accrued to such surplus money during the period between its receipt by the County Council and its repayment to the Surety

Arbitration

31. Save for matters of interpretation of this Agreement (which shall be matters for the Court) in the event of any dispute arising between the parties hereto in respect of any matter contained in this Agreement including questions of value and any question of reasonableness the same shall be referred to an expert ("Expert") to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors and the Expert's decision shall be final and binding on the parties hereto and whose costs (including the re-imbursement of the costs of any other experts' fees) shall be at his discretion

32. The Expert shall:

32.1. have at least ten years post qualification experience in the subject matter of the dispute

32.2. be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 30 Working Days from the date of his appointment to act

32.3. be required to give notice to each of the third parties inviting each of them to submit to him within such period as he shall reasonably determine within 10 Working Days of his

appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and the Expert shall disregard any representations made out of time and the Expert's decision shall be given in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties

33. It is hereby declared and agreed between the parties hereto that nothing in Clauses 31 and 32 shall be taken to fetter the ability of the County Council to seek legal redress of any breach of the obligations entered into by the Developer in this Agreement

Miscellaneous

34. Notice of this Agreement and the terms and conditions thereof shall be registered as a Local Land Charge

35. The Developer hereby agrees that the Works are for the benefit of the Land

36. SUBJECT to Clauses 30 31 and 32 any decision of the County Council under the terms of this Agreement shall be final and binding upon the parties hereto

37. Nothing in this Agreement shall prevent or restrict the exercise by the County Council of its powers under any statutory provision

38. Nothing in this Agreement shall imply any obligation on the part of the County Council or the County Council to the Developer or to any person to ensure that the Works are properly constructed

39. For the avoidance of doubt reference wherever it appears in this Agreement to the Developer's successor in title shall not include any successor in respect of the authority granted to the Developer to carry out the Works pursuant to Clause 10

40. Reference whenever it appears in this Agreement to any statute or other legislation shall include any amendment thereto or other regulations Codes of Practice or other directions made or given thereunder

41. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement confers or purports to confer any benefit or any rights to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title to a party hereto

Mortgagee's Consent

42. The Mortgagee hereby acknowledges and declares that this Deed has been entered into by the Developer with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the Charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee (and any successor in title or any other mortgagee) shall otherwise have no liability under this Deed unless it becomes a mortgagee in possession of the Site in which case it too will be bound by the obligations as it were a person deriving title from the Developer

[redacted]

SCHEDULE 1

Part 1 Works shall comprise if the following works:

- All highway drainage
- All other drainage contained within the highway
- All other drainage contained within the prepared highway
- Completion of all utility works, including connections to properties
- All kerbing, kerb foundations and, where appropriate kerbs, including dropped kerbs for vehicle crossings
- Capping layer where appropriate
- Carriageway sub base, road base and any supporting structures
- Carriageway binder course surfacing including any areas of block paving up to binder course level
- Demarcation of sight lines and clearance of vision splays

SCHEDULE 2

Part 2 Works shall comprise of the following works:

- All outstanding kerbing not completed in Part 1 Works
- All pedestrian routes re all footpaths and footways and cycleways
- Carriageway surface course
- All block paving
- Vision splays and verges

- Street lighting and street furniture
- Street name plates
- Road markings
- Any other works described in the specification and shown on the approved Drawings
- Confirmation that section 104 sewers are on maintenance

SCHEDULE 3

JKK 7416 -111- Rev P1

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

EXECUTED as a DEED by affixing the)
COMMON SEAL of HAMPSHIRE)
COUNTY COUNCIL in the presence of:-)

[redacted]

