

LINCOLNSHIRE COUNTY COUNCIL

and

.....

and

.....

DEED OF AGREEMENT

pursuant to the provisions of S.38 of the Highways Act 1980 S.111 of the Local Government Act 1972 and S.33 of the Local Government (Miscellaneous Provisions) Act 1982 relating to the construction of new streets off

in the Parish of in Lincolnshire

R A WILLS

Executive Director (Development Services)

County Offices

Lincoln

THIS AGREEMENT is made the day of Two thousand and

BETWEEN

(1) LINCOLNSHIRE COUNTY COUNCIL of County Offices Newland Lincoln (“the Council”)

(2) whose registered office is situate at (“the Developer”)

(3) whose registered office is situate at (“the Surety”)

WHEREAS

(1) The Developer (as defined in clause 2 of this Agreement) is the freehold owner of the green and orange land

(2) The Developer intends to construct the Streets and Footways (as defined in clause 2 of this Agreement) and proposes to dedicate the Streets as highways for the usage of mechanically propelled vehicles and to dedicate the Footways as highways for the usage of pedestrian traffic and the streets and Footways shall upon completion of the Works become highways maintainable at the public expense

NOW THIS DEED WITNESSETH as follows:-

1. This Agreement is made pursuant to Section 38 of the Highways Act 1980 Section 111 of the Local Government Act 1972 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982

2. In this Agreement the following expressions (arranged in alphabetical order) shall have the following meanings:-

“Actual Cost of the Works”

shall mean the costs of constructing and completing the Works (or any outstanding part or parts thereof)

“Bond Figure”

shall be £.. (... HUNDRED AND THOUSAND NINE HUNDRED AND POUNDS) being the sum calculated by the Council as representing the estimated Actual Cost of the Works as at the date of this Agreement and inflated to cover the first three years of this Agreement

“the Certificate of Substantial Completion”

shall mean the Certificate issued by the Council at the commencement of the Maintenance Period under clause 5 of the Agreement

“Commutated Sum”

shall be £..... (...THOUSAND HUNDRED.....POUNDS) being the sum of money required to be paid by the Developer to the Council to cover future maintenance of the

“the Development Road Fee”

shall mean the sum of £..... (..... THOUSAND HUNDRED AND POUNDS) being a contribution to be made by the Developer towards the legal and other costs incurred by the Council in inspecting and testing the Works and in the preparation and administrative implementation of this Agreement

“the Director”

shall mean the Director or such other Directors of the Council from time to time who is responsible for the provision of the Councils highway authority function or the officer of the Council holding that appointment or such suitably qualified person as he may from time to time nominate

“the Drawings”

shall mean the Plan together with such other drawings and plans as may be submitted by the Developer and approved by the Director under the terms of this Agreement

“Electrical Test Certificates”

shall mean an electrical installation certificate in accordance with BS7671: Requirements for Electrical installations and shall be provided for all electrical equipment associated with the Works

“the Footways”

shall mean the footways to be constructed by the Developer pursuant to this Agreement upon the land coloured orange on the Plan (“the orange land”)

“the Key Stages”

shall mean the Key Stages of construction and inspections of the streets referred to in Appendix 1 of the Development Road Specification, which are to be individually certified on satisfactory completion in accordance with clause 4 of this Agreement

“Legal Fees”

shall mean the fees required for the Council’s Legal Services to carry out appropriate checks on the Epitome of Title and Land Registry Records based on the time taken but shall be no less than £400

“the Maintenance Period”

shall mean the period of twelve months referred to in clause 7 of this Agreement

“the Plan”

shall mean the plan numbered attached to this Agreement or such other plan or plans as the Developer shall submit and the Director may agree in writing shall be used in substitution thereof

“Private Drives”

shall mean drives serving 2 or more properties that are not intended to be adopted as highways maintainable at the public expense

“the Specification”

shall mean the current "Lincolnshire Design Guide for Residential Areas" and the Lincolnshire County Council "Development Road Specification and Construction" document as may be approved by the Council in such modified or extended form as the Council may communicate to the Developer

“Service Margins”

shall mean grassed margins that are provided in place of footways which contain public utilities apparatus

“Street Lighting”

shall mean a system of lighting including bollards and signage to illuminate the Works where the equipment specification and illumination levels are to the satisfaction of the Council

“the Streets”

shall mean the streets to be constructed by the Developer pursuant to this Agreement upon the land coloured green on the Plan (“the green land”)

“Working Days”

shall mean any day(s) upon which Banks in the City of London are open to the general public

“the Works”

shall mean the street works more particularly described in clause 3(f) of this Agreement and shall include any necessary works with the highway maintained at the public expense

