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DATED 21 JUNE

2019

THE COUNCIL OF THE CITY OF MANCHESTER

- and -

BRECKSIDE ESTATES LLP

- and -

GREAT PLACES HOUSING ASSOCIATION

- and -

AVIVA INSURANCE LIMITED

A G R E E M E N T

made under Sections 38 and 278 of the Highways Act 1980
relating to the making up of new highway and highway works
at Clarkesville Farm and Saddlecote Close
Manchester

City Solicitor

Town Hall

Manchester

M60 2LA

Ref: L/PSH/EVD5012/423

THIS AGREEMENT is made the 21st day of June 2019

BETWEEN:

- (1) THE COUNCIL OF THE CITY OF MANCHESTER of PO Box 532, Town Hall, Albert Square, Manchester M60 2LA ("the Council")
- (2) BRECKSIDE ESTATES LLP (LLP Registration no. OC358431) whose registered office is situate at 47 Bury New Road, Prestwich, Manchester M25 9JY ("the Developer")
- (3) GREAT PLACES HOUSING ASSOCIATION (Registered Society No.19564R) whose registered office is situate at 2A Derwent Avenue, Manchester M21 7QP ("the Adjoining Landowner")
- (4) AVIVA INSURANCE LIMITED (Company Registration No.SC002116) whose registered office is situate at Pitheavlis, Perth PH2 0NH ("the Surety")

Recitals

- A. The Council will act in its capacities (i) as local highway authority with statutory responsibility for all public highways within its jurisdiction including the Public Highway; and (ii) as the beneficiary under the Legal Charge.
- B. The Developer is the registered proprietor of the land known as Clarkesville Farm, Crescent Road, Manchester registered under Land Registry Title MAN279042.
- C. The Adjoining Landowner is the registered proprietor of the land known as (i) the land on the south side of Saddlecote Close, Manchester registered freehold with under Land Registry title number MAN192446 and (ii) the land known as 63, 65, and 67 Saddlecote Close, Manchester M8 5QE and registered under Land Registry title number MAN227300.
- D. The Developer proposes to undertake the Development in accordance with the Planning Permission and will undertake and complete the Highway Works as agent of the Council as far as this Agreement is concerned for the purpose of Section 278 of the Act, and will also undertake and complete the Road Works for the purpose of

Section 38 of the Act.

- E. The Council is satisfied that the carrying out of Highway Works and Road Works will be of benefit to the public.
- F. The Developer and the Adjoining Landowner are willing to dedicate the Road for public use and the Developer has requested that after the Road has 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 subject to the terms and conditions of this Agreement.
- G. The Surety has agreed to enter into this Agreement to guarantee the performance of the Developer's obligations.
- H. The Council as the registered proprietor of the Legal Charge has agreed to enter into this Agreement to grant the consent contained in Clause 7.2.

1. INTERPRETATION

1.1 In this Agreement unless the context otherwise requires or admits the following terms and expressions shall have the meanings specified:

- 1.1.1 "Act" means the Highways Act 1980 (as amended) and any statutory modification on re-enactment of the same;
- 1.1.2 "Administration/Inspection Fee" means the payment to be made by the Developer to the Council upon request towards the Council's Cost in monitoring and inspecting the undertaking of the Highway Works
- 1.1.3 "Advance Warning Signs" means public information signs that give advance notice to highway users of the commencement of the Highway Works (or any part thereof) or that communicates other relevant information
- 1.1.4 "Agreement Plan(s)" mean the plan numbered J4284/HW04 Revision L annexed to this Agreement and signed by or on behalf of the parties or such other plan(s) as may be approved from time to time by the Council either as

amendments to the Agreement Plan(s) or as part of the detailed design for the Works

1.1.5 "CDM Regulations" means the Construction (Design and Management) Regulations 2015

1.1.6 "Client" means the client as defined by the CDM Regulations

1.1.7 "Contractor" means the contractor appointed by the Developer (as applicable) as the principal contractor under the CDM Regulations to carry out the Works

1.1.8 "Council's Cost" means all administrative and other reasonable fees or establishment charges of the Council in connection with the Works incurred or to be incurred up until the issue of the Final Certificate including, but not limited to:

1.1.8.1 the Administration/Inspection Fee;

1.1.8.2 the costs of checking and approval of the Design Works;

1.1.8.3 all legal, administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new, or revocation and amendment of existing, Traffic Regulation Orders arising as a consequence of the Works;

1.1.8.4 all costs or expenses incurred in complying with the CDM Regulations insulating buildings against noise or in satisfying claims made under the noise abatement legislation and/or the Land Compensation Act 1973 Part 1 in connection with the Works in accordance with Clause 18.2

1.1.9 "Default Cost" mean both the:

1.1.9.1 cost of carrying out the Default Work; and

1.1.9.2 the (or any part of the) Council's Cost

1.1.10 "Default Event" includes the following events:

