

Dated

22 December

2022

THE COUNCIL OF THE BOROUGH OF TORBAY

And

PERSIMMON HOMES LIMITED

And

ABACUS PROJECTS LIMITED

AGREEMENT

under Sections 38 and 278 of the Highways Act 1980
and section 111 of the Local Government Act 1972

in connection with

street works at Brixham Road relating to the development on land known as
Inglewood under appeal reference: APP/X1165/W/20/324501

in the Borough of Torbay

THIS AGREEMENT is dated

22 December 2022

PARTIES

- (1) THE COUNCIL OF THE BOROUGH OF TORBAY of Town Hall Castle Circus Torquay Devon TQ1 3DR ("the Council")
- (2) PERSIMMON HOMES LIMITED Co. Regn. No. 4108747 whose registered office is at Persimmon House Fulford YO19 4FE ("the Developer")
- (3) ABACUS PROJECTS LIMITED Co. Regn. No. 01460919 whose registered office is Eaton Court, Marylands Avenue, Hemel Hempstead Industrial Estate, Hemel Hempstead, HP2 7TR ("the Mortgagee").

BACKGROUND

- (A) The Council is the local highway authority for the area in which the Land and the S278 Highway Works are situated.
- (B) The Developer owns the Land which includes the site of the proposed Road and all other land required for the S38 Works.
- (C) The Mortgagee has a registered charge over the Land dated 10 February 2022 and enters into this Agreement to give its consent to the Developer agreeing to the terms herein and to the completion of the Soakaway Easement if this is necessary.
- (D) The Developer has requested that after the S38 Works some of which (for the avoidance of doubt outside the highway) it is acknowledged by the Council have commenced at the date of this Agreement have been completed and maintained, the Council shall adopt the Road as a highway maintainable at the public expense, which the Council has agreed to do on the terms and conditions of this agreement.
- (E) The Council and the Developer have also agreed to secure the execution of and payment for the S278 Highway Works which will be of benefit to the Developer and of benefit to the general public at large.
- (F) The Developer has sought to mitigate the impact of the S278 Highway Works by redesigning the works so as to raise part of Brixham Road and utilising adjacent and nearby land for implementing various sewer works which would otherwise be carried out within the highway boundary and the Developer has agreed to carry out and implement the Mitigation Measures as set out in Schedule 5 and carry out the liaison and communication set out in Schedule 6.
- (G) The Developer has consulted on the design of all of the S278 Highway Works with the Council to ensure compliance with specifications and to develop designs to reduce disruptions and speed up the execution of the works and in order to discharge planning conditions.
- (H) The Council and the Developer recognise that the S278 Highway Works will require the closure of Brixham Road between Long Road/Goodrington Road and Windy Corner and the parties enter into this Agreement with the intention of minimising and mitigating (a) the length of time of any closure and (b) the disruption and delay and other impacts caused by the road closure and the use of the Diversion Route and other roads.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

1991 Act: the New Roads and Street Works Act 1991

Bond: means the bond between the Developer Tokio Marine HCC Insurance Holdings (International) Limited and the Council dated the same date as this Agreement generally in the form annexed to this Agreement at Annex 2

CDM Regulations: the Construction (Design and Management) Regulations 2007 (SI 2007/320).

Certificate of Satisfactory Completion: means the Certificate issued by the Proper Officer to the Developer upon completion of the S278 Highway Works in accordance with the Drawings that enables the S278 Highway Works to be used for the purpose for which they were designed save for any minor defects

Client: the client as defined by the CDM Regulations

Closure: means the closure of Brixham Road between Windy Corner and Long Road/Goodrington Road between 3 January 2023 and the Closure End Date

Closure End Date: 31 March 2023 subject to the Developer's obligation to minimise the length of time of the Closure and subject to the provisions of Clause 5.4

Council and Developer: includes their respective successors in title and assigns

Commutated Sum: the sum of thirty three thousand pounds (£33,000.00) as a commuted sum for future maintenance of the hedges shown on the Drawing E05673-ING-0409-412-PROPOSED SITE LAYOUT on Brixham Road and works to maintain visibility splays

Dedication Drawing: means drawing E05673-CB-DR-XX-XX-03-PO1 showing the extent of the area of the Works to become highway in accordance with Clauses 11.4 and 14

Diversion Route: means the roads used by traffic diverted from Brixham Road during the S278 Highway Works including Goodrington Road between Brixham Road and Dartmouth Road and Dartmouth Road between its junction with Goodrington Road and Windy Corner and any other roads designated as may be dedicated as a diversion route by the Council (acting reasonably) pursuant to paragraph 5 of Schedule 5

Drawings: the Drawings in the document marked "The Drawings referred to in the Inglewood Section 278 Agreement made between the Council Of The Borough Of Torbay and Persimmon Homes Limited and Abacus Projects Limited" and signed by or on behalf of the parties as listed in Annex 1 to this agreement which shall be deemed to be incorporated into this agreement and any amended drawing signed by on or behalf of the Proper Officer

Emergency Plan: the plan agreed with each of the emergency services for the use of the Diversion Route and other roads during S278 Highway Works to be implemented pursuant to Schedule 5 and annexed at Annex 3

End Date: the programmed date for the issue of the Certificate of Satisfactory Completion approved by the Council under Clause 3A.5 as may be amended under Clause 5.2

Estimated Cost: the sum of three million six hundred and nineteen thousand and five pounds (£3,619,005.00) which, in the reasonable opinion of the Proper Officer, is the cost of carrying out the S38 Works and the S278 Highway Works within the period specified in clause 3.1(f).

Final Certificate: the certificate to be issued on satisfactory completion of the S38 Works or the S278 Highway Works, as the case may be, under clause 13.

Health and Safety File: the health and safety file as required by the CDM Regulations.

S278 Highway Works: the works to the highway to be carried out pursuant to section 278 of the Highways Act 1980 set out in Schedule 4

Land: the freehold land at Inglewood Paignton shown edged red on the plan at Annex 5 and which is registered at the Land Registry under Title number DN751310.

Liaison Committee: the liaison committee to be formed and operated pursuant to Schedule 6

Maintenance Period: the maintenance period specified in clause 12.

Mitigation Measures: the measures set out in Schedule 5

Occupied: occupied for residential purposes and does not include occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display, or occupation in relation to security operations

Part 1 Certificate: the certificate to be issued under clause 9 on satisfactory completion of the Part 1 Works.

Part 1 Works: the S38 Works set out in Schedule 1.

Part 2 Certificate: the certificate to be issued under clause 10 on satisfactory completion of the Part 2 Works.

Part 2 Works: the S38 Works set out in Schedule 2.

Permanent Drainage: a drainage system to replace the Temporary Soakaway which shall (a) provide for the passage and conveyance of surface water from the Roads in a drain or drains to an outfall approved by the Council (in consultation with the relevant statutory undertaker where necessary) (b) has been adopted by the Council as highway drainage maintainable at the public expense under an agreement pursuant to section 38 and/or 278 of the Highways Act 1980 and (c) removes the Temporary Soakaway and reinstates the land to the reasonable satisfaction of the Council.

Proper Officer: any officer of the Council for the time being appointed for the purposes of this agreement and whose identity shall be made known by the Council to the Developer.

Road: the carriageways and footways of the roads shown on the Drawings, including:

- (a) any off-site highway drainage shown on the Drawings;
- (b) the footpaths, street lighting, all verges, service strips, service margins, vehicular crossings, road surface water drainage system (if any);
- (c) street furniture; and
- (d) all other ancillary items.

