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DATED 12 July 2018

HAMPSHIRE COUNTY COUNCIL

- and -

BOVIS HOMES LIMITED

- and -

NATIONAL HOUSE BUILDING COUNCIL

-

Deed of Agreement relating to the construction of a highway at Church Road (Phase 2), Bishopstoke, Eastleigh pursuant to (inter alia) S.38 Highways Act 1980

HCC File Ref: 114568/CAP

Barbara Beardwell, MA., Solicitor
Head of Law and Governance and
Monitoring Officer
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ

HAMPSHIRE COUNTY COUNCIL

SECTION 38 DEED OF AGREEMENT

Date: 12 July 2018

PARTIES:

1. **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ (**"the County Council"**)
2. **BOVIS HOMES LIMITED** (Company Registration Number 00397634) whose registered office is situated at The Manor House, North Ash Road, New Ash Green, Longfield, Kent DA3 8HQ (**"the Developer"**)
3. **NATIONAL HOUSE BUILDING COUNCIL** (Company Registration Number 00320784) whose registered office is situated at Nhbc House, Davy Avenue, Knowhill, Milton Keynes, Buckinghamshire MK5 8FP (**"the Surety"**) [redacted]

WHEREAS

A. The County Council is the Highway Authority for Hampshire where the Site is located

B. The Developer is the registered proprietor with title absolute of the Site registered at Land Registry under Title Number(s) HP792730 SAVE for any individual parcels which may have at the time of this Deed previously been disposed of

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 Drawing(s) 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. he County Council has approved the Drawing(s) 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

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:

"BOND"		Means such sum provided by the Surety pursuant to clause 25 hereof to enable the County Council to undertake the Works should the Developer breach his obligations under this Agreement
"CDM Regulations"		Means the Construction (Design and Management) Regulations 2015 for notification purposes. Works prior to the implementation date will be inspected in accordance with the Construction (Design and Management) Regulations 2007
"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
"CDMS"		Means the 'Companion Document 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 85 dwellings, community allotments and orchard, open space, car parking, details of vehicular access arrangements and associated works at Church Road, Bishopstoke, Eastleigh
"Drawing(s)"		Means those drawings as set out in Schedule 3 (or such others as shall be approved in writing by the County Council) together with the Approved s38 Drawing and Location Plan identifying the Works by reference to the colours orange blue brown red and green
"Approved s38 Drawing(s)"		Means the drawing(s) numbered

		5667/S38/100 Rev H attached to this Agreement identifying the Works in principle by reference to the colours orange blue brown red and 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 CDMS
"Location Plan"		Means the plan reference Figure 2

		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
"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 16
"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
"Phase 1 s38 Agreement"		Means the Agreement entered into and dated 3 November 2017 under (inter alia) s38 Highways Act 1980 made between Hampshire County Council (1) the Developer (2) and the Surety (3) to secure the construction completion maintenance dedication and adoption of the highway works upon s38 Phase 1 Works as defined
"Phase 1 s38 Works"		Means the highway works defined within and secured by the Phase 1 s38 Agreement

"Planning Permission"		Means the planning permission reference 0/13/72892 of 18 February 2014 and reference R/15/77507 granted by Eastleigh Borough Council on 11 February 2016 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 Church Road and Breach Lane Bishopstoke shown edged red on the Location Plan having the benefit of the Planning Permission
"Specification"		Means the CDMS 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
"SuDs" Sustainable Drainage		Means a sequence of conveyance systems and control structures designed to manage the drainage of surface water more sustainably than conventional techniques by providing treatment and reducing flow rates and volumes.
"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 cycle track footpaths and footways street lighting grass trees and landscaping as shown on the Drawing(s) identifying the Works by reference to the colours orange blue brown red and 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 The Localism Act 2011 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

Developers Covenants

5. The Developer hereby covenants with the County Council as follows:

Execution of Works

5.1. To carry out at its own expense and at no cost to the County Council the Works in accordance with the Drawing(s) and in accordance with the Programme agreed by the County Council after compliance by the Developer with its obligations contained in Clauses 6 and 8

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

5.3. To notify the County Council prior to Commencement in accordance with Clause 6 and 8

5.4. 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:-

5.4.1. properly sewer level pave flag kerb channel metal and otherwise make good the site of the Works including all such works as may be required by the County Council as shown on the Drawings to secure the connection of the Works with the highway known as Church Road Bishopstoke Eastleigh