Authorised Signatory

36/4597

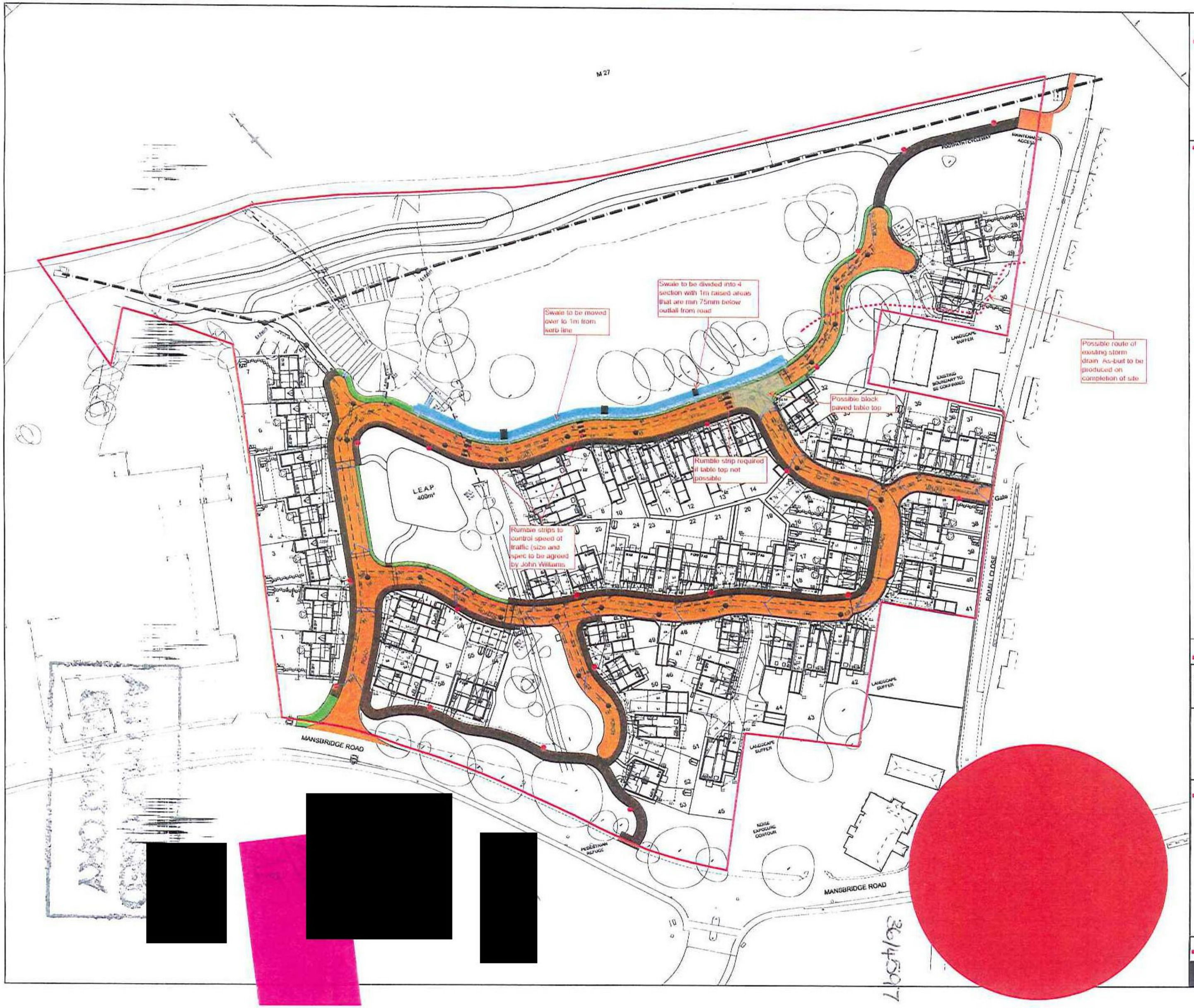
[redacted]

EXECUTED as a DEED by ~~affixing the~~)
~~COMMON SEAL of~~ LINDEN ~~HOMES~~)
LIMITED in the presence of:-

[redacted]

Director

Director/Secretary



[redacted]

36/4597

Notes

KEY

ADOPTABLE

- CARRIAGEWAY
- FOOTWAY/FOOTPATH
- GRASS VERGE
- SWALE
- GULLY CONNECTION
- SITE BOUNDARY
- PROPOSED STREET LIGHTING COLUMN

Rev	Date	Amendment	Drawn	Check
P1	14.03.12	FIRST ISSUE	SJW	KMc

RPS

Client: Linden HOMES

Project: BLACKFARM (ROMILL CLOSE) SOUTHAMPTON

Title: SECTION 38 AGREEMENT

Status: PRELIMINARY — Checked: KMc

Drawn: SJW — Date: 14.09.12 — Scale: 1/500 @ A1

Job No: JKK7416 — Drg No: 111 — Rev: P1

Architects Engineers Surveyors
Landscape Architects Services Consultants

EXECUTED as a DEED by affixing the)
COMMON SEAL of NATIONAL HOUSE)
BUILDING COUNCIL in the presence of:)

Authorised Signatory

[redacted]

KIRSTEN L. GIVENS
AUTHORISED SIGNATORY

EXECUTED as a DEED by ~~affixing the COMMON SEAL of~~ HSBC Bank Plc
in the presence of:-

~~Director~~

~~Director/Secretary~~

[redacted]

In the presence o
Sevim Howell
HSBC Bank plc
8 Canada Square
London E14 5HQ

EXECUTED as a DEED by affixing the)
COMMON SEAL of SOUTHAMPTON)
CITY COUNCIL in the presence of:-)

[redacted]

Authorised Signatory

10129 3