“the Council” “the Developer” and “the Surety”

these expressions shall include their respective successors in title or assigns and where applicable in this Agreement words importing the singular shall include the plural and vice versa

3. Developer’s Obligations to Carry Out the Works

3.1 The Developer for itself and its successors in title covenants with the Council as follows:-

- (a) before works to commence on site to provide to the Council the name and contact details of a nominated person who will be responsible for managing the construction and quality of the Streets and ensuring compliance with the specification and certification of the Key Stages. This nominated person will be

the principal contact for the Council and the Developer shall provide the Council with any changes of details of the nominated person

- (b) it and all contractors and subcontractors working on its behalf shall have the appropriate public liability insurance of £5 million which shall conform to the requirements of this Agreement and the Specification
- (c) that the position of the Streets and Footways shall unless otherwise agreed previously in writing by the Director be in accordance with the Plan
- (d) that any necessary off site works carried out in the existing highway maintained at the public expense will require permits under the New Roads and Street Works Act (NRSWA) 1991 and permission from the Council as Highway Authority under the Highways Act 1980. Such permission shall be obtained from the Director and all such works will be carried out and maintained to the satisfaction of the Director
- (e) during the period of works within the existing highway maintained at the public expense the Developer shall comply with the provision of the Councils Code of Practice for Safety of Roadworks and the Traffic Signs Manual 1991 Chapter 8 "Traffic Safety Measures and Signs for Roadworks and Temporary Situations" (published by the Department of Transport) and any amendment thereto or any provisions replacing the same for lighting or signing the Works
- (f) that the Streets and Footways shall be constructed and otherwise made good at the expense of the Developer (which construction and otherwise making good

are hereinafter referred to as “the Works”) in accordance with the current Specification and to the satisfaction of the Director as indicated on the Drawings

- (g) that the surface water and foul water sewers and or drains in the Streets **and Footways** shall be constructed to the satisfaction of the relevant drainage authority. Such works to be covered by an adoption agreement by those authorities

- (h) that (subject to any written agreement to the contrary) the Developer will carry out and complete the Works in accordance with this Agreement and the said Plan and Specification and Drawings to the satisfaction of the Director either within the period of three years from the date of this Agreement or within the period of three months from the date upon which the construction is commenced of the penultimate dwelling to be erected with a frontage to any of the Streets (whichever period shall be the earlier) **PROVIDED ALWAYS** that the periods specified in this sub-clause may be extended for such further period or periods as the Director may approve and of which notice in writing is served by the Director upon the Developer **and the Surety**

- (i) that in the event of the Developer being in default of clause 3(h) of this Agreement the Director may (after the Council has given to it at least fourteen days notice in writing of their intention to do so) enter on the site of the Streets **and/or Footways** and complete the Works or any part thereof and charge the expense thereof to the Developer and recover such expenses from it **PROVIDED THAT** the Director has not previously agreed in writing to extend

the periods or any of them mentioned in clauses 3(h) of this Agreement **PROVIDED FURTHER THAT** if any of the periods referred to in the above clauses are extended the Director may serve a notice in like manner upon the expiration of any such extended periods **PROVIDED STILL FURTHER THAT** the Surety is given notice as described under Clause 12.1 herein

- (j) that the Developer will during the progress of the said Works give to the Director (or persons authorised by him) free access to every part of the Works and the site of the Streets and Footways and permit the inspection of the same as they proceed and of all materials used or intended for use therein and the Developer shall give effect to any reasonable and proper requirements made or directions given by the Director (or in his name) to ensure the Works conform to the Plan and the Specification and the Drawings. In particular the Developer shall ensure that the Council is informed in sufficient time (being a minimum of five working days notice) to allow the Director (or persons authorised by him) facility to carry out the inspections and testing specified under the Key Stages. And it shall be the Developers' responsibility to ensure that it obtains the necessary certification at each Key Stage

- (k) that the Developer will indemnify the Council against all actions claims demands proceedings costs expenses and liabilities whatsoever arising directly or indirectly out of the failure by the Developer to perform or observe any of the covenants contained in this clause 3 of this Agreement

- (l) In any cases of ambiguity between the Specification and the Drawings the Specification shall take precedence unless it has been specifically agreed otherwise in writing by the Director

- (m) Before any buildings in any road subject of this Agreement are occupied the Developer shall construct up to at least binder course level and maintain the Streets and Footways leading to and fronting such buildings and will erect and light the lamp columns thereon to the approval and satisfaction of the Director