5.4.2. provide the street lighting in accordance with the Street Lighting Policy Document 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

5.4.3. lay out any verges and landscape works if shown on the Drawing(s)

5.4.4. 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 Borough Council

5.4.5. 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

5.4.6. 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 blue or orange on the Drawing(s) 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"

5.4.7. 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

5.4.8. 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 Drawing(s) 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

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

5.4.10. 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

5.4.11. 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

5.4.12. 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

5.5. Complete the Works within 48 months of their commencement (or such longer period as The County Council may at its absolute discretion agree in writing and subject to any additional costs as The County Council may reasonably require)

5.6. Not at any time give consent to the erection by any telecommunications operator of telegraph or telephone poles or cabinets or apparatus or 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

5.7. That it 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 produce for inspection the relevant policies of insurance together with receipts for the premiums paid

Indemnity

5.8. The Developer shall indemnify and keep indemnified the County 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

5.8.1. The Developer shall indemnify and keep indemnified the County 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

AND PROVIDED ALWAYS THAT

(i) Prior to settling any claim under Part I and/or Part II of the Land Compensation Act 1973 the Council shall give the Developer the opportunity to comment and take advice from the Builder's own independent consultant in relation to any such proposed settlement and

(ii) The Developer and/or its independent consultant shall be entitled to make representations to the Council in relation to any proposed settlement in respect of any claim under Part I and/or Part II of the Land Compensation Act 1973 and

(iii) The Council shall have proper regard to any representations made by the Developer or its consultant in accordance with Clause (ii) above
SAVE THAT the County Council's decision to settle any claim under Part I and/or Part II of the Land Compensation Act 1973 shall be final

5.8.2.

Dedication

5.9. That it hereby dedicates so much of the site of the Works (save for any easements) 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 23 then dedication shall be effective from the date of such entry and for the avoidance of doubt the Works shall remain maintainable at the expense of the Developer until the Works are adopted pursuant to clauses 17 and 21

Restrictions on commencement of Works

6. The Developer shall not commence the Works until:

Notices

6.1. 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;

6.2. 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

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

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

6.5. obtained any necessary consents and permissions from any railway canal inland navigation dock or harbour undertakers or any other party or organisation where the consent or permission of the undertaker party or organisation is required for the Works to be lawfully undertaken and completed

6.6. 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

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

6.8. the Developer has demonstrated to the satisfaction of the County Council the disposal of the proposed highway surface water 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

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

On the date of the Agreement

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

Prior to commencement of the Works

7.2. On demand and in any event prior to commencement of the Works a sum equal to £20,243.01 TWENTY THOUSAND TWO HUNDRED AND FORTY THREE POUNDS AND ONE PENCE (less any pre check fees already paid to the County Council) 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 and street lighting approvals; and

(b) in inspecting the Works 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

7.3 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 5.5 is exceeded.

7.4 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

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

7.5.1 traffic signal installations (if any) (including controlled pedestrian crossings and any CCTV variable message signs traffic travel and bus passenger information systems) the sum of 20% of the works cost of the construction of those works including inter-alia ducts drawpits signal poles and any other costs incurred by the County Council in respect of loop cutting and installation

7.5.2 unusual paving surfacing and high friction surfaces (if any) a commuted sum equal to the replacement cost

7.5.3 non Street Lighting PFI compliant street lighting and illuminated signs (if any) a commuted sum equal to the replacement cost

7.5.4 street furniture (if any) a commuted sum equal to the replacement cost

7.5.5 bus shelters (including any variable message signs traffic travel and bus passenger information) (if any) a commuted sum equal to the replacement cost

7.5.6 landscape works (if any) a commuted sum for the maintenance of new trees shrub planting and retained trees in accordance with the County Council's schedule of rates current at the date of payment

7.5.7 Water attenuation systems Sustainable Drainage Systems (SUDS) and any other drainage systems (if any) a commuted sum equal to the replacement cost and maintenance of such systems being solely for the disposal of highway water

7.5.8 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 £150 per lighting unit to permit all Street Lighting PFI compliant illuminated signs and street lighting columns to be accrued into the Street Lighting PFI

Notice to Statutory Undertakers

8 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

9 The County Council hereby authorises 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 and subject to the appropriate noticing licencing etc

10 Nothing in this Agreement shall prevent or restrict the exercise by the County 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

11 **It is further agreed between the parties that**:

11.1 In accordance with Regulation 4(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 4(4), 8(4) and 8(6) of the CDM Regulations insofar as those duties relate to health and safety information in the County Council's possession as a Highway Authority

11.2 Where in accordance with Regulation 4(8) 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:-

11.2.1 a copy of the notice to be served to be served under Reg 6(2) of the CDM Regulations

11.3 Where in accordance with Regulation 5(1) of the CDM Regulations there is more than one contractor or it is foreseeable that there will be more than one contractor the Developer as the only client shall provide to the County Council:

11.3.1 Written details of the principal designer and principal contractor

11.4 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

11.5 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

11.6 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 County Council's Companion Document to Manual for Streets

11.7 If required by the County Council the Developer will enter into a new Agreement using reasonable endeavours and in the same terms as those contained herein no later than 11 years from the date of this Agreement mutatis mutandis

Records

12 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:-

12.1 in respect of Structures: as built drawings of all structures including type and suppliers of materials and components used including modifications made during construction

12.2 and in respect of the Works generally:

12.2.1 Health and Safety files in electronic form

12.2.2 accurate 1:500 scale of "as-built" drawings supplied electronically on disc as an image file j-peg and as a Auto-CAD 2008 drawing in .dwg format and two paper sets of "as built" drawings

12.2.3 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

12.2.4 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.)

12.2.5 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

13 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 commissioned by the Developer and undertaken by an independent and suitably qualified Auditor (from the County Council's approved list) in the presence of the County Council and arising therefrom the County Council shall be at liberty to require such alterations to the Drawing(s) 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

14 The Developer shall on completing the Part 1 Works provide to the County Council a CCTV survey of all highway drainage including gullies manholes pipework and catchpits and submit a report by an independent and suitably qualified Engineer detailing inspections of all soakaways and SuDs and shall thereafter carry out any remedial works required by the County Council in respect of all aforesaid highway drainage

15 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 14 having been first complied with) the County Council shall issue a Part 1 Certificate

Issue of Part 2 Certificate

16 On completion of the Works to the reasonable satisfaction of the County Council in all respects (and subject always to Clause 17) and PROVIDED THAT a part 2 Certificate has been issued in respect of Phase 1 s38 Agreement Works 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

17 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

18 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

19 The Developer shall:

19.1 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

19.2 for the purposes of Sub-Clause 19.1 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 16

Issue of Adoption Certificate

20 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 and PROVIDED THAT as adoption certificate has been issued in respect of the Phase 1 s38 Agreement Works 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

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

Extraordinary Traffic

22 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 County 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 County Council any additional cost of repair or maintenance as may be certified by The County 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

23 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 (otherwise than for the purpose of amalgamation or reconstruction) the Developer enters into a composition or scheme of arrangement 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

24 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

25 Without prejudice to Clause 5 and Clause 8 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 County Council pursuant to Clause 23 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:

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

25.2 ten per centum of the total sum payable in accordance with the provisions of this Clause 25 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

25.3 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 25 shall not exceed £184,027.38 ONE HUNDERED AND EIGHTY FOUR THOUSAND AND TWENTY SEVEN POUNDS AND THIRTY EIGHT PENCE being the cost of Works plus the estimated cost of any commuted sums payable in accordance with Clause 7 in both cases as estimated by the County Council together with the cost of any statutory undertakers works

26 Upon issue of the Part 1 Certificate the liability of the Surety pursuant to Clause 25 may with the approval in writing of the County Council be reduced to a minimum figure of £92,013.69 NINETY TWO THOUSAND AND THIRTEEN POUNDS AND SIXTY NINE PENCE unless agreed otherwise by the County Council in writing

27 Upon issue of the Part 2 Certificate the liability of the Surety pursuant to Clause 25 shall be reduced to be reduced to a minimum figure of £27,604.11 TWENTY SEVEN THOUSAND SIX HUNDRED AND FOUR POUNDS AND ELEVEN PENCE unless agreed otherwise by the County Council in writing

28 The County Council shall apply all sums received from the Surety pursuant to Clause 25 solely to the completion of the Works and other purposes referred to in Clause 25

29 If the sum paid by the Surety in accordance with Clause 25 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

30 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

31 The Expert shall:

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

31.2 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

31.3 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

32 It is hereby declared and agreed between the parties hereto that nothing in Clauses 30 and 31 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