And **Roads** shall mean more than one of them

but PROVIDED THAT for the purposes of Clauses 11 (Certificates For Part Or Parts Of The Road) 14 (Adoption) and 23(b) (Council's Covenants) the Road is limited to the land shown edged red and shaded grey on the Dedication Drawing and shall not include the Temporary Soakaway.

Road Land: the freehold estate in the land comprising the Road.

Sewer Adoption Agreement: an agreement made under section 104 of the Water Industry Act 1991.

Soakaway Easement: means the easement in the form annexed to this Agreement at Annex 4 for the Temporary Soakaway in the event that the Permanent Drainage has not been provided.

South Hams Works: means the works shown in the South Hams Schedule at Annex 6

Specification: the following publications

- i. the version of "Torbay Council – Highways Design Guide for New Developments" adopted by the Council in force at the date of this agreement; and
- ii. the Design Guide Exception Report by the Council dated April 2003

Statutory Undertaker: a statutory undertaker, as defined in section 329(1) of the Highways Act 1980 and including:

- (a) persons authorised under any enactment to carry on an undertaking for the supply of electricity, gas, water and any sewerage undertaking;
- (b) the Environment Agency;
- (c) a holder of a licence to operate telecommunication systems;
- (d) the Civil Aviation Authority; and
- (e) the holder of a licence to supply cable television.

Street Furniture: objects and pieces of equipment installed for various purposes on the carriageway and footway of the private road shown on the Drawings including street lighting, traffic lights and traffic signs.

Temporary Soakaway: the soakaway and related drains and drainage works shown on Drawing E05673-ING-0426-429-Drainage Layout-428XXXX

Traffic Manager: the officer appointed by the Council to act as Traffic Manager for the purpose of the Traffic Management Act 2004.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, or a bank holiday or public holiday in England.

S38 Works: the Part 1 Works and the Part 2 Works (including Works that have been carried out by the Developer on the date of this Agreement as acknowledged in Recital C) being works on private land which it is intended will be adopted by the Council as highway maintainable at public expense pursuant to section 38 of the Highways Act 1980

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms
- 1.14 References to Brixham Road Windy Corner Long Road Goodrington Road and Dartmouth Road mean the roads named in the Drawings.

2. STATUTORY PROVISIONS

This Agreement is made under sections 38 and 278 of the Highways Act 1980, section 111 of the Local Government Act 1972 and (in relation to the undertaking and covenant in Clauses 3.4 and 12) section 106 of the Town and Country Planning Act 1990 and any other enabling powers of the Council.

2A GRANT OF RIGHT TO EXECUTE WORKS

The Council as the highway authority hereby grants to the Developer and its servants and agents or any contractor of the Developer with all necessary plant and equipment a licence to enter upon the public highway so far as is necessary for the purpose of executing the S278 Highway Works (including breaking open the surface) and inspecting replacing and maintaining the same

3. DEVELOPER'S OBLIGATIONS

- 3.1 The Developer shall, at its own cost, use all reasonable endeavours to carry out and complete the S38 Works and the S278 Highway Works:
- (a) in a good and workmanlike manner;
 - (b) using only good quality materials approved by the Proper Officer;
 - (c) in accordance with this agreement, the Specification (a copy of which has been received by the Developer) and the Drawings;
 - (d) to the Proper Officer's reasonable satisfaction; and
 - (e) in compliance with all relevant British Standards, codes of practice and good building practice; and
 - (f) within 7 calendar months following the date of this Agreement (unless otherwise agreed between the Developer and the Proper Officer)
- 3.2 It is agreed that the S278 Highway Works may start on 3 January 2023 but in the event of any substantial delay the Developer shall notify the Council of that and give to the Proper Officer not less than 10 Working Days written notice of the date of starting.

- 3.3 The Developer shall maintain the Road and the S278 Highway Works in each case until the date of issue of the Final Certificate.
- 3.4 The Developer undertakes and covenants with the Council as a planning obligation for the purposes of section 106 of the Town and Country Planning Act 1990 enforceable by the Council as local planning authority and so as to bind the Developer its successors in title and assigns to the Land
- (a) to use all reasonable endeavours complete the Permanent Drainage at its own cost on the Road Land in accordance with a scheme and details previously approved by the Council within [3 (three)] years of the date of this Agreement; and
 - (b) in the event that the Permanent Drainage has not been completed within 5 years of the date of this Agreement not to carry out any further Development until the Soakaway Easement has been entered into and a commuted sum of five thousand pounds (£5,000.00) been paid to the Council to be used by the Council for the maintenance of the Temporary Soakaway.

3A DEVELOPER'S ADDITIONAL OBLIGATIONS – S278 HIGHWAY WORKS

3A.1 Approval of S278 Highway Works

Before carrying out the S278 Highway Works the Developer shall obtain:-

- (a) the approval of the Proper Officer (such approval not to be unreasonably withheld or delayed) to the Drawings
- (b) all necessary planning consents
- (c) all necessary consents of Statutory Undertakers who have or may have apparatus that may be affected by the S278 Highway Works

3A.2 The Developer shall give the Council not less than 10 Working Days notice of any traffic signal work

3A.3 The S278 Highway Works

The Developer shall at its own expense

- (a) carry out and complete the S278 Highway Works in a good and workmanlike manner and with proper materials, in accordance in all respects with the Specification and the Drawing(s), to the reasonable satisfaction of the Proper Officer and in accordance with any permits, permissions, consents and approvals granted by the Council (or any other statutory or public authorities),
- (b) advise all Statutory Undertakers who may or do have apparatus or any part of their services affected by the S278 Highway Works, and
- (c) execute all works or pay any costs that may become due and payable in respect of any further works that are required by any Statutory Undertaker as a result of the Developer undertaking the S278 Highway Works
- (d) use best endeavours to minimise and mitigate (a) the length of time of the Closure (b) the disruption and delay and other impacts caused by the Closure and the use of the Diversion Route and other roads including undertaking:

- (i) extended working hours and weekend working (subject to obtaining planning permission)
- (ii) using additional work crews
- (iii) taking all opportunities to minimise the period of the Closure
- (iv) taking all opportunities to increase the robustness of the programme approved under Clause 3A.5

PROVIDED THAT in the event that the Developer is unable to mitigate the Closure to a period shorter than the Closure End Date the Developer will not be in breach of this Agreement.