1.1.10.1 the Developer at any time failing to perform or observe any of the conditions stipulations or obligations on its part contained in this agreement;

or

- 1.1.10.2 a receiving order in bankruptcy is made in respect of the Developer's estate; or
- 1.1.10.3 the Developer being wound up; or
- 1.1.10.4 the Developer entering into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation)
- 1.1.11 "Default Notice" means a notice served by the Proper Officer on the Surety in accordance with Clause 20.1
- 1.1.12 "Default Work" means work required to be carried out in connection with the Works by or on behalf of the Surety following a Default Event in order to secure the performance of the Developer's covenants, obligations and liabilities contained in this Agreement
- 1.1.13 "Deposit" means the sum of £3000 paid by the Developer to the Council as an advance contribution towards the Council's Cost
- 1.1.14 "Design Works" means undertaking a feasibility study and preparing the detailed highway design (including the lighting design) and the Specification all such work to be undertaken by the Developer and approved separately by the Proper Officer prior to commencement of the Works
- 1.1.15 "Development" means the erection of 44 no. 2 and 2.5 storey semi-detached and detached three and four bedroom dwellings with associated external works, including retaining walls, boundary treatment, car parking, landscaping and associated highway works, including alterations to existing access road - Saddlecote Close, following demolition of existing Sexton's House / Clarkesville Farm, as permitted by the Planning Permission
- 1.1.16 "Due Date" is the date when a payment is due in accordance with the terms and conditions of this Agreement
- 1.1.17 "Estimated Cost" means the sum of one hundred and fifty nine thousand and forty pounds twenty pence (£159,040.20) being the amount which in the opinion of the Proper Officer represents the Council's Cost and the cost of carrying out

the Works within the period specified in Clause 6.3.

- 1.1.18 "Final Certificate" means the certificate issued by the Proper Officer to the Developer following the expiry of the Maintenance Period in accordance with Clause 9
- 1.1.19 "Further Works" means those works as may be specified in accordance with clause 9.2.2 prior to issue of the Final Certificate
- 1.1.20 "Health and Safety File" means the file or other permanent record containing the information required by the CDM Regulations
- 1.1.21 "Highway Works" mean the highway improvement works described generally in the Schedule, as shown in principle hatched on the Agreement Plan and any detailed design subsequently approved by the Council in accordance with this agreement
- 1.1.22 "Interest" means the interest at the rate of 4% per annum above the base rate from time to time of Barclays Bank PLC
- 1.1.23 "Land" means (i) part of the land known as Clarkesville Farm, Crescent Road, Manchester (ii) part of the land on the south side of Saddlecote Close, Manchester; and (iii) part of the land being 63, 65, and 67 Saddlecote Close, Manchester shown edged red and shaded pink and yellow on the Agreement Plan and registered under Title Numbers MAN279042, MAN192446 and MAN227300 upon which the Road is to be constructed
- 1.1.24 "Latent Defect" means a defect in the Works which is not detectable prior to the issue of the Final Certificate
- 1.1.25 "Legal Charge" means a registered charge contained in a debenture dated 10 October 2018 and made in favour of the Council
- 1.1.26 "Maintenance Period" means a minimum period of twelve (12) calendar months (Excepting That in circumstances where the Works include soft landscaping or tree planting the Maintenance Period shall be extended to twenty-four (24) months) from the date of issue of the Part 2 Certificate or, if the construction

vehicles continue to travel along the Public Highway, such longer period as the Proper Office may reasonably determine unless at the end of that period the Proper Officer forms the view that the Final Certificate cannot be issued on the basis that the Further Works have not been completed in accordance with this agreement in which case the Maintenance Period shall include such further period as shall elapse until the issue of the Final Certificate

- 1.1.27 "Occupation" shall mean the occupation of the Development for the purposes of the Planning Permission but not including occupation for the purposes of construction, fitting out or security and "Occupied" shall be construed accordingly
- 1.1.28 "Part 1 Certificate" means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 6 of the Agreement
- 1.1.29 "Part 1 Works" means the works referred to in Part 1 of the Schedule
- 1.1.30 "Part 1 Costs" means EIGHTY SEVEN THOUSAND FOUR HUNDRED AND SEVENTY TWO POUND AND ELEVEN PENCE (£87,472.11)
- 1.1.31 "Part 2 Certificate" means the Certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 6 of the Agreement
- 1.1.32 "Part 2 Costs" means THIRTY NINE THOUSAND SEVEN HUNDRED AND SIXTY POUNDS AND FIVE PENCE (£39,760.05)
- 1.1.33 "Part 2 Works" means the works referred to in Part 2 of the Schedule including any works required to be carried out as a result of the RSA3 in accordance with Clause 6.5
- 1.1.34 "Planning Permission" shall mean the planning permission issued by Manchester City Council on 30 June 2017 with reference number 1151/39/FO/2017
- 1.1.35 "Programme" means the period for completion of the Works as defined in Clause 6.3
- 1.1.36 "Proper Officer" means the person for the time being appointed by the Council

for the purposes of this Agreement or of any provision contained herein

- 1.1.37 "Public Highway" means that part of Saddlecote Close that is maintainable at public expense as more particularly shown hatched on the Agreement Plan on which the Highway Works are proposed to be carried out including all footpaths, street furniture, verges, service strips, service margins, vehicular crossings and road surface water drainage systems (if any) and all other things ancillary thereto
- 1.1.38 "Public Liability Insurance Policy" shall mean an insurance policy with an insurance company regulated and registered with the Association of British Insurers for a sum of not less than £10,000,000 in respect of any single claim, the number of claims being unlimited, 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 arising out of the execution and use of the Works
- 1.1.39 "Road" means the road to be constructed on the Land as part of the Road Works and more specifically the carriageways and footways of the road or roads shown edged red and shaded pink and yellow on the Agreement Plan together with such proposed emergency accesses, cycle ways and footpaths (if any) including their carriageways and footways, street lighting and all verges including any grassed areas, service strips, service margins, vehicular crossings, road surface water drainage system (if any) and all other things ancillary thereto
- 1.1.40 "Road Safety Audits" shall mean the audits of the Works to be carried out in accordance with the Department for Transport Road Traffic Audit Standard HD 19/15 or any other modification or replacement of the same
- 1.1.41 "Road Safety Audit report" shall mean the report to be prepared by the Safety Auditor following the carrying out of the Road Safety Audits
- 1.1.42 "Road Works" shall mean the works to construct a new road as described generally in the Schedule, as shown in principle on the Agreement Plan and

any detailed design subsequently approved by the Council in accordance with this Agreement

- 1.1.43 "RSA3" shall mean a Stage 3 Road Safety Audit Report relating to the completed Works to be carried out prior to issue of the Part 2 Certificate
- 1.1.44 "RSA4" shall mean a Stage 4 Road Safety Audit Report relating to the completed Works to be carried out 12 months following the issue of the Part 2 Certificate
- 1.1.45 "Safety Auditor" shall mean an independent and suitably qualified highway or traffic engineer appointed by the Developer at the Developer's expense to carry out the Road Safety Audits such appointment having been previously approved in writing by the Proper Officer
- 1.1.46 "Specification" shall mean the publication entitled "Specification for Highway Works" published by the Stationery Office as Volume 1 of the Manual of Contract Document for Highway Works as modified and extended by the latest edition of the publication entitled "Roads for Adoption a Guide for Developers" and by the Council's Standard Detail Drawing and those drawings submitted by or on behalf of the Developer and subsequently approved in writing by the Proper Officer
- 1.1.47 "Statutory Undertaker" shall mean public utility undertakers statutory undertakers and water undertakers as defined in Section 329(1) of the Act and British Telecom PLC or other such similar organisation
- 1.1.48 "Street Furniture" shall mean all types of street furniture including (but not limited to) bollards, fencing, street lighting, traffic lights and illuminated traffic signs installed or to be installed as part of the Works
- 1.1.51 "Traffic Regulation Order" shall mean any temporary or permanent order required to commence and carry out the construction of the Works pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order

1.1.52 "VAT" shall mean the value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax

1.1.53 "Working Day" shall mean any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or Wales

1.1.54 "Works" means together the Highway Works and the Road Works

1.2 The Schedule forms 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 Schedule.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 A reference to any party shall include that party's personal representatives and successors and in the case of the Council the successors to their respective statutory functions.

1.5 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

1.6 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.7 Where any approval or agreement of the Council is required pursuant to this Agreement, such approval or agreement shall be in writing.

1.8 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement from time to time)

1.9 References to clause numbers are to the relevant clauses of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule

1.10 Words in the singular include the plural and vice versa and words importing one gender include any gender

1.11 The clause headings are for reference only and shall not affect the construction hereof

2. STATUTORY PROVISION

2.1 This Agreement is made as a deed under Sections 38 and 278 of the Act, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and any other power or authority thereby enabling.

2.2 The Council gives the Developer and all those authorised by the Developer licence to enter the Public Highway with or without workmen, plant and machinery to enable the Developer to comply with its obligations in this Agreement. Subject to the terms of this Agreement, the Council agrees that the Developer is permitted to break open the surface of the Public Highway to the extent reasonably necessary for the carrying out of the Highway Works PROVIDED THAT the Developer will make good any damage to the Public Highway and will leave the Works in a good and clean and tidy condition to the satisfaction of the Proper Officer.

3. DEVELOPER'S OBLIGATIONS

3.1 The Developer has paid the Deposit in advance of this Agreement the receipt of which the Council hereby acknowledge as a contribution towards the Council's Cost.

Pre-commencement obligations

3.2 The Developer shall obtain the prior written approval of the Proper Officer for the detailed Design Works prior to undertaking the Works.

3.3 Prior to commencing the Works the Developer shall provide the Council a Public Liability Insurance Policy in accordance with Clause 19.

3.4 The Developer shall install the Advance Warning Signs in such locations as the Proper Officer advises and to the Proper Officer's satisfaction.

Ongoing obligations

3.5 The Developer covenants with the Council to undertake construct and complete the

Works in accordance with the terms of this Agreement and the Design Works.

3.6 The Developer covenants to pay to the Council within ten (10) Working Days of written demand:

3.6.1 The Administration/Inspection Fee with due regard being taken of the amount of Deposit paid;

3.6.2 Any other outstanding amount being part of the Council's Cost, on a monthly basis or as otherwise approved by the Proper Officer;

3.6.3 All legal, administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new Traffic Regulation Orders arising as a consequence of the Works

3.6.4 Any costs associated with diversions or protection of Statutory Undertakers' equipment if necessary for the Works' completion.

3.7 Upon execution of this Agreement the Developer covenants to pay the Council's legal costs and disbursements in connection with the preparation and completion of this Agreement and duplicates thereof on the date of this Agreement.

3.8 In the event that the Developer fails to pay any of the monies due at the time they are due, the Proper Officer will cease to inspect the site or works being undertaken on site for the purpose of adopting the Works. In that case the Council being the highway authority shall not be under any obligation to adopt any of the Works under this Agreement.

3.9 Receipt by the Council being the highway authority of the Council's Cost or the legal costs or any other amounts (or any part thereof) referred to in Clauses 3.6 and 3.7 shall not be deemed to create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law and the Council shall not be liable for any loss,

damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Works by the Proper Officer

3.10 The Developer shall not interfere with the free flow of traffic on the existing highway or in any way obstruct the Public Highway without the express written permission of the Proper Officer and the bringing into force of any necessary Traffic Regulation Order.

3.11 The Developer shall:

3.11.1 submit to the Council noise readings, supporting information, calculations and any other information or data that the Council may reasonably request for the purposes of ascertaining whether any properties are eligible for an offer of insulation works or a grant to cover the cost of such works pursuant to the Noise Insulation Regulations 1975;

3.11.2 consult with, place orders with and pay any costs to Statutory Undertakers in relation to any works to their mains, services, plant or equipment necessitated by the Works including works required by the Statutory Undertakers to divert the services to the satisfaction of the Proper Officer; also consult with Statutory Undertakers about their maintenance schedule on the Road or Public Highway and ensure that this does not conflict with the Developer's Programme for the duration of the construction of the Works and the Maintenance Period to the satisfaction of the Proper Officer

3.11.3 provide the Proper Officer the contact details of a representative for the duration of the construction of the Works and the Maintenance Period and a telephone number of such representative which number will be manned on a 24 hour basis in case of emergency; and

3.11.4 apply for any necessary Traffic Regulation Orders which may be required in order for the Works to commence.

4. ACCESS TO THE LAND

- 4.1 During construction of the Works, the Developer and the Adjoining Landowner shall give to the Proper Officer and any other Council officer free access to every part of the Works and Land for the purpose of inspecting the Works and all material uses, or intended to be used, for the Works.
- 4.2 During construction of the Works, the Proper Officer may require the Developer to open up or expose any of the 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 Works. The Developer shall pay the Council's Costs of such taking up and exposure and the Developer shall make good any taking up and exposure to the satisfaction of the Proper Officer.

5. THE COUNCIL'S OBLIGATIONS

- 5.1 The Council covenants with the Developer that it will comply with its obligations contained in this Agreement PROVIDED THAT in the event that the Developer fails to pay any of the monies due under this Agreement at the time they are due, the Proper Officer will cease to inspect the site or works for the purpose of adopting the Works and shall be under no obligation to adopt the Works under this Agreement.
- 5.2 Following a reasonable request from the Developer in writing and receipt of payment in accordance with Clause 3.6 and 3.7 the Council shall, as soon as reasonably practicable, commence the statutory process relating to any Traffic Regulation Order required for the Development.
- 5.3 The Council shall disregard this Agreement when considering any objections to any Traffic Regulation Order which they may propose to make. If any objections are made, the Council shall have no duty or obligation to the Developer by reason of this Agreement or otherwise to make the Traffic Regulation Order other than the duty it would have to all persons interested in the Traffic Regulation Order in its capacity as local highway authority.

5.4 If there are no objections to any Traffic Regulation Order and the Council resolves to make one or all of the Traffic Regulation Orders, any Traffic Regulation Order shall be made and the statutory formalities completed as soon as reasonably practicable.

6.0 CONSTRUCTION OF THE WORKS – PART 1 AND PART 2 CERTIFICATE

- 6.1 The Developer shall, at its own cost, carry out and complete the Works:
- 6.1.1 in a good and workmanlike manner;
 - 6.1.2 using only good quality materials approved by the Proper Officer ; and
 - 6.1.3 in accordance with the Design Works approved by the Proper Officer prior to commencement of the Works.
- 6.2 During the carrying out of the Works the Developer shall comply with:
- 6.2.1 the Traffic Signs Regulations and General Directions 2016 and any statutory modification or re-enactment of the same;
 - 6.2.2 Any directions of the Police and the Proper Officer in respect of lighting and signing of the Works and any diversion routes; and
 - 6.2.3 if requested by the Proper Officer, the Developer shall remove any existing Street Furniture (if applicable) and relocate or deliver it for local storage.
- 6.3 The Developer shall complete the Works to the satisfaction of the Proper Officer within 12 months following the date of this Agreement
- 6.4 On completion of the Part 1 Works the Developer shall provide the Proper Officer with suitable evidence to verify the completion of any highway drainage pipelines and any works to the other drainage and culverted watercourses contained within the Road and (without prejudice to the generality of the above) the Proper Officer may require that such evidence will be required in the form of any audio visual recordings and/or reports compiled following CCTV surveys of all or any highway drainage pipelines and any works to other drainage and culverted watercourses and upon receipt of the above evidence PROVIDED THAT the Proper Officer is

satisfied that the Part 1 Works (including any highway drainage) has been completed in accordance with the Specification and Agreement Plan the Proper Officer shall issue the Part 1 Certificate to the Developer.

6.5 Before applying for the Part 2 Certificate the Developer shall either:

6.5.1 commission the preparation and completion of an RSA3 in relation to the Works and after providing the result of such RSA3 to the Proper Officer within the timetable provided on behalf of the Council the Developer shall fully address, remedy and resolve any issues that are identified by the RSA3 to the entire satisfaction of the Proper Officer and will provide such evidence within the timetable as the Proper Officer may require to prove that the Developer has complied with all and any recommendations referred to in the RSA3 to the satisfaction of the Proper Officer; or

6.5.2 apply to the Proper Officer for consent (or the Proper may recommend) that the said RSA3 be postponed until after issue of the Part 2 Certificate and that such RSA3 be carried out within eight (8) weeks following issue of the Part 2 Certificate so that the Safety Auditor can record the movement of traffic following completion of the construction of the Works. The RSA3 will be subject to scrutiny by the Proper Officer at every stage in accordance with the conditions contained in this Agreement.

6.6 On completion of the Works to the absolute satisfaction of the Proper Officer in all respects the Proper Officer (having regard to any additional works, alterations or amendments which may be required by virtue of Clause 6.4) shall issue the Part 2 Certificate to the Developer PROVIDED THAT (i) verification has been provided to the Proper Officer that any sewers constructed on or under the Road have been adopted by a sewer authority and that the Statutory Undertaker responsible for such sewers has certified all sewers constructed

under the Road as being or having been on maintenance and (ii) that a RSA3 has been carried out (in the event that the Developer has applied for consent to postpone the RSA3 in accordance with Clause 6.5.2)

and from the date thereof

6.6.1 the Maintenance Period shall commence to run;

6.6.2 the Road 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;

6.6.3 the Developer, as long as the Road Works are concerned, shall remain the street manager for the purposes of Section 49(4) of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Road shall be formally adopted as part of the Public Highway being highway maintainable at public expense in accordance with Clause 9.5.

7. DEDICATION

7.1 From the date of issue of the Part 2 Certificate the Developer and the Adjoining Landowner shall immediately thereafter be deemed to have given up, transferred, surrendered and otherwise dedicated to the Council all their respective legal estate and interests in the Land comprised in the Road but only in so far as this extends over the site of the Road with the intent that upon issue of the Final Certificate the Road shall become part of the Public Highway being a highway or highways maintainable at the public expense upon the terms, conditions and provisions herein contained.

7.2 The Council shall be deemed to have given its consent to the dedication of the Road as part of a highway maintainable at public expense as herein provided and acknowledges that the Road will be released from the Legal Charge

and will no longer be charged as security for payment of the sums due under the Legal Charge and the Council hereby undertakes to do all such further acts and will execute any deeds as may be necessary or required for the purpose of releasing the Land from the Legal Charge.

8. MAINTENANCE

8.1 Throughout the Maintenance Period the Developer at its own expense and to the satisfaction of the Proper Officer shall:

- 8.1.1 maintain the Works;
- 8.1.2 be responsible for the supply of energy and all associated costs for the Street Furniture; and
- 8.1.3 carry out routine maintenance of the Road including (but not limited to) sweeping, gully emptying and snow clearance, and clear all abandoned vehicles, rubbish or other unauthorised materials from the Road.

8.2 Before expiry of Maintenance Period and if required by the Proper Officer, the Developer shall:

- 8.1.1 commission the preparation and completion of an RSA4 in relation to the Works and
- 8.1.2 after providing the result of such RSA4 to the Proper Officer the Developer shall fully address, remedy and resolve any issues that are identified by the RSA4 to the entire satisfaction of the Proper Officer and
- 8.1.3 will provide such evidence as the Proper Officer may require in order to prove that the Developer has complied with all and any recommendations referred to in the RSA4 to the satisfaction of the Proper Officer.

9 FINAL CERTIFICATE

- 9.1 After the expiry of the Maintenance Period and Subject To the Developer having commissioned, prepared and submitted to the Proper Officer an RSA4 (if required) the Developer must apply to the Proper Officer in writing for a Final Certificate.
- 9.2 Within twenty eight (28) Working Days following receipt of a written application for the issue of a Final Certificate the Proper Officer shall:
- 9.2.1 inspect the Works to which the application relates, and
 - 9.2.2 provide the Developer (where necessary) with a definitive written list of any further works required to be carried out and a timetable for carrying out these works in order to remedy and make good any defect or damage to the Works or any necessary reinstatement works which may have arisen during the Maintenance Period (including any defect in, or damage to, the road surface water drainage system) or any other works reasonably required as a result of the RSA3 and RSA4 (as applicable) ("Further Works").
- 9.3 The Developer shall carry out any Further Works without delay and at its own cost.
- 9.4 The Further Works shall be subject to the same inspection procedure detailed in Clause 9.2 until such time as the Developer has remedied or made good any such defect or damage to the satisfaction of the Proper Officer
- 9.5 Within twenty eight (28) Working Days of a satisfactory inspection in accordance with Clauses 9.2 and 9.4 the Proper Officer shall issue the Final Certificate to the Developer
- PROVIDED THAT:**
- 9.5.1 the Developer has paid to the Council the balance of the Council's Cost;
 - 9.5.2 Further Works have been completed to the satisfaction in all respects of the Proper Officer;

9.5.3 the Developer has delivered to the Proper Officer and the Proper Officer has accepted:

9.5.3.1 1 set of drawings in PDF and in CAD format showing to a scale of no less than 1:500 the Highway Works as constructed; and

9.5.3.2 One of the Health and Safety File and the final Health and Safety Plan, both in electronic format; and

9.5.4 the Developer has at its own cost provided the Proper Officer a verification that any sewers constructed on or under the Road have been adopted by a sewer authority;

9.5.5 any works required by a Statutory Undertaker pursuant to Clause 14 have been undertaken by the Developer and any costs incurred by the Council pursuant to Clause 14 have been reimbursed by the Developer;

9.5.6 audio visual evidence to the satisfaction of the Proper Officer and reports from CCTV surveys of any highway drainage pipelines and any works to other drainage and culverted watercourses contained within the Road verifying that any required Further Works have been satisfactorily completed and/or that no defects have arisen during the Maintenance Period; and

9.5.7 the provisions relating to the grant of easements in Clause 16 have been complied with.

9.5.8 From the date of the issue of the Final Certificate the Council agrees to adopt the Works and the Works shall become part of the highway maintainable at the public expense.

9.6 Upon the issue of the Final Certificate the Developer shall be released from all liability hereunder **SAVE FOR** the Developer's obligation to remedy any Latent Defect and **SAVE FOR** the indemnity provisions as referred to in Clause 18.

10 INTEREST ON PAYMENTS

10.1 If any payment due under any of the provisions of this Agreement is not made on or before the Due Date the Developer shall pay to the Council the Interest as at the Due Date for the period starting with the Due Date and ending with the actual date of payment

10.2 The Council shall be under no obligation to place any sums paid to them by the Developer pursuant to this Agreement in an account which bears interest on such sums and (without prejudice to Clause 10.1) any sums repaid to the Developer hereunder shall not carry the payment of any interest thereon

11 MINOR ALTERATIONS

11.1 If the Developer wishes to amend the Design Works or revise the proposals for implementation of the Works, including the Programme it shall submit details in writing to the Council. No amendments or revisions shall be implemented without the prior written approval of the Proper Officer.

11.2 If the Proper Officer considers it necessary and reasonable and notifies the Developer in writing the Developer may be required to incorporate minor alterations or additions to the Design Works or construction of the Works.

11.3 The terms and provisions of this Agreement shall apply to any such amended or revised works as they apply to the Works as originally designed.

12 MATERIALS SAMPLING AND TESTING

12.1 The Developer shall, if requested by the Proper Officer, make all necessary arrangements for an independent accredited testing facility, approved by the Proper Officer, to test the materials proposed to be used in connection with the 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.

- 12.2 Any material rejected by the Proper Officer, acting reasonably, as a result of the tests carried out shall not be used by the Developer for any of the Works.

13 KEEPING THE HIGHWAY CLEAN AND TIDY

- 13.1 All roads, footpaths, rights of way and other means of passage that lead to, from or cross the site of the Works and are available for use by the public during the carrying out of the Works shall be kept free from mud or other substances deposited through the construction operations of the Works and any such substance deposited by the Developer or its Contractor shall be promptly removed at no cost to the Council.
- 13.2 If such substances are not promptly and adequately removed the Council may close any associated crossings entrances and exits and in the event of there being a danger to highway users may arrange for the substances to be removed by its own employees or contractors and may recover its reasonable and proper costs from the Developer. On removal of any such substances the Council shall allow such crossings, entrances and exits to be reopened. Any losses or expenses incurred as a result of these measures shall be borne by the Developer.
- 13.3 On completion of the Works the Developer shall clear away and remove from the Public Highway all construction plant, surplus material, rubbish and temporary works and leave the site of the Works in a good clean and workmanlike condition to the satisfaction of the Proper Officer.

14 CONNECTING TO EXISTING SERVICES

- 14.1 Before connecting the Road to the Public Highway, 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 of major highway works as defined in Section 86 of the New Roads and Street

Works Act 1991.

14.2 The Developer shall:

14.2.1 carry out, at its own cost, any works or measures required by a Statutory Undertaker as a result of the Works; and

14.2.2 indemnify the Council for the cost of any works or measures carried out, as a result of the Works, by the Council at the request of the Statutory Undertaker.

15 OCCUPATION OF BUILDINGS

15.1 No building erected by or on behalf of the Developer that fronts, adjoins, abuts or has access to the Road shall be Occupied until:

15.1.1 the Proper Officer has issued the Part 1 Certificate in respect of the Road or such part of the Road as will provide the purchaser/occupier of such premises with access to an adopted vehicular highway; and

15.1.2 a base course pedestrian access (where applicable) to the Road has been provided;

15.1.3 the Road has operational street lighting columns erected in accordance with the Specification and Agreement Plan; and

15.1.4 the Road has street name plates erected as agreed with the Proper Officer.

16 GRANT OF EASEMENTS

16.1 Before the Proper Officer issues a Final Certificate, the Developer shall (at no cost to the Council) execute and complete, or procure the execution and completion of:

16.1.1 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 that are not within the Land; and

16.1.2 any other deeds of easement required by the Council for the future maintenance of the Council of any Street Furniture not within the Land.

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

16.3 The Council shall not be liable for the payment of compensation or any other costs or fees arising on account of the completion of any deeds of easement referred to in this Clause 16 or due to the subsequent use of the easement.

17 CDM REGULATIONS

17.1 The Developer agrees to undertake all the obligations of a Client and to ensure that the Works are carried out by its Contractor in accordance with the CDM Regulations.

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

17.3 The Developer warrants it has taken or shall take all reasonable steps to be satisfied that its Contractor and all contractors engaged on the Works have the skills, knowledge and experience in undertaking the Works and in respect of the CDM Regulations.

17.4 The Developer shall indemnify and keep the Council indemnified against any breach of the Developer's obligations under this Clause 17.

18 INDEMNITIES

18.1 The Developer shall indemnify the Council and the Adjoining Owner against any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance by the Developer of its obligations in this Agreement or at any time in connection with or incidental to the carrying

out or use of the Works (including without limitation any negligent or defective design or construction of the Works).

18.2 The Developer shall indemnify the Council in respect of any claims under Section 10 of the Compulsory Purchase Act 1965, Part I of the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 arising out of, in connection with or incidental to, the carrying out of the Works and their subsequent use.

18.3 The indemnity contained in this Clause 18 includes:

18.3.1 all fees incurred by claimants which the Council or the Adjoining Owner is obliged to pay, and those of the Council or its Partner Agent or the Adjoining Owner or any agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);

18.3.2 statutory interest payments to claimants and their professional advisors; and

18.3.3 the Council's and the Adjoining Owner's reasonable and proper legal costs in making the compensation, fees and interest payments.

19 INSURANCE

19.1 Before commencing the Works or before completing this Agreement, whichever is earlier, the Developer shall provide the Council with a copy of a Public Liability Insurance Policy together with proof that it is in force and any such other information relating to the policy as the Council shall reasonably require

19.2 From and including the date applicable under Clause 19.1 above until the date of issue of the Final Certificate, the Developer shall maintain the Public Liability Insurance Policy

19.3 The Developer shall ensure that the Council's interests under this Agreement are

endorsed on the Public Liability Insurance Policy.

20 SECURITY FOR PERFORMANCE OF THE DEVELOPER'S OBLIGATIONS

20.1 If any Default Event occurs the Council may, without affecting any statutory rights or powers or any other right, claim, or remedy under this agreement for such non-performance or non-observance, serve the Surety with a Default Notice which will specify:

20.1.1 The Default Work; and

20.1.2 An estimate of the Default Cost Provided That:

20.1.2.1 this amount will not exceed the Estimated Cost;

20.1.2.2 this amount will not exceed the Part 1 Cost following issue of the Part 1 Certificate; and

20.1.2.3 this amount will not exceed the Part 2 Cost following issue of the Part 2 Certificate.

20.2 Within twenty-eight (28) Working Days following the date of receipt of the Default Notice, the Surety shall:

20.2.1 pay the Default Cost to the Council; or

20.2.2 Send the Council a notice ("the Surety's Counter Notice") of the intention of the Surety to carry out the Default Work.

20.3 If the Surety having sent the Surety's Counter Notice to the Council fails to start the Default Work within fifty-six (56) days after the Surety received the Default Notice the Surety shall forthwith pay the Default Cost to the Council with Interest from the Due Date up to the date of payment.

20.4 If the Surety having sent the Surety's Counter Notice to the Council starts the Default Work and the Default Work is not completed within four (4) calendar months after the Surety's Counter Notice was received by the Council or within such further period as may

the amount of the Council's usual establishment charges) to repay to the Surety within twenty eight (28) Working Days following the date of the Final Certificate, the amount of any excess; and

20.7.4 on the issue of the Final Certificate to give such notices and do whatever else may be required for securing that the Works become part of the highway maintainable at public expense.

21 ADDITIONAL BOND

21.1 It is hereby agreed between the Council and the Developer that in the event of the Developer being unable to undertake the Works in accordance with the Programme or any longer period agreed by the Council the Developer shall:

21.2 obtain forthwith when required to do so by the Council an additional guarantee or bond for an amount to be specified conclusively by the Council as representing the excess of the revised estimated cost of the outstanding works to be carried out under this Agreement over the Estimated Cost; and

21.3 pay forthwith to the Council when required to do so any increase in the Council's Cost resulting directly from the Developer's non-compliance with the Programme.

22 POWER TO EXECUTE WORKS IN DEFAULT

Without prejudice to Clauses 20 and 21 if the Developer fails to execute or complete the Works in accordance with the Developer's obligations hereunder the Council shall after not less than twenty eight (28) Working Days' notice in writing to the Developer be entitled to execute or complete the Works in default by its own employees, servants, workmen, contractors or other duly authorised personnel or otherwise and to recover from the Developer all fees costs and expenses associated with undertaking any such default works as certified by the Proper Officer.

be agreed in writing with the Proper Officer the Surety shall subject to Clause 20.3 forthwith on demand pay to the Council such sum as the Proper Officer may determine as being the Default Cost for the Default Work.

20.5 The Council shall issue a Final Certificate once the Default Work has been completed to the satisfaction of the Proper Officer and the Surety has paid the Default Cost and for the avoidance of doubt nothing in this Agreement shall require the Council to issue the Final Certificate until the Surety has paid the Default Cost or has completed the Default Work to the Council's approval.

20.6 Following the issue of a Final Certificate in accordance with Clause 20.5 the Surety shall be released from all liability under this Agreement.

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

20.7.1 to use reasonable endeavours to mitigate any loss or damage sustained because of any default by the Developer, by taking such steps as the Council thinks fit;

20.7.2 to use all monies received from the Surety to secure the performance of the Developer's covenants and obligations contained in this Agreement in accordance with the terms of this Agreement including but not limited to carrying out or completing the Works and any Further Works and maintaining and making good all defects during the Maintenance Period;

20.7.3 if the sum paid by the Surety to the Council exceeds the cost of carrying out or completing the Works and any Further Works and maintaining and making good all defects throughout the Maintenance Period as set out in this Agreement (together with

23. ARBITRATION

23.1 In the event of any dispute arising out of this Agreement the same shall be referred to an expert to be appointed by Agreement between the parties or failing Agreement:

23.1.1 Where the dispute involves the interpretation of the terms of this Agreement in the matter of the parties' rights, liabilities or obligations, by a suitably qualified barrister nominated by the President for the time being of the Law Society;

23.1.2 where the dispute involves an issue not covered by clause 23.1 by a suitably qualified expert nominated by the President for the time being of the Institution of Civil Engineers

AND in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof and each party shall bear its own costs of such arbitration (subject to any direction as to or award of costs made by the arbitrator)

24. NOTICES

Any written notice to be served on the Council shall be delivered or posted to Proper Officer and any notices to be served on the Developer, the Adjoining Landowner or the Surety may be delivered or posted to its registered office

25. ASSIGNMENT

This Agreement shall not be assigned by the Developer and the assignment of this Agreement is hereby expressly prohibited PROVIDED THAT the Council being the highway authority agree to consider any request from a proposed assignee of the site of the Road for the execution by the proposed assignee (and its surety (if required by the Council)) of an agreement with the Council on similar terms and conditions to this agreement.

26. EXCLUSION OF THIRD PARTIES

No person other than a party to this Agreement and their respective successors shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

27. THE COUNCIL'S STATUTORY POWERS BEING THE HIGHWAY AUTHORITY

27.1 Nothing in this Agreement shall:

27.1.1 Prevent or restrict the exercise by the Council being the highway authority of its powers under Part XI of the Act or any other statutory powers except that this Agreement is intended to be such an agreement as is mentioned in Section 219 sub-section (1) of the Act

27.1.2 Imply any obligation on the part of the Council to the Developer or to any person to ensure that the Works are properly constructed

27.1.3 Affect the Council's rights powers duties and obligations in the exercise of its functions as a local authority planning authority or highway authority or in any other capacity whatsoever nor relieve the Developer from the necessity to obtain all such approvals or consents as may from time to time be requisite from the Council in any such capacity as aforesaid.

28 APPLICABLE JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England.

THE SCHEDULE

Brief Description of the Works

PART 1

The Part 1 Works

1. Excavation of road trough
2. Excavate and install drainage
3. Plate load test of formation
4. Stone road up to underside of base course tarmac
5. Temporary block kerb
6. Install road gully pots (temp grating)
7. Plate load test at this point
8. Base course will be done at this point

PART 2

The Part 2 Works

1. Replace temporary kerbs with road kerbs as designed
2. Raise and grate road gullies
3. Tarmac including wearing course
4. Raised platforms to road as designed
5. White lining as designed

BRECKSIDE ESTATES LLP

EXECUTED as a DEED by

one director in the presence of a witness:-

Signature: [REDACTED]

Director

Witness Signature [REDACTED]

Witness Name (in Capitals): ANTHONY DAVID ROSE

Address: [REDACTED]

[REDACTED]

Occupation: [REDACTED]

EXECUTED as a DEED by

GREAT PLACES HOUSING ASSOCIATION

by affixing the Common Seal

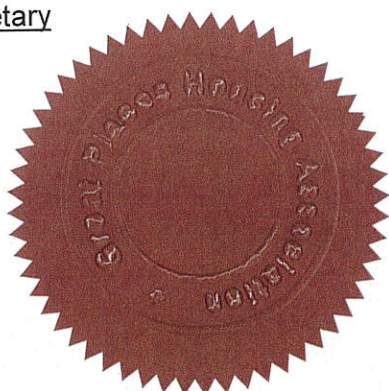
in the presence of :-

Signature: [REDACTED]

Director

Signature: [REDACTED]

Director / Secretary



AVIVA INSURANCE LIMITED

EXECUTED as a DEED by _____

acting by two directors or one director

or a person duly authorised to execute

documents on its behalf:-

Signature: [REDACTED]

Director/Company Secretary/Authorised Signatory*

(* delete as appropriate)

Signature: [REDACTED]

Director/Company Secretary/Authorised Signatory*

(* delete as appropriate)

Witness Signature: [REDACTED]

Witness Name (in Capitals): HANNAH DUNNE

Address: [REDACTED]

[REDACTED]

Occupation: [REDACTED]

OR:

THE COMMON SEAL of _____

was hereunto affixed in the

presence of:-

Signature:

Director/Company Secretary/Authorised Signatory*

(* delete as appropriate)

Signature:

Director/Company Secretary/Authorised Signatory*

(* delete as appropriate)



THE COMMON SEAL of THE COUNCIL

OF THE CITY OF MANCHESTER was

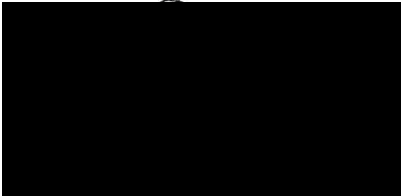
hereunto affixed in pursuance of

an Order of the Council of

the said City :-



01101364



Authorised Signatory