4. Inspection, Testing and Rectification of Defective Works and Materials

4.1 The Director shall have power in his reasonable discretion to test or require the testing of materials plant and workmanship used or proposed to be used in the Works and to reject any materials plant or workmanship so tested which he may reasonably and properly find to be not in accordance with the Plan and the Specification and the Drawing. In particular the specified inspections and testing will be required at the eight Key Stages

4.2 The Developer shall immediately replace or repair any materials plant or workmanship which have been found to be not in accordance with the Plan and the Specification and the Drawings with such as are so in accordance

4.3 The Director shall for the purposes of clauses 4.1 and 4.2 of this Agreement be allowed reasonable access and admission to the Works or the places where materials or plant for the Works may be stored or be in the course of preparation

manufacture or use. In particular the Developer shall notify in sufficient time (being a minimum of five working days) and allow facility for the Director (or persons authorised by him) to carry out the critical inspections and tests specified in the Key Stages of construction and obtain the relevant certificates

4.4 During the construction of the Streets and Footways the Director may issue instructions to the Developer to open up or expose any of the Works which have been covered up without previously being inspected by the Director and should the Developer fail to comply with any such instructions the Council may so take up or expose the relevant part of the Works causing as little damage or inconvenience as is possible to or in respect of any other part or parts of the Works and the reasonable and proper cost of such taking up or exposure and reinstatement is to be met by the Developer

4.5 Should the Developer fail to notify in sufficient time and allow facility for the Director (or persons authorised by him) to carry out the critical inspections and tests specified in the Key Stages, then the Council will require the Developer, at its expense, to carry out retrospective testing (at the Council's discretion). In addition and irrespective of any retrospective testing or the outcome of such tests, should the Developer fail to obtain the relevant certificate for any Key Stage and/or proceed without the consent of the Director (or persons authorised by him), then the Council will require the Developer to pay a sum to the Council (as determined by the Council at its absolute discretion) to cover any possible future risk to the Council associated with the lack of inspection and/or testing at the correct stage

5 Certificate of Substantial Completion

5.1 The Council hereby covenants with the Developer that when and so soon as the Works (or where it is provided in the Specification or otherwise agreed between the parties in writing that the Works shall be carried out in sections any section of the Works) shall have been completed and all certificates of Key Stages have been obtained in accordance with the provisions herein contained to the reasonable satisfaction of the Director the said Director shall issue a Certificate of Substantial Completion

6. Street Lighting

6.1 The Developer shall be responsible for the energy costs of the street lighting system and hereby agrees to indemnify the Council in respect of the replacement of any part of the installation found to be defective (including parts labour and all other charges) prior to the adoption of the Streets **and Footways** as highways maintainable at the public expense pursuant to clause 8.1 of this Agreement

6.2 Prior to issue of the Certificate of Substantial Completion the Developer shall provide Electrical Test Certificates for all associated electrical equipment

6.3 Prior to the adoption of the Streets **and Footways** as highways maintainable at the public expense pursuant to clause 8.1 of this Agreement the Developer shall clean and re-lamp each street lighting unit

7. Maintenance Period

7.1 The Developer shall at no cost to the Council for a period of twelve months from the issue of Certificate of Substantial Completion in accordance with Clause 5 above maintain the Streets **and Footways** and/or reinstate and make good any damage or defect in the Works so certified which in the reasonable and proper opinion of the Director shall have arisen during the construction of the Streets **and Footways** or shall have been caused by the Developer or its employees agents licensees or contractors and which shall become apparent during the Maintenance Period howsoever caused whether by the Developer or a third party other than by the negligence of the Council or its agents servants or employees.

8. Adoption

8.1 In respect of the green land **and orange land** the Council hereby covenants with the Developer that (subject as hereinafter provided) upon the expiration of the Maintenance Period and on the making good of all defects if any referred to in Clauses 6 and 7 the Council shall do all acts or things necessary to procure that the Streets **and Footways** (or any part thereof to which the Certificate of Substantial Completion shall relate and which is not already highway maintainable at the public expense shall become highways maintainable at the public expense **PROVIDED THAT** the Developer shall have performed and observed the covenants conditions and stipulations herein contained and on the Developer's part to be performed and observed **PROVIDED FURTHER THAT** such part or section of the Streets **and**

Footways shall connect directly with an existing highway maintainable at the public expense and the same shall accordingly forthwith be and become highways maintainable at the public expense **PROVIDED STILL FURTHER THAT** nothing in this Agreement shall impose upon the Council any liability for the future maintenance after the Streets **and Footways** have become highways maintainable at the public expense of any foul or surface water sewers laid in or under the Streets **and/or Footways** other than surface water drains included in this Agreement carrying highway water only and the Developer shall make arrangements with the appropriate authority for the future maintenance of such sewers **PROVIDED ALSO THAT** the Council may at its absolute discretion before the Works or any section of the Works shall have been completed as aforesaid give such notices and do such acts and things as aforesaid in respect of any part or section thereof (the construction of which part or section shall have been completed and certified by the Director in the manner provided by clause 5.1 of this Agreement)