- (e) no S278 Highway Works (other than minor works that have no impact on the free flow of traffic) shall be carried out from Monday 3 April to Friday 14 April 2023 and from 12 June to 15 September 2023 (including on those dates)
- (f) For the avoidance of doubt the Developer shall comply with all statutory requirements in connection with the carrying out of the S278 Highway Works (and where there is any conflict between the terms of this agreement or anything agreed pursuant to it and any statutory requirement then the latter shall prevail)

3A.4 Contractors

The Developer shall:-

- (a) before the commencement of the S278 Highway Works inform the Proper Officer of the name and address of the proposed contractor and obtain the consent of the Proper Officer (such consent not to be unreasonably withheld or delayed) to that contractor being employed in writing before commencement of the S278 Highway Works and the contractor shall at all times maintain a public liability insurance policy with a member of the Association of British Insurers in a minimum sum of £5,000,000 for a single claim (and in the event of the Developer carrying out the S278 Highway Works itself it shall provide the insurance cover required by this clause)
- (b) include in the conditions of contract of the contractors (or any sub-contractors) engaged to carry out the S278 Highway Works obligations to:-
 - (i) give the Traffic Manager appropriate notice (such form of notice to be obtained from the Traffic Manager to comply with the requirements of the Traffic Management Act 2004) of the Developer's intention to commence the S38 Works and
 - (ii) comply with any obligations imposed upon the Developer in this Deed insofar as they relate to the carrying out of the S278 Highway Works
- (c) guarantee compliance with the matters set out in this clause 3A.4

3A.5 Programme of S278 Highway Works

The Developer shall:-

- (a) give the Proper Officer a programme of works for the S278 Highway Works for the purpose of exercising its functions under the terms of this agreement for approval prior to commencement of the S278 Highway Works;
- (b) include the proposed End Date and the Closure End Date within the programme; and
- (c) not commence the S278 Highway Works until the programme has been approved by the Council and carry out the S278 Highway Works in accordance with the programme of works as approved by the Council

3A.6 Health and Safety

3A6.1 Throughout the progress of the S278 Highway Works the Developer shall have full regard for the safety of the public and, without prejudice to the generality of the foregoing, shall provide and maintain such precautionary works (including fencing) and signs as may be reasonably required by the Proper Officer or any other body having statutory authority

3A6.2 The Developer agrees to and shall comply with the Mitigation Measures.

3A6.3 If in the opinion of the Proper Officer the Developer fails to comply with the Mitigation Measures or fails to comply with the liaison and communication requirements of Schedule 6 the Council may serve notice on the Developer requiring the Developer to immediately cease carrying out works on the public highway until the Mitigation Measures and/or the liaison and communication requirements of Schedule 6 have been complied with and the Proper Officer gives notice to the Developer that it may continue carrying out the S278 Highway Works.

3A6.4 If in the opinion of the Proper Officer the Developer fails to comply with the Communication Policy, the Proper Officer may serve notice upon the Developer that the licence granted by this Agreement to carry out the S278 Highway Works on the public highway is suspended with immediate effect

3A6.5 Should notice be served pursuant to clause 7.2(a) the Developer will immediately cease carrying out works on the public highway until the Communication Policy has been complied with and the Proper Officer gives notice to the Developer that it may continue carrying out the S278 Highway Works.

3A6.6 If the Council require the Developer to cease the S278 Highway Works the Developer shall, if any part of the highway is closed, use best endeavours to reopen the highway immediately and shall not close the highway again until the Proper Officer gives notice to the Developer that it may close the highway and continue carrying out the S278 Highway Works

3A.7 General Indemnity

The Developer shall indemnify the Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the S278 Highway Works other than those arising out of in consequence of any act neglect default or liability of the Council or any failure by the Council to

comply with its obligations hereunder

3A.8 Developer's Further Indemnity

Without prejudice to the generality of the indemnity given by the Developer to the Council at clause 3A.7 the Developer shall

- (a) be responsible for all reasonable and proper costs and expenses incurred by the Council or its duly appointed agents in dealing with settling or disposing of claims for noise insulation or injurious affection arising from the S278 Highway Works
- (b) indemnify the Council against any lawful claim under the Land Compensation Act 1973 (and any statutory modification or re-enactment thereof) arising as a result of the S278 Highway Works PROVIDED THAT the Council shall keep the Developer informed of any claims as they arise
- (c) indemnify the Council for the cost of processing and implementing any traffic regulation order which the Council consider reasonable as a result of the S38 Works or the S278 Highway Works
- (d) be responsible for and indemnify the Council against the costs of signs, road markings and also including the costs and expenses of removal and reinstatement
- (d) be responsible for and indemnify the Council for the costs of any noise surveys or other preparatory works carried out before or after the S278 Highway Works reasonably necessary for assessing any claims for compensation
- (e) be responsible for and shall indemnify the Council against the payment of all costs and expenses in connection with the Mitigation Measures
- (f) be responsible for and indemnify the Council against all costs and expenses incurred under Clause 3A9(b)
- (g) be responsible for and indemnify the Council against the payment of all costs and expenses in connection with the Mitigation Measures
- (h) be responsible for and indemnify the Council against all relevant reasonable and proper administrative expenses of the Council in connection with anything arising or action taken under this Agreement including an appropriate sum in respect of the Council's general staff costs and overheads and including (where considered reasonable in the Council's opinion) the costs and expenses of appointing consultants in connection with the S278 Highway Works

Provided that in connection with any matter specified above in this clause (other than in relation to general staff costs and overheads) the Council shall keep the Developer reasonably informed of the steps which the Council is taking or any claims as they arise and there shall be no double counting of costs or expenses

3A.9 Developer's Confirmation

- (a) The Developer confirms and acknowledges that notwithstanding anything in this Agreement the Council retains and can exercise all powers related to traffic regulation and control and that its powers to make any temporary or emergency orders may be exercised (whether or not that has an impact on the S278 Highway Works) as if this Agreement had not been entered into
- (b) In relation to the Diversion Route the Council may without consultation with the Developer carry out any operations (including notifications) or works which in the Council's opinion are reasonably necessary to ensure the safe and efficient flow of traffic and the safety and amenity of residents and the public along the Diversion Route and other roads
- (c) Where anything in this Agreement requires a step to be taken prior to the commencement of the S38 Works, the Developer confirms that it has taken those steps or will do so immediately and the parties agree that this Agreement shall be deemed to apply as if entered into prior to any S38 Works being carried out

4. DEVELOPER'S DECLARATION

The Developer declares and warrants to the Council that throughout the duration of this agreement the Developer has or will have full right, liberty and consent to carry out such works as may be necessary to connect the Road to a highway that is, or will be, maintainable at the public expense.

5. EXTENSION OF TIME TO COMPLETE THE S38 WORKS AND/OR THE S278 HIGHWAY WORKS AND CHARGES IN RELATION TO WORKS OCCUPYING THE HIGHWAY DURING PERIOD OF OVERRUN

- 5.1 Without prejudice to any remedy of the Council, the Proper Officer may at any time, exercising absolute discretion grant an extension of time to complete the S38 Works or the S278 Highway Works for a further period or periods by giving written notice to the Developer and providing
 - i. that if such extension of time (to be confirmed in writing by the Proper Officer) is granted the Developer shall pay to the Council such additional inspection fee (based on the estimated cost of any outstanding works) as shall be agreed between the Proper Officer and the Developer; and
 - ii. the Developer and the Proper Officer shall review the amount of the Bond (as specified in Clause 22) in force at that time and the Developer shall if required by the Proper Officer in writing arrange for the amount of the Bond to be increased to such reasonable amount as shall be required by the Proper Officer
- 5.2 The Developer covenants to pay the Council a daily charge for each day between the End Date and the date of issue of the Certificate of Satisfactory Completion (including

both the End Date itself and the day on which the Certificate of Satisfactory Completion is issued) which shall be:

- (a) £2,500 for each day; or if greater
- (b) The sum being the maximum amount payable specified in any revision to Item 2 of Table 10.2 of the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters HAUC(England) 2020 Edition for “Other street not in road categories 2, 3 or 4”

PROVIDED THAT the Developer may apply for the Council’s approval to extend the End Date for the purposes of this Clause on the grounds only of engineering difficulties (such approval not to be unreasonably withheld or delayed):

- (c) by giving not less than 10 days notice prior to the End Date of the proposal to extend and such application shall specify in detail the engineering difficulties and such other information as the Council shall reasonably require and propose a new End Date
- (d) and the End Date shall (if extended) be such date as shall be reasonably determined by the Council and notified to the Developer

and in any other case the daily charge shall be payable notwithstanding any Council approval to changes to the programme or extension of time to complete the S278 Highway Works (whether or not under Clause 5.1).

5.3 The Developer covenants to pay the Council a daily charge in the event that the Closure End Date is exceeded which shall be £2,500 for each day;

5.4 The Closure End Date may be extended for the period of any reopening of Brixham Road or cessation of the S278 Works during the Closure that have been carried out at the request of or agreed with the Council (the extension being equivalent to the period of any reopening or cessation of works).

6. SUSPENSION OF THE S38 WORKS

6.1 If the Developer intends to suspend construction of the S38 Works for a period of more than twenty (20) Working Days, the Developer shall notify the Proper Officer in writing of:

- (a) the intended suspension not less than five (5) Working Days before the start of the suspension; and
- (b) the Developer's intention to re-commence construction of the S38 Works not less than five (5) Working Days before such re-commencement.

6.2 If the Developer fails to notify the Proper Officer as required under clause 6.1, the inspection fee referred to in clause 33 shall be increased by such amount as the Proper Officer, exercising absolute discretion, sees fit in order to reimburse the Council any

additional cost incurred by the Council in inspecting the S38 Works because of such failure.

7. DUTY TO ALLOW INSPECTION OF THE S38 WORKS AND THE S278 HIGHWAY WORKS

- 7.1 During construction of the S38 Works and the S278 Highway Works, the Developer shall give to the Proper Officer and any other Council officer free access to every part of the S38 Works, the S278 Highway Works and the Land for the purpose of inspecting the S38 Works, the S278 Highway Works and all materials used, or intended to be used, for the S38 Works and/ or the S278 Highway Works.
- 7.2 While carrying out any inspection under clause 7.1, the Proper Officer and any other Council officer shall comply with any reasonable health and safety and security requirements notified to them by the Developer.
- 7.3 During construction of the S38 Works and/or the S278 Highway Works, the Proper Officer may require the Developer to open up or expose any of the S38 Works or the S278 Highway Works that have been covered up without previously being inspected by the Proper Officer. If the Developer fails to comply with any such request, the Council may take up or expose the relevant part of the S38 Works or the S278 Highway Works causing as little damage or inconvenience as possible to or in respect of any other part or parts of the S38 Works or the S278 Highway Works as the case may be. The Developer shall pay the Council's reasonable and proper costs of such taking up, exposure and reinstatement.

8. PROCEDURE FOR INSPECTION AND ISSUE OF CERTIFICATES

- 8.1 The Developer must apply to the Proper Officer in writing for a:
- (a) Part 1 Certificate;
 - (b) Part 2 Certificate; and
 - (c) Final Certificate.
- 8.2 Within ten Working Days following receipt of a written application from the Developer for the issue of a Part 1 Certificate or Final Certificate and within 20 Working Days following written application from the Developer for the issue of a Part 2 Certificate the Proper Officer shall:
- (a) inspect the S38 Works or S278 Highway Works to which the application relates; and
 - (b) provide the Developer (where necessary) with a definitive written list of any works required to be carried out to remedy any defect or damage to the Road or the public highway before the issue of that certificate.
- 8.3 The Developer must apply to the Proper Officer in writing for a:
- (a) Certificate of Satisfactory Completion; and

(b) Final Certificate.

8.4 Within 20 Working Days following receipt of a written application from the Developer for the issue of a Certificate of Satisfactory Completion and within 10 Working Days following written application from the Developer for the issue of a Final Certificate the Proper Officer shall:

- (a) inspect the S278 Highway Works; and
- (b) provide the Developer (where necessary) with a definitive written list of any works required to be carried out to remedy any defect or damage to the S278 Highway Works or public highway before the issue of that certificate.

8.5 The Developer must carry out the works referred to in clause 8.2(b) and 8.4(b) without delay and at its own cost.

8.6 The works referred to in clauses 8.2(b) and 8.4(b) shall be subject to the same inspection procedure detailed in this clause 8 until such time as those works have been completed to the reasonable satisfaction of the Proper Officer.

8.7 The Proper Officer shall issue the relevant certificate in accordance with clause 9, clause 10 or clause 13.

9. PART 1 CERTIFICATE (WORKS)

Within 20 Working Days following completion of the Part 1 Works to the reasonable satisfaction of the Proper Officer, the Proper Officer shall issue the Part 1 Certificate to the Developer.

10. PART 2 CERTIFICATE (WORKS)

Within 20 Working Days following completion of the Part 2 Works to the reasonable satisfaction of the Proper Officer, the Proper Officer shall issue the Part 2 Certificate to the Developer provided that

- (a) a camera survey of the surface water drains serving the Road has been carried out and provided to the Proper Officer; and
- (b) the maintenance period of any sewer constructed on or under the Road in accordance with a Sewer Adoption Agreement is currently running or has expired.

10A. CERTIFICATE OF SATISFACTORY COMPLETION (S278 HIGHWAY WORKS)

Within 20 Working Days following completion of the S278 Highway Works to the reasonable satisfaction of the Proper Officer, the Proper Officer shall issue the Certificate of Satisfactory Completion to the Developer provided that no certificate may be issued if the Developer has not paid any daily charge payable under Clause 5.2.

11. CERTIFICATES FOR PART OR PARTS OF THE ROAD

- 11.1 The Developer can apply to the Proper Officer for a Part 1 Certificate or a Part 2 Certificate for any part of the Road (being the whole width of the Road between specified points to be agreed by the Proper Officer and defined in the application).
- 11.2 If the Proper Officer is satisfied that the part of the Road defined is suitable to be treated as a separate road for the purposes of construction and adoption under this agreement, the Proper Officer may issue a separate Part 1 Certificate or Part 2 Certificate, as the case may be, for that part of the Road.
- 11.3 The same procedures may then be taken in respect of the said part of the Road as if it were the subject of a separate agreement under which the terms of this agreement applied, but without affecting the application of this agreement to the remainder of the Road.
- 11.4 That part of the Road comprising the new roundabout junction shown on the Dedication Drawing shall become highway open for use by the public at large from the date the Closure ends or (if earlier) the date when it is used by the public at large, but shall not be regarded as a highway maintainable at the public expense until the issue of the Final Certificate PROVIDED THAT this provision does not affect or remove the Developer's obligation to obtain the Part 1 Certificate the Part 2 Certificate and the Final Certificate or any remedy of the Council for a failure to do so.
- 11.5 References herein to "the Part 1 Certificate" or "the Part 2 Certificate" shall be construed as meaning that certificate issued in respect of the relevant part or parts of the Road if this Clause 11 shall apply.

12. THE MAINTENANCE PERIOD

- 12.1 the Maintenance Period for the S38 Works shall
- (a) commence from and include the date of the Part 2 Certificate; and
 - (b) run for a period of twelve (12) calendar months or, if construction vehicles continue to travel along the Road, such longer period as the Proper Officer may reasonably determine; but
 - (c) provided that in the case of the Temporary Soakaway the maintenance period shall run until the date on which the Permanent Drainage has been adopted by the Council as highway drainage maintainable at the public expense and
- 12.2 during the Maintenance Period the Road or that part of the Road which is not already highway pursuant to clause 11.4 shall become a highway open for use by the public at large, but shall not be regarded as a highway maintainable at the public expense.
- 12.3 the Maintenance Period for the S278 Highway Works shall

- (a) commence from and include the date of issue of the Certificate of Satisfactory Completion; and
 - (b) run for a period of twelve (12) calendar months
- 12.4 During the Maintenance Period the Council shall, at its own cost undertake routine maintenance of and be responsible for, the supply of energy all the street lights and illuminated traffic signs.
- 12.5 Before the Maintenance Period expires, the Developer shall, without delay and at its own expense, reinstate and make good any defect or damage to the Road or the S278 Highway Works, which may have arisen from any cause or be discovered, during the Maintenance Period (including any defect in, or damage to, the road surface water drainage system) of which the Developer has been notified in writing by the Proper Officer, so that the S38 Works or the S278 Highway Works, as the case may be, comply with the Specification and the Drawings.
- 12.6 The Developer undertakes and covenants with the Council as a planning obligation for the purposes of section 106 of the Town and Country Planning Act 1990 enforceable by the Council as local planning authority and so as to bind the Developer its successors in title and assigns and the Land during the Maintenance Period to repair, maintain or replace the Temporary Soakaway which will not become maintainable at the public expense so as to ensure the passage and conveyance of surface water from the Roads to the reasonable satisfaction of the Council

13. FINAL CERTIFICATES

THE S38 WORKS

- 13.1 On receipt of a written application from the Developer the Proper Officer shall issue to the Developer the Final Certificate in respect of the S38 Works provided that:
 - (a) the Developer has paid to the Council all amounts due to the Council under this agreement including any commuted sum payable under clause 24;
 - (b) any necessary reinstatement or other works notified in writing to the Developer in accordance with clause 12.5 have been completed to the reasonable satisfaction of the Proper Officer;
 - (c) the Road connects directly to a highway maintainable at public expense;
 - (d) the Developer has delivered to the Proper Officer each of the following:
 - (i) one printed set and one electronic set of coloured drawings showing to a scale of 1:500 the S38 Works and the S278 Highway Works as constructed, in a format specified by the Proper Officer;
 - (ii) one copy of the Health and Safety File in electronic form; and
 - (iii) highways inventory data in a format specified by the Proper Officer.

- (e) The Developer has at its own expense provided the Proper Officer with verification that any sewers constructed on or under the Road, in accordance with a Sewer Adoption Agreement, have been adopted by a Statutory Undertaker;
- (f) the Developer has obtained and delivered to the Council all necessary deeds of easement under clause 20;
- (g) the Developer has procured that an independent safety auditor, approved by the Council, has undertaken road safety audit stages 1, 2, 3 and (if required by the Proper Officer) 4 (**Road Safety Audits**) on the S38 Works [and the S278 Highway Works] in accordance with H.D 19/03 (Road safety audit volume 5: design manual for roads and bridges); and
- (h) the Developer has carried out, at its own expense, all the remedial works identified in the Road Safety Audits to the reasonable satisfaction of the Proper Officer;
- (i) Either:
 - (i) the Permanent Drainage has been completed and has either been adopted by the Council as part of the highway maintainable at the public expense or is subject to an agreement under section 38 Highways Act 1980 for its adoption; or
 - (ii) The Soakaway Easement has been completed and the commuted sum payable under clause 3.4(b) has been paid to the Council

13.2

THE S278 HIGHWAY WORKS

On receipt of a written application from the Developer and completion of a satisfactory safety audit by the Proper Officer, the Proper Officer shall issue to the Developer the Final Certificate in respect of the S278 Highway Works provided that:

- (a) any necessary reinstatement or other works notified in writing to the Developer in accordance with clause 12.5 have been completed to the reasonable satisfaction of the Proper Officer;
- (b) the Developer has paid to the Council all amounts due to the Council under this Agreement and
- (c) any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer and
- (d) the Developer has delivered to the Proper Officer drawings showing the S278 Highway Works as built

14. ADOPTION

From and including the date of issue of the Final Certificate, the Road or any part of the Road, as the case may be, shall become a highway maintainable at the public expense.

15. MATERIALS SAMPLING AND TESTING

- 15.1 The Developer shall, if requested by the Proper Officer, make all necessary arrangements for an independent accredited testing facility, approved by the Council, to test the materials proposed to be used in connection with the S38 Works and the S278 Highway Works. The Developer shall bear the full cost of such testing and give to the Proper Officer, at no expense to the Council, copies of all material testing certificates.
- 15.2 Any material rejected by the Proper Officer acting reasonably, as a result of the tests carried out under clause 15.1 shall not be used by the Developer for any of the S38 Works or the S278 Highway Works.

16. NEW ROADS AND STREET WORKS ACT 1991

Until the date of issue of the Final Certificate, in respect of both the S38 Works and the S278 Highway Works the Developer shall:

- (a) appoint a supervisor qualified in accordance with the provisions of section 67 of the 1991 Act; and
- (b) remain the street manager of the Road under section 49(4) of the 1991 Act.
- (c) comply in all respects with the 1991 Act

17. KEEPING THE EXISTING HIGHWAY CLEAN

The Developer shall:

- (a) before commencing the S38 Works provide suitable vehicle and wheel cleaning apparatus on the Land; and
- (b) during construction of the S38 Works and the S278 Highway Works ensure the cleaning apparatus is well maintained and used by all vehicles immediately before leaving the Land to prevent mud and other materials being deposited on the highway.

18. CONNECTING TO EXISTING SERVICES

18.1 The Developer shall

- (a) At its own cost and expense advise all Statutory Undertakers who may or do have apparatus or any part of their services affected by the S38 Works or the S278 Highway Works
- (b) Execute all works or pay any costs that may become due and payable in respect of any further works that are required by the Statutory Undertaker as a result of the Developer undertaking the S38 Works or the S278 Highway Works

18.2 Before connecting the Road to the carriageway of a highway maintainable at the public expense, the Developer shall give notice to the relevant Statutory Undertaker of any service or services laid in, on, or under the existing highway of the proposal to make such connection as if the connection were works for road purposes or major highway works as defined in section 86 of the 1991 Act.

18.3 The Developer shall:

- (a) carry out, at its own cost, any works or measures required by a Statutory Undertaker as a result of the S38 Works or the S278 Highway Works; and
- (b) indemnify the Council for the cost of any works or measures carried out, as a result of the S38 Works or the S278 Highway Works, by the Council at the request of the Statutory Undertaker.

19. OCCUPATION OF BUILDINGS

No buildings erected by or on behalf of the Developer that front, adjoin, abut or have access to the Road shall be occupied until:

- (a) the Proper Officer has issued the Part 1 Certificate for the Road, or the part of the Road that will provide the occupier with access to a vehicular highway;
- (b) a base course pedestrian access (where applicable) to such highway has been provided;
- (c) the Road or that part of the Road referred to in clause 19(a) has operational street lighting columns erected in accordance with the Specification and the Drawings and the Developer has arranged with the service provider for an electricity supply to the lighting by giving at least six weeks' prior notice in writing or as may otherwise be agreed in writing by the Proper Officer; and
- (d) the Road or that part of the Road referred to in clause 19(a) has street name plates erected as agreed with the Proper Officer.

20. GRANT OF EASEMENTS

20.1 Before the Proper Officer issues a Final Certificate, the Developer shall, without cost to the Council, execute and complete or procure the execution and completion of:

- (a) any deeds of easement that are in the opinion of the Council necessary to secure for the Council full drainage rights to such parts of the surface water drainage system of the Road Land that are not within the Road Land; and
- (b) any other deeds of easement required by the Council for the future maintenance by the Council of any street furniture not within the Road Land.

20.2 The Developer shall pay the Council's proper and reasonable legal costs and disbursements in connection with the grant of any deeds of easement.

20.3 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the completion of any deeds of easement referred to in clause 20.1 or due to the subsequent use of the easement.

21. CDM REGULATIONS

21.1 The Developer elects to be treated for the purposes of the CDM Regulations as the only Client. The Council agrees with such election by the Developer.

21.2 The Developer agrees to undertake all the obligations of a Client and to use its best endeavours to ensure that the S38 Works and the S278 Highway Works are carried out in accordance with the CDM Regulations.

21.3 Before commencement of the S38 Works and the S278 Highway Works, the Developer shall ensure that the S38 Works and the S278 Highway Work are properly notified to the Health and Safety Executive in accordance with the CDM Regulations and shall give the Council a copy of the notification and any acknowledgement from the Health and Safety Executive.

21.4 The Developer shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.

21.5 The Developer warrants it has taken or shall take all reasonable steps to be satisfied that all contractors engaged on the S38 Works or the S278 Highway Work are suitable and competent having regard to their responsibilities in relation to the S38 Works and the S278 Highway Work and the CDM Regulations.

21.6 The Developer shall indemnify and keep the Council indemnified against any breach of the Developer's obligations under this clause 21.

22. THE BOND

The Developer covenants with the Council to enter into the Bond on the date of this agreement.

23. COUNCIL'S COVENANTS

The Council covenants with the Developer for the benefit of each and every building plot fronting, adjoining, abutting, or having access to the Road:

- (a) to use all reasonable endeavours to mitigate any loss or damage sustained because of any default by the Developer, by taking such reasonable steps as the Council thinks fit;
- (b) on the issue of the Final Certificate to give such notices and do whatever else may be required for securing that the Road or any part thereof, as the case may be, shall become a highway maintainable at public expense.

24. COMMUTED SUM

On the date of completion of this agreement, the Developer shall pay to the Council the sums specified in the second column of Schedule 3 in respect of the future maintenance and/or replacement cost of the corresponding item described in the first column of Schedule 3.

25. SPECIFICATION TO TAKE PRECEDENCE

If there is any conflict between the Specification and the Drawings, the Specification shall take precedence unless otherwise agreed in writing by the Proper Officer.

26. TECHNICAL ADVICE

If the Proper Officer determines that technical advice is required before any feature or structure included as part of the S38 Works or that is under or over the Road, or as part of the or the S278 Highway Works, can be approved, the Developer shall reimburse to the Council, within 20 Working Days following receipt of an invoice, all costs incurred by the Council in obtaining such technical advice.

27. MAKING UP OF PRIVATE STREETS

If the Developer fails to perform any of its obligations under this agreement, nothing in this agreement shall prevent or restrict the Council from exercising its powers under the Private Street Works Code contained in Part XI of the Highways Act 1980 or any other statutory provision.

28. INDEMNITIES

28.1 The Developer shall indemnify the Council in respect of any actions, charges, claims, costs, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance of the Developer's obligations in this agreement including (but not limited to):

- (a) third party claims for death, personal injury or damage to property;
- (b) statutory or other liability for the safety or security of the Land, working methods, employment practices, protection of the environment and control of pollution; and
- (c) third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.

28.2 The Developer shall indemnify the Council in respect of any claims for compensation under section 10 of the Compulsory Purchase Act 1965 and claims under the Land Compensation Act 1973 arising out of, in connection with or incidental to, the carrying out of the S38 Works or the S278 Highway Works and their subsequent use, other than those arising out of or in consequence of any negligent act default or omission of the Council.

- 28.3 The indemnification referred to in clause 28.2 includes:
- (a) compensation payments under Part I of the Land Compensation Act 1973;
 - (b) all fees incurred by claimants, and those of the Council or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
 - (c) statutory interest payments to claimants and their professional advisors; and
 - (d) the Council's reasonable and proper legal costs in making the compensation, fees and interest payments under clause 28.3.
- 28.4 The Council shall notify the Developer as soon as reasonably practicable on becoming aware of any matter which becomes the subject of a claim for indemnity and the Developer shall only be required to indemnify the Council in accordance with this agreement if:
- (a) the Council keeps the Developer reasonably informed of all progress of which it is, or becomes, aware of in connection with that matter and of any proposed settlement;
 - (b) where it is permitted by the Council's insurer, not settling or compromising that matter without the previous consent of the Developer, such consent not to be unreasonably withheld or delayed. Where the Developer does not consent it shall indemnify the Council against all costs incurred by the Council in litigating that matter and will assist the Council in such litigation by providing such witnesses and other evidence as it is able to do relating to any matter in contention.

29. INSURANCE

From and including the date of completion of this agreement until the date of issue of the later of the Final Certificate or the Certificate of Satisfactory Completion, the Developer shall maintain public liability insurance in the Developer's own name to cover claims for injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £5,000,000 for any one occurrence or series of occurrences arising out of the same event.

30. DEFAULT EVENTS

The Council may terminate this agreement (except Clauses 1,2,3A7,3A8,7, 12 (in relation to the Maintenance Period for the Temporary Soakaway), 15,19 to 21,27,28,31 33 and 40) immediately by written notice to the Developer without prejudice to any other rights the Council may have, if any of the following events occur:

- (a) the Developer is in fundamental breach of any of its conditions, stipulations or obligations and liabilities in this agreement; or
- (b) the Developer is in substantial breach of any of its conditions, stipulations or obligations and liabilities in this agreement and has failed to rectify the breach

within a reasonable time after receiving notice to rectify from the Proper Officer; or

- (c) where the Developer is a corporation:
 - (i) has an administrative receiver or receiver appointed over the whole or part of the Developer's assets or suffers the appointment of an administrator; or
 - (ii) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
 - (iii) in relation to the Developer, the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an administrator by the Developer or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - (iv) a receiver or manager is appointed in relation to any property or income of the Developer; or
 - (v) a liquidator is appointed in respect of the Developer; or
 - (vi) a voluntary winding-up of the Developer is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
 - (vii) the Developer is struck-off from the Register of Companies; or
 - (viii) the Developer otherwise ceases to exist; or
- (d) Where the Developer is an individual:
 - (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
 - (ii) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developer.

31. COUNCIL'S POWER TO EXECUTE WORKS IN DEFAULT

- 31.1 Without affecting any other powers or rights of the Council under this Agreement or the Bond, if the Developer fails to carry out or complete the S38 Works or the S278 Highway Works as the case may be in accordance with the Developer's obligations under this agreement (including carrying out any works which in the Council's reasonable opinion are required to the Temporary Soakaway), the Council, after giving to the Developer not less than 20 Working Days written notice, shall be entitled to carry out or complete the S38 Works or the S278 Highway Works in default or the works to the Temporary Soakaway as the case may be or the Council may alternatively reinstate

the highway (reinstatement being the reprovision of a highway along the line it was prior to the S278 Highway Works commencing), using the Council's own employees, or by contractors or otherwise and to recover from the Developer the cost of carrying out or completing the S38 Works or the S278 Highway Works or the works to the Temporary Soakaway or reinstatement of the highway as the case may be as certified by the Proper Officer.

- 31.2 The Developer hereby grants to the Council and the Council's agents, contractors and employees full right and licence to enter onto and remain on the Land together with all machinery plant and materials in order to carry out or complete the S38 Works or the S278 Highway Works and remedy any defects or damage to the Road pursuant to clause 31.1.

32. DISPUTES

Any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Institution of Civil Engineers;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and

33. LEGAL AND OTHER COSTS

- 33.1 On the date of completion of this agreement or whenever demanded, within ten Working Days of written demand, the Developer shall pay to the Council:
- (a) £217,140.00 (two hundred and seventeen thousand one hundred and forty pounds) in respect of the reasonable and proper costs and expenses incurred or to be incurred by the Council in connection with the technical assessment, and inspection of the S38 Works and the S278 Highway Works (receipt of which is acknowledged at the date of this Agreement);
 - (b) £6,000 (six thousand pounds) in respect of the Council's reasonable and proper legal costs and disbursements in connection with the preparation, completion and registration of this agreement;
 - (c) any costs incurred by the Council in making and implementing any orders that regulate traffic which the Proper Officer deems necessary because of the S38 Works or the or the S278 Highway Works and whether made or implemented before, during or after completion of the S38 Works or the S278 Highway Works as the case may be; and

33.2 Receipt by the Council of the payment of any sum shall not create any contractual relationship between the Council and the Developer, nor absolve the Developer from any liability or obligation imposed on the Developer by the terms of this agreement, or by statute or at common law.

34. ASSIGNMENT

The Developer may not assign this agreement without the prior written consent of the Council such consent not to be unreasonably withheld or delayed (and provided that the Council may in its absolute discretion refuse such consent unless the assignee first provides the Council with a bond in the form of the Bond and for the Estimated Cost with a bondsman approved by the Council)

35. LOCAL LAND CHARGES REGISTER

As soon as practicable, following the date of completion of this agreement, the Council shall enter this agreement and its terms and conditions in the local land charges register.

36. NOTICES

36.1 A notice or other communication to be given under this agreement must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service (and by fax in the case of emergency).

36.2 Any notice [or other communication] to be given under this agreement must be sent to the relevant party as follows:

- (a) to the Council at: the Highways and Engineering Department, Town Hall, Torquay TQ1 3DR marked for the attention of the Highways and Transport Manager;
- (b) to the Developer at: Persimmon Homes Limited Pennygillam Industrial Estate Launceston PL15 7ED (or such other address as is notified to the Council by the Developer in writing from time to time) marked for the attention of Managing Director;

or as otherwise specified by the relevant party by notice in writing to each other party.

36.3 Any notice or other communication given in accordance with clause 37.1 and clause 37.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a

Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

36.4 A notice or other communication required to be given under this agreement shall not be validly given if sent by e-mail.

36.5 This clause does not apply to the service of any proceedings or other documents in any legal action.

37. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

38. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

39. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

40. MORTGAGEE'S CONSENT

The Mortgagee enters into this Agreement to confirm its consent to it being entered into and completion and to agree to the dedication of the Roads as highways and to the completion and registration of the Soakaway Easement in accordance with the terms of this Agreement.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Part 1 Works

- All highway drainage including the Temporary Soakaway.
- All other drainage contained within the Road.
- All kerb foundations and where appropriate, kerbs including lowering at vehicle crossings, pram-ramps, sub-base and base course surfacing to pedestrian way.
- Carriageway sub-base, road base, vehicle crossings and any supporting structures to the same.
- Carriageway base course surfacing and all vehicle crossings where appropriate.
- Demarcation of sight lines and clearance of vision splays.
- Operational street lighting.
- Temporary street name plates.

Schedule 2 Part 2 Works

- All outstanding kerbing not completed as part of the Part 1 Works.
- Pedestrian ways and cycle ways.
- Carriageway wearing course and carriageway base course including (where appropriate) speed restraint measures.
- Vision splays, verges and service strips.
- All outstanding street lighting and street furniture.
- Street name plates.
- Road markings and traffic signs.
- All other works described in the Specification and shown in the Drawings.

Schedule 3 Commuted sums

Item	Commuted Sum
Highway Hedge Maintenance and maintenance of visibility splays (shown on Drawings E05673-ING-0409- 412-PROPOSED SITE LAYOUT)	£33,000.00

Schedule 4
S278 Highway Works

The S278 Highway Works to be carried out by the Developer include:

- raising Brixham Road to provide forward visibility for the new signalised pedestrian crossing. widening the road to 7.3m and provide a new safe crossing point for access to the Development including new street lighting
- constructing a new roundabout and bus drop off point and new footpath connection points from the Hookhills side of the road and the removal of some trees to facilitate this
- All as more particularly described in the Drawings

and shall also include:

- all works for and ancillary to the use of the Diversion Route.
- any altered substitute or additional works specified by the Council at any time if this is required in their reasonable opinion after prior consultation with the Developer

Schedule 5
Mitigation Measures

1. The Developer shall maintain access for emergency vehicles and residential access at all times,
2. The Developer shall maintain access for post, deliveries and refuse collection.
3. The Developer shall comply with and implement the details agreed with each of the emergency services as annexed to this Agreement at Annex 3 which include (1) emergency vehicle routes agreed with the Council and the relevant emergency services and (2) measures to be taken along the Diversion Route and other roads (including through the area known as Hookhills) in cases of accidents or blockages and in cases of emergency (3) measures to permit the emergency services to use Brixham Road where this is feasible and (4) the provision of 24 hour contact details for the site manager. The requirements for the emergency services shall be regularly monitored and may be amended by the Council if this is reasonably necessary.
4. The Developer shall comply with the traffic management measures as annexed to this Agreement at Annex 3 which provide for (1) the management and control of Brixham Road (2) the management and control of the Diversion Route and other roads (in particular in neighbouring residential areas and to avoid the inappropriate use of other roads) including the provision of signage and for the avoidance, mitigation and management of unplanned interruptions or incidents and (2) access for post, deliveries and refuse collection. The Developer shall implement and comply with the traffic management measures. The traffic management measures shall be regularly monitored and may be amended by the Council if this is reasonably necessary.
5. The Council may where reasonably necessary add to or replace the whole or parts of the Diversion Route and the Diversion Route shall be closely monitored and its operation reviewed during the Closure to ensure that delays are kept as minimal as possible
6. The Developer shall man the junction of Goodrington Road with Dartmouth Road on a daily basis between the hours of 0700 and 1800 for at least the first 3 weeks of the Partial Closure (and longer if required by the Council) to monitor and manage the traffic flows and adjust the traffic light systems to minimise and mitigate delays and congestion.
7. The Developer shall regularly monitor the Diversion Route during the day (at least 3 times a day and at least once during the morning and evening peak and longer is required by the Council) to assess the impact on access to and from side roads and properties fronting Dartmouth Road and Goodrington Road.
8. In the event of bottlenecks the Developer's junction operatives will be employed to utilise Stop / Go signs to manage traffic flow between the hours of 0700 and 1800.
9. The Windy Corner/ Brixham Road junction will remain closed during the road closure to all vehicles (other than emergency vehicles) unless otherwise directed by the Council. The traffic lights at this junction will be turned off and temporary lights installed which will remain on green to enable the traffic to continually flow unless triggered by pedestrians crossing.
10. The Developer shall secure the provision of an additional bus service and shall provide 200 free "day rider" tickets per calendar week through Stagecoach which shall be provided in accordance with a scheme approved by the Council prior to the S278 Works commencing PROVIDED THAT In the event If it is found that the additional capacity is not required and delays to the timetable are not experienced then the additional bus will be stood down but no earlier than February 2023 in any event.