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

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

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

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

37 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

38 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 9

39 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

40 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

SCHEDULE 1

Part 1 Works shall comprise if the following works:

- All highway drainage including outfall and any SuDs
- All other drainage contained within the proposed highway
- Completion of all utility works, including connections to properties
- All kerbing, kerb foundations and, where appropriate kerbs, including dropped kerbs for vehicle crossings and pedestrian crossings
- Demarcation of sight lines and clearance of vision splays
- Carriageway footways and footpaths and cycleways to binder course
- Structures

SCHEDULE 2

Part 2 Works shall comprise of the following works:

- All outstanding kerbing not completed in Part 1 Works
- All carriageways, footpaths, footways and cycleways to surface course.
- All block paving
- Vision splays and verges
- Street lighting and street furniture
- Street name plates
- Road markings
- Landscaping and tree planting

- Any other works described in the specification and shown on the Approved s38 Drawing

- Confirmation from the relevant Statutory Bodies that the section 104 sewers and any sewers and/ or SuDs which impact on the s38 works are either adopted and/ or placed on maintenance

SCHEDULE 3

5667/GA/100 General Arrangement (1 of 2) Rev H

5667/GA/102 External Works Layout (1 of 2) Rev J

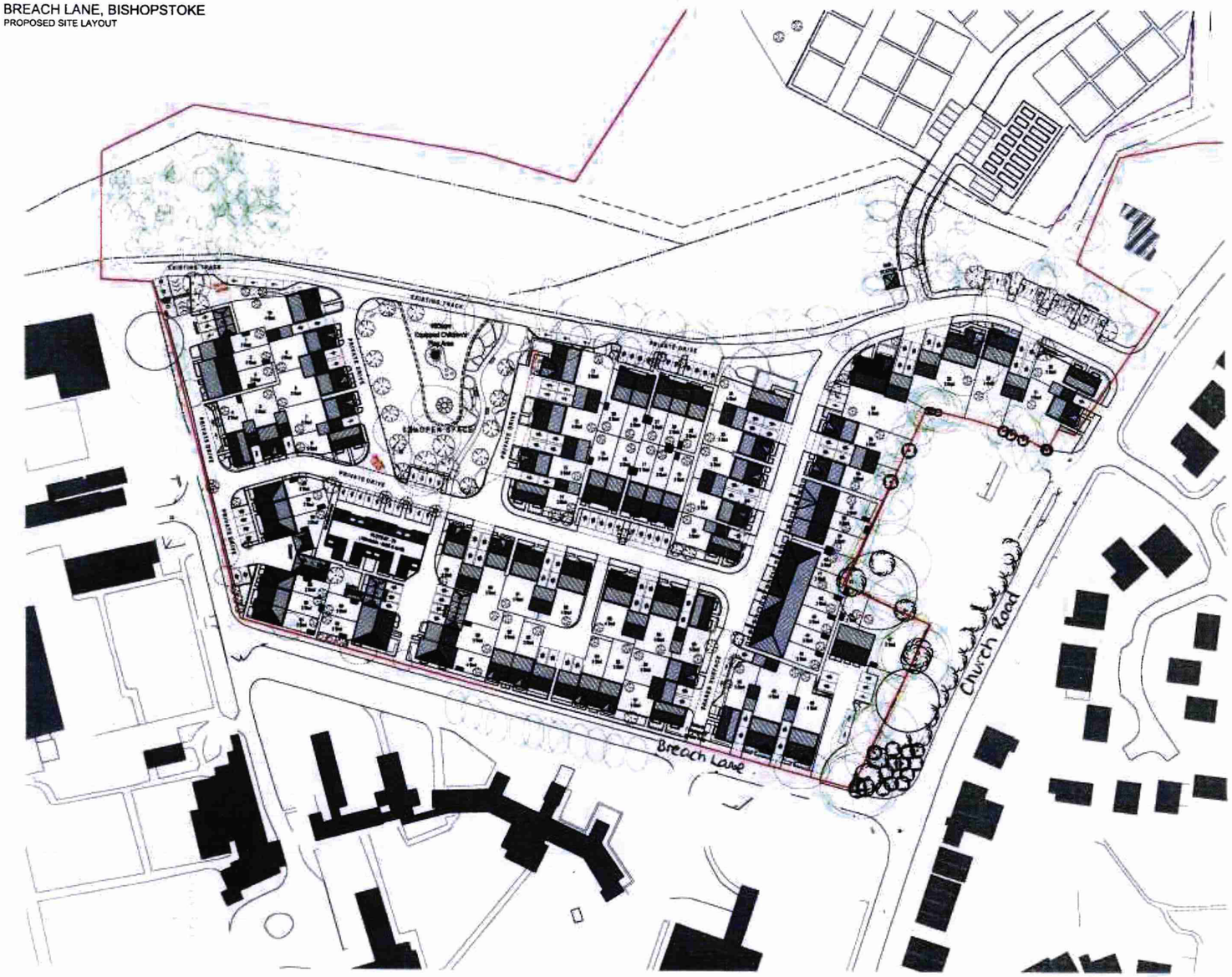
5667/SD/001 Adoptable Pavement and Footway Construction Rev B

170015667 Landscaping Changes for s38 Approval Rev K

SEE989303 Church Lane Lighting Design Rev D

1100.P1.500 Proposed Site Layout Figure 2

BREACH LANE, BISHOPSTOKE
PROPOSED SITE LAYOUT



[redacted]

[redacted]

[redacted]

Rev	Date	Amendment	Initials
K	11/01/2016	Town added and school layout amendments before planning meeting. Key numbers added to plots 87 and 88.	SF
G	04/01/2016	Plot 48 changed to a 4 bed unit. Plot 49 garage moved to rear.	SF
F	21/12/2015	Number of bed spaces indicated to each plot. Cycle sheds added to plots 1-4, 13-15, 26-29, 37-40 & 87-94. Garages to plots 1, 30-34, 36, 53-54 & 56-62 moved back. Additional visitor and un-allocated parking where to rear of plot 75. Fitness zone serving Plots 69 to 82 moved. Bus access indicated to Plots 31, 34, 91, 87, 88 & 91.	SF RC
E	07/12/2015	Plots 57 & 91 handed and chimneys added, to accommodate solar panel/heating statements.	SF
D	30/11/2015	Numbers following final engineering/landscaping submission.	SF
L	30/10/2015	Revisions following revised red line issued.	SF
K	21/10/2015	Revisions following engineering comments.	SF
J	23/09/2015	Revisions following breathing/housing comments.	SF
H	15/09/2015	Numbers following pre-app meeting.	SF
G	09/09/2015	Revisions following engineering, tree and ecology comments.	SF
F	07/08/2015	Revised Site Layout following maintenance input and new breathaway details.	SF
E	31/07/2015	Revision to corner of plots numbered to accommodate [illegible] Planting around Plot 62 & 63 altered.	SF
D	11/06/2015	Visitor parking added. Additional parking for flats shown. Plots 47-49 mirrored to provide pathway symmetry.	SF
C	08/06/2015	Layout changes following pre-app meeting and design team comments. Primary cleanup footpaths showing flats to POS relation.	SF
B	05/05/2015	Minor layout changes as per Carter J comments.	SF
A	15/04/2015	Minor layout changes as per Hardy comments.	SF

Project:
BREACH LANE
BISHOPSTOKE

Client:
CEMEX UK OPERATIONS LTD & BOVIS HOMES LTD

Drawing:
PROPOSED SITE LAYOUT
FIGURE 2.

PLANNING

Drawing no.: 1100.P1.500 Rev: R

Scale@A1: 1/500 Date: MAY 2015 Drawn: SCF Checked: SCF

FINC
ARCHITECTS & DESIGNERS

[redacted]

36/91684

FOR ADDITIONAL SUPPORTING INFORMATION, REFER TO DRAWINGS:

- 5667/S278/001 & 002
- 5667/D/100 & 101
- 5667/RP/100 & 101
- 5667/RP/102
- 5667/RP/104
- 5667/S104/100
- 5667/S104/101
- 5667/S104/103
- 5667/S104/104
- 5667/GA/100 & 101
- 5667/GA/102 & 103
- 5667/SD/001

REFER TO DRAWINGS 5667/S278/001 & 002 FOR S278 WORKS

LIMIT OF S38 WORKS

PRIVATE ROAD FALLS DOWN TO THE NORTH, AWAY FROM PUBLIC HIGHWAY

CORDUROY PAVING INSTALLED AS PER HCC10/6/060 WITH CORDUROY TYPE TACTILE PAVING INSTEAD OF BUSTER PAVED UNITS

PRIVATE ROAD RUNOFF INTERCEPTED BY PRIVATE DRAIN OUTSIDE ADOPTABLE BOUNDARY.

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NOTES

1. ALL DIMENSIONS ARE IN METRES UNLESS STATED
2. THIS DRAWING SHOULD BE READ IN CONJUNCTION OTHER RELEVANT ARCHITECT AND ENGINEERING DE DRAWINGS AND SPECIFICATIONS.
3. FOR PRECISE SETTING OUT DRAWINGS READ IN ACCORDANCE WITH ALL DRAWINGS IN THE 5667/RP/100 SERIES & 5667/SO/100 SERIES.
4. ANY DISCREPANCIES SHOULD BE REPORTED TO THE ARCHITECT AND/OR ENGINEER IMMEDIATELY, SO THAT CLARIFICATION CAN BE SOUGHT PRIOR TO COMMENCEMENT OF WORK.
5. ALL WORKS ARE TO BE IN ACCORDANCE WITH HAMPSHIRE COUNTY COUNCIL DESIGN CODE.
6. FOR CONSTRUCTION DETAILS, REFER TO ALL RELEVANT STANDARD DETAILS (5667/SD/01 ONWARDS).
7. FOR DETAILS OF KERBING AND SURFACE CONSTRUCTION REFER TO DRAWING 5667/GA/101 ONWARDS.
8. UNLESS OTHERWISE STATED ALL FOOTWAYS LEADING TO HOUSE ENTRANCES SHALL HAVE DROPPED CONSERVATION KERBS (CK) WHERE THEY JOIN THE CARRIAGEWAY. DROPPED KERBS TO B FLUSH WITH CHANNEL.
9. IT IS THE CONTRACTORS RESPONSIBILITY TO LOCATE ALL EXISTING SERVICES THAT MAY BE AFFECTED BY THE PROPOS WORKS BEFORE COMMENCEMENT OF CONSTRUCTION.
10. WHERE PRIVATE DRIVES FALL TOWARDS THE ADOPTABLE HIGHWAY, DRAINAGE CHANNELS AND/OR GULLIES ARE TO BE INSTALLED TO PREVENT SURFACE WATER RUNOFF ONTO THE HIGHWAY.
11. WHERE PRIVATE DRIVES FALL TOWARDS PRIVATE GARAGES, A DRAINAGE CHANNEL OR YARD GULLY SHALL BE INSTALLED TO PREVENT FLOODING. REFER TO DRAINAGE LAYOUT DRAWINGS FOR DETAILS OF LINEAR DRAINS AND GULLIES
12. FOR FURTHER DETAILS REGARDING PRIVATE DRAINAGE REFER TO STANDARD DETAILS.
13. FOR SETTING OUT CO-ORDINATES FOR THE PRIVATE AREAS REFER TO DRG No's. 5667/SO/101 ONWARDS.
14. DRAINAGE AND WORKS ASSOCIATED WITH THE DRAINAGE SHALL BE IN ACCORDANCE WITH THE 'DETR SPECIFICATION FOR HIGHWAY WORKS' UNLESS OTHERWISE SPECIFIED. REFER TO DRAINAGE LAYOUTS AND STANDARD DETAILS.
15. A THRESHOLD DRAIN (HEPWORTH CODE TDA1 OR SIMILAR APPROVED) IS TO BE INSTALLED WHERE FOOTPATHS FALL TOWARDS THE BUILDING. DRAIN TO BE INSTALLED IN ACCORDANCE WITH MANUFACTURERS RECOMMENDATIONS.
16. EXTENT OF OVERLAY AREAS TO BE AGREED ON SITE TAKING INTO ACCOUNT CONSTRUCTION METHODS AND TRAFFIC MANAGEMENT REQUIREMENTS. AREAS SHOWN ARE AN EXACT REPRESENTATION OF LEVEL DIFFERENCE BETWEEN EXISTING CARRIAGEWAY AND PROPOSED FINISHED SURFACE.
17. AREAS SHOWN DO NOT INCLUDE RESURFACING WHERE NOT EXPLICITLY REQUIRED BY THE PROPOSED HIGHWAY WORKS AND NOT INCLUDED IN THE CONTRACT.
18. NO PRIVATE SURFACE WATER SHALL BE ALLOWED TO DISCHARGE ONTO THE PUBLIC HIGHWAY OR VICE VERSA. PROVIDE CUT-OFF DRAINS IF APPLICABLE.
19. ANY SOFT SPOTS AT FORMATION LEVEL SHALL BE DUG OUT AND THE VOID BACKFILLED WITH SELECTED GRANULAR MATERIAL, ALL TO THE SATISFACTION OF THE HIGHWAYS INSPECTOR.
20. CONTINUITY OF ACCESS TO OCCUPIED AREAS TO BE MAINTAINED TO THE SATISFACTION OF HIGHWAYS INSPECTOR.
21. ANY DAMAGE CAUSED TO THE EXISTING HIGHWAY DURING THE WORKS SHALL BE REPAIRED TO THE SATISFACTION OF THE HIGHWAYS INSPECTOR.
22. THE EXISTING PUBLIC HIGHWAY MUST NOT BE USED AS SITE ROADS OR SITES FOR STOCKPILING AND STORING PLANT, MATERIALS OR EQUIPMENT. THE DEVELOPER SHALL BE LIABLE FOR THE COST OF REINSTATEMENT IF ANY DAMAGE HAS BEEN CAUSED TO THE HIGHWAY.
23. NO WORKS TO COMMENCE UNTIL THE TRAFFIC MANAGEMENT SCHEME HAS BEEN APPROVED IN WRITING.
24. NO WORKS TO START UNTIL THE AGREEMENT IS SIGNED.