8.2 The Council will not adopt any Streets **or Footways** where the surface and or foul water sewers have not been adopted by the appropriate authority

9. Private Drives

9.1 In respect of any Private Drives not coloured green on The Plan the Council as the street works authority is satisfied that they are not likely to be substantially built-up as to justify the use of powers under the **Private Street Works Code** for securing the carrying out of the street works in these areas and exempts the buildings having frontage to them from the provisions of Section 219 of the Highways Act 1980

10. Planting in Service Margins

10.1 The Developer shall ensure that nothing is erected or planted within any **Service Margins** coloured green on The Plan unless agreed in writing. The Director shall insist on the removal of any structures and/or planting before issuing the Certificate of Substantial Completion

11. Dedication

11.1 **SUBJECT TO** clause 8.1 above the Developer dedicates to the Council in accordance with the provisions of the Highways Act 1980 and all other relevant statutory enactments the green land **and orange land** upon which the Streets **and Footways** shall be constructed as publicly maintainable highway **and FURTHER GRANTS** to the Council an easement over or through any land coloured blue on the said plan (which does not form part of the green land) through which any part of the surface water drainage system of the Streets to be adopted under this Agreement passes and into which the said system discharges and that any conveyance of such land made before or after the date of adoption of the streets as highways maintainable at the public expense is or shall be expressed to be subject to the **Council's easement PROVIDED THAT** the dedication shall not be effective until the date of final adoption of the green land by the Council as highways maintainable at the public expense in accordance with Clause 8.1 above

12. Recovery of Bond Monies or Deposit Sums

12.1 In the event of non-observance omission or breach by the Developer of any of the terms covenants conditions or stipulations herein contained (without prejudice to the right of the Council to exercise any of its rights and powers under the Highways Act 1980 or any other statutory provision) the Surety shall pay to the Council **upon first written demand** the sum of £..... (.... HUNDRED AND THOUSAND HUNDRED AND POUNDS) to enable the Council to undertake or complete the Works or to cover possible future risk to the Council where there has been a lack of certification, testing or inspections of the Key Stages and to remedy any defects prior to the adoption of the Streets **and Footways** as highways maintainable at the public expense and the vesting of the said highway drains in the Council **AND** the Surety shall have the right to an accounting of how any Bond monies (other than those to cover possible future risk to the Council due to the lack of certification, testing or inspections of the Key Stages which will be determined by the Council) have been utilised by the Council only after the Works have been completed by the Council **AND** the Surety hereby binds itself to the Council in such sum and under such terms as aforesaid **PROVIDED THAT** the Surety shall have the first option of engaging its own contractors to undertake any works in lieu of payment of any Bond monies and **PROVIDED FURTHER THAT** the Surety shall exercise such option within 28 days from the date of the written notification from the Council to the Surety and the Developer of the Developer's non-observance omission or breach of any of the terms covenants conditions or stipulations herein contained.

12.2 The Council shall apply all monies received by it from the Surety as mentioned in Clause 12.1 to the costs involved in the completion of the said Works and to remedy any defects prior to the adoption of the Streets and Footways as highways maintainable at the public expense and the vesting of the said highway drains in the Council or to cover possible future risk to this Council due to the lack of certification, testing or inspection of the Key Stages as determined by the Council and any amounts so received shall be deducted by the Council from any demand or charges which may be made by the Council on the frontagers of the Streets in respect of any street works carried out under the Highways Act 1980 or any amendment thereof and in the event of any surplus as between the amount paid by the Surety and the final cost of the Street Works and the monies calculated by the Council to cover possible future risk due to the lack of certification testing or inspection of the Key Stages (including the Council's establishment inspection and supervision charges) before the Streets and Footways are adopted as highways maintainable at the public expense such surplus monies shall be refunded to the Surety

13. Review of Bond Monies

13(a) Upon certification of any of the Key Stages (subject to all previous certificates being satisfactorily obtained) the Council, will if requested by the Developer, review the Bond accordingly. **PROVIDED THAT** at no time will the Council reduce the Bond by more than 50 % of the original figure prior to the issue of the Certificate of Substantial Completion