11. The Developer shall continue to engage with all statutory undertakers and take all reasonable steps to minimise utility diversions, consequent delay and disruption and ensure the timely mobilisation and implementation of the S278 Highway Works.
12. The Developer shall carry out the South Hams Works and complete the South Hams Works by 4 January 2023.
13. The Council may amend replace or supplement these Mitigation Measures in consultation with the Developer if it considers this reasonably necessary in the interests of health and safety, traffic congestion or otherwise in the public interest and the Developer shall comply with any such amended replaced or supplemented Mitigation Measures.

Schedule 6 Consultation and Liaison

Communication requirements

The Developer shall maintain the website page <https://inglewood-at-paignton.co.uk> (or alternative website) (the “Dedicated Inglewood Website”) which shall provide details and updates of the preparation for and progress of the S278 Highway Works including notes of meetings of the Liaison Committee and proposed action and such other information as the Council shall require including but not limited to

- notification in writing in advance of the start of works or sections of works and the Closure
- notification as soon as practicable after the commencement of any emergency works and no later than within 1 day of the start of the emergency works where advance notification was not possible
- the publication of press releases relating to the works
- The provision of information boards on street in advance of and during works
- Contact details required by the Council including the contact details for the contractor appointed for the S278 Highway Works.

The Developer shall prepare and make available on the Dedicated Inglewood Website a newsletter with updates on the current status of the S278 Highway Works (the “Inglewood Newsletter”).

The Developer shall provide weekly emails to the emergency services in addition to the detail being provided in the Inglewood Newsletter and on the Dedicated Inglewood Website.

The Developer shall contact all Brixham Road residents prior to commencement of the Closure to discuss works being carried out, access arrangements, and specifically how they can access their property and how their waste and recycling will be collected and deliveries can be made and understand any specific needs or issues they may have. This will include details of alternative access arrangements or any other form of mitigating action as appropriate. The communication will provide details of the Dedicated Inglewood Website and dedicated public phone numbers email addresses and contact details and emergency and 24 hour contact numbers required to be provided by the Developer.

The Developer shall wherever possible give as much advanced notice and details as possible of any roadworks and the Closure and at the earliest opportunity with updates as necessary and where those details change. The details given shall include:

- a) what works are being undertaken
- b) when they will start
- c) how long they will take
- d) an indication of the anticipated disruption
- e) any traffic control / temporary prohibition of traffic

The Liaison Committee

The Liaison Committee comprises the following named individuals or their substitute: Robbie Brown Persimmon Aime Harris Roadform Iain Neary Deely Freed Guy Redfern (SWISCo) and Alan Denby (the Council)

Where any of these named individuals are unwilling or unable to attend, the relevant company will ensure that a substitute of equal standing and who is fully briefed attends. There shall be no quorum for meetings of the Liaison Committee and in the event of a member or individual not attending the Committee meeting shall proceed in any event.

A representative of Brixham Town Council shall be invited and the Council may invite any number of other persons to attend and participate at meetings of the Committee. The Committee meetings may also be attended by any number of officers from the Council and SWISCo. .

The purpose of the Committee meetings is to discuss preparations for and the implementation of any S278 Highway Works with the overall aim of minimising the period of closure, and avoiding and minimising the impact of the closure. The purpose of the Liaison Committee is consultative only.

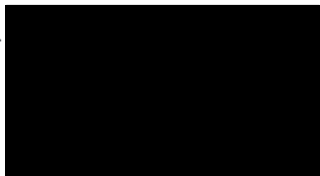
The first meeting of the Liaison Committee shall be held prior to the commencement of the works and meetings shall be held at not less than 7 day intervals in the first month of the Closure until the end of the Closure period unless it can be agreed with the Council that the meetings can be held at 14 day intervals during this period. Following the Closure End Date the meetings shall be held at not less than 14 day intervals. The meetings shall be held on Microsoft Teams or such other online conferencing service or by such other method or location as the Council shall determine. The Council may call an emergency meeting of the Committee at any time to be held within 24 hours.

EXECUTED AS A DEED by affixing

THE COMMON SEAL OF)

THE COUNCIL OF THE BOROUGH OF TORBAY)

in the presence of: -



Proper Officer and Authorised Signatory



The Council of The
Borough of Torbay

S / No: 8886

Executed as a deed by PERSIMMON
HOMES LIMITED acting by two of its
appointed attorneys

.....
[SIGNATURE OF FIRST ATTORNEY]

Name []

.....
[SIGNATURE OF SECOND ATTORNEY]

And

Name []

In the presence of

Witness signature

Witness name

Witness address

Executed as a deed by ABACUS
PROJECTS LIMITED acting by a Director

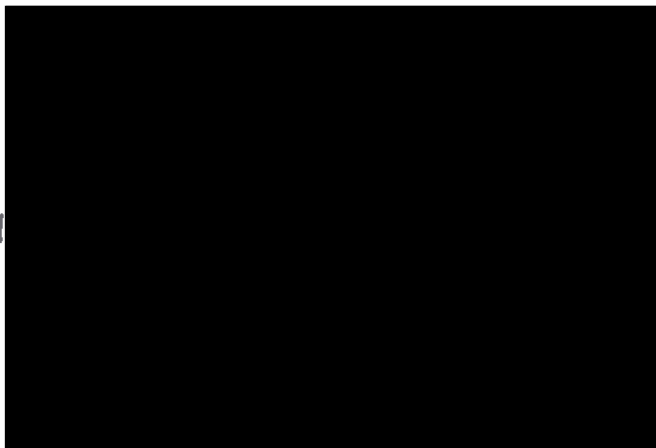


in the presence of:

Witness signature:

Witness name:

Witness address:



EXECUTED AS A DEED by affixing

THE COMMON SEAL OF)

THE COUNCIL OF THE BOROUGH OF TORBAY)



in the presence of:



Proper Officer and Authorised Signatory

The Council of The
Borough of Torbay

S / No: 8886

Executed as a deed by PERSIMMON
HOMES LIMITED acting by two of its
appointed attorneys

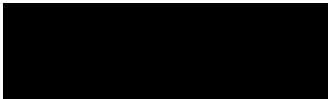
[SIGNATURE OF FIRST ATTORNEY]



[SIGNATURE OF SECOND ATTORNEY]



Name [



And

Name

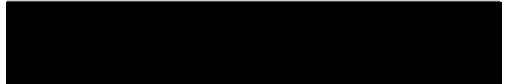


In the presence of

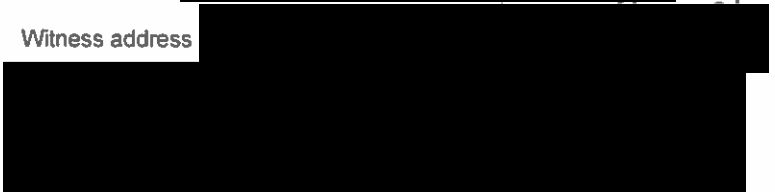
Witness signature



Witness name



Witness address



Executed as a deed by ABACUS
PROJECTS LIMITED acting by a Director

.....
in the presence of:

Witness signature:

Witness name:

Witness address:

Annex 1
List of Drawings

Annex 2
Form of Bond

Annex 3
Emergency Plan and Traffic Management Plan

Annex 4
Form of easement for temporary soakaway

Annex 5

Title Plan

Annex 6

South Hams Works