FOOTWAY FOR ADOPTION
VERGE FOR ADOPTION
STREET LIGHTING COLUMN
RETAINED EXISTING TREES
PROPOSED SURFACE WATER SEWER & MANHOLE
PROPOSED FOUL SEWER & MANHOLE
GULLY
38.48m/1:178/225ø PIPE LENGTH/GRADIENT/SIZE
FOUL WATER DEMARCATION CHAMBER
SURFACE WATER DEMARCATION CHAMBER

REV	DATE	BY	DESCRIPTION	CHK	APD
			NG UPDATED	OJF	LRB
G	19/05/17	OJF	PEDESTRIAN REFUGE AREA AMENDED, LIST OF SUPPORTING DRAWINGS ADDED	LRB	PB
F	19/04/17	OJF	PEDESTRIAN REFUGE AREA MOVED, STREETLIGHTING	LRB	PB
E	22/02/17	OJF	LEVEL PEDESTRIAN REFUGE ADDED BY PLOT 34, S278 WORKS MOVED TO DRAWING 5667/S278/002	LRB	PB
D	14/02/17	WP	HCC COMMENTS, COLOUR AMENDMENTS TO DRAINAGE	OJF	PB
C	16/12/16	OJF	UPDATED FOLLOWING S38 COMMENTS. REFER TO S38 RESPONSE REPORT FOR DETAILS	LRB	PB
B	15/06/16	OJF	CHANAGES ADDED	OJF	LRB
A	21/04/16	MFB	FIRST ISSUE	OJF	LRB

DRAWING STATUS: FOR TECHNICAL APPROVAL

WSP | PARSONS BRINCKERHOFF
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George Curl Way, Southampton, Hampshire, SO18 2RZ
Tel: +44 (0)2380 302529 Fax: +44 (0)2380 302001
www.wspgroup.com www.pbworld.com

CLIENT: BOVIS

ARCHITECT: FINC

PROJECT: CHURCH ROAD

TITLE: S38 AGREEMENT PLAN

SCALE @ A1:	CHECKED:	APPROVED:
1:250	OJF	LRB
CAD FILE: 5667-S38-100	DESIGN DRAWN: MFB	DATE: September 17
PROJECT No: 70015667	DRAWING No: 5667/S38/100	REV: H

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Z:\70015667 - CHURCH ROAD - BOVIS\E MODELS AND DRAWINGS\DEVELOPMENT\AUTOCAD\S38 SECTION 38 AGREEMENT\5667-S38-100.DWG 08/09/2017 17:30:41 Scott, Toby

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

36/9684

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

[redacted]

Authorised Signatory

EXECUTED as a DEED by affixing the
COMMON SEAL of BOVIS HOMES
LIMITED in the presence of two authorised signatories:-

Authorised Signatory [redacted]

Authorised Signatory

Signed as a deed by [redacted]

and [redacted] as attorney for **National House-Building Council**

[ ] as attorneys for

National House-Building Council under a power of attorney dated [6th December 2016]:

[redacted]

as attorney for **National House-Building Council**

CUSTOMER CONTACT TEAM LEADER
CUSTOMER SERVICES