Alt12.1

12.1 In the event of non-observance omission or breach by the Developer of any of the terms covenants conditions or stipulations herein contained (without prejudice to the right of the Council to exercise any of its rights and powers under the Highways Act 1980 or any other statutory provision) the Council shall be entitled to draw upon the sum of (..... THOUSAND HUNDRED AND POUNDS) plus any accrued interest such sum having already been deposited by the Developer with the Council on such terms and conditions as have been agreed between the parties hereto and evidenced in writing to enable the Council to undertake or complete the Works or to cover possible future risk to the Council where there has been a lack of certification, testing or inspection of the Key Stages and remedy any defects prior to the adoption of the Streets as highways maintainable at the public expense and the vesting of the said highway drains in the Council **AND** the Developer hereby binds itself to the Council in such sum and under such terms as aforesaid

Alt 12.2

12.2 The Council shall apply all monies received by it from the Developer as mentioned in Clause 12.1 to the costs involved in the completion of the said Works and to remedy any defects prior to the adoption of the Streets as highways maintainable at the public expense and the vesting of the said highway drains in the Council or to cover possible future risk to the Council due to the lack of certification, testing or inspection of the Key Stages as determined by the Council and any amounts so received shall be deducted by the Council from any demand or charges which may be made by the Council on the frontagers of the Streets in respect of any street works carried out under the Highways Act 1980 or any amendment thereof and in the event of any surplus as between the amount paid by the Developer and the final cost of the Street Works and the monies calculated by the Council to cover

possible future risk to the Council due to the lack of certification, testing or inspection of the Key Stages (including the Council's establishment inspection and supervision charges) before the Streets are adopted as highways maintainable at the public expense such surplus monies shall be refunded to the Developer

14. Access for the Council

14.1 The Developer hereby grants full right and licence to the Council and its agents contractors and employees to enter onto and remain on its land together with all machinery plant and materials if the Council shall consider it necessary to do so in order to complete the Works and remedy any defects pursuant to clause 12 above

15. Interest on Delayed Payments

15.1 In the event of any delay in the payment by the Developer of any sums required under this Agreement interest shall be payable thereon at the rate of two per cent per annum above HSBC Bank PLC base lending rate from time to time in force from the due date to the date of actual payment

16. Arbitration

16.1 In the event of any dispute between the parties hereto or their respective representatives regarding any of the matters contained in this Agreement such matter may at the written election of any party (notice of which shall be given to the other parties) be referred to a single arbitrator as they may agree or (in default of agreement within 10 working days of such election) appointed by the President for the time being of the Royal Institution of Chartered Surveyors **PROVIDED THAT** the reference to arbitration shall be on terms that any determination shall take place within 10 working days of the arbitrator accepting his instructions **AND** the costs of such arbitration shall be in the award of the arbitrator

17. Notices

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

18. Indemnity

18.1 The Developer hereby covenants with the Council pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 to indemnify the Council from and against all claims actions demands or proceedings arising out of or in connection with the Works to include but not limited to claims for personal injury loss or damage to property claims under Land Compensation Act 1973 or Regulations made under the said Act or any re-enactment or amendment thereof and against all damages liabilities costs charges losses compensation awards (to include awards of interest) and expenses including the Council's expenses in managing and investigating any claim arising in respect thereof or in relation thereto PROVIDED THAT such indemnity shall not apply in respect of any action costs claim demand

charge or expenses arising out of or incidental to any negligent act or default or omission on the part of the Council

19. Council Powers

Except insofar as legally or equitably permitted this Agreement shall not prejudice or affect any statutory powers of the Council or of any Minister of the Crown

20. Payment of Fees

The Developer will upon or before execution of this Agreement pay to the Council the Development Road Fees and Legal Fees as previously defined

21. Payment of Commuted Sum

Where a commuted sum is required the sums specified in this Agreement shall be paid to the Council prior to the signing of the Agreement

22. Payment of Monies for Failure to Achieve Certification of the Key Stages of Construction

Where the Developer fails to obtain satisfactory certificates for all the Key Stages of construction, it shall pay the amounts as calculated in accordance with clause 4.5 and specified by the Council to cover the possible future risk to the Council due to the lack of testing and inspection at the correct time. These sums shall be paid to

the Council prior to the Streets and Footways being entered into the twelve month maintenance period

23. Interpretation

Where applicable in this Agreement words imparting the singular shall include the plural and vice versa

24. Third Parties

IT IS HEREBY AGREED that the provisions of Section 1 of the Contracts (Rights of Third Parties) Act 1999 be expressly excluded from this Agreement

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

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

Duly Authorised Officer

THE COMMON SEAL of)

.....

was hereunto affixed in the)

presence of:-)

Name

(Block Capitals)

THE COMMON SEAL OF)

.....)

was hereunto affixed in the)

presence of:-)

Name

(Block Capitals)

Bond Reference Number: