AN AGREEMENT made the day of Two Thousand and Thirteen BETWEEN whose registered office is at (hereinafter called "the Developer") of the first part; BIRMINGHAM CITY COUNCIL whose principal office is at THE COUNCIL HOUSE BIRMINGHAM B1 1BB (hereinafter called "the Council") of the second part; and whose registered office is at (hereinafter called "the Surety") of the third part

WHEREAS:

(1) The Council is the Local Highway Authority

(2) The Developer is the registered proprietor of the Freehold with title absolute of the land registered under title number WM (Subject only to the covenants and restrictions set out in the aforementioned title) and known as which is shown for the purposes of identification only by red edging on the drawing numbered annexed hereto which includes the site of the proposed Road or Roads and annexed hereto and all other land required for the Works hereinafter referred to and is desirous of making up the Road or Roads so that the same shall become a highway or highways maintainable at the public expense

(3) The Developer has requested that when the Works hereinafter referred to for the making up of the Road or Roads have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the Road or Roads as a highway or highways maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing

NOW in pursuance of Section 38 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:

1. Interpretation:

IN this Agreement where the context so admits:

the "Council"	means Birmingham City Council and its successors in title
the "Developer"	means and its successors in title and assigns
the "Director"	means the Director of Sustainability Transportation and Partnerships of the Council or such other officer from time to time performing this function
the "Drawings"	means the drawing(s) numbered annexed hereto and signed by or on behalf of the parties hereto and includes any amended drawing(s) which have been approved and signed by or on behalf of the Director
the "Estimated Cost"	is the sum of POUNDS (£) being the amount which is in the opinion of the Director the cost of carrying out the Works within the period specified in Clause 2(2) hereof
the "Final Certificate"	means the Certificate to be issued on satisfactory completion of the Works in accordance with Clause 14 hereof
the “Maintenance Defects Sum”	the sum of FIVE THOUSAND POUNDS (£5,000)
the "Maintenance Period"	means the period of 12 months commencing when the Part 2 Certificate is issued by the Director
the "Part 1 Certificate"	means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 9 hereof
the "Part 1 Works"	means the Works referred to in Part 1 of the Schedule hereto

the "Part 2 Certificate"	means the certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 12 hereof
the "Part 2 Works"	means the Works referred to in Part 2 of the Schedule hereto
the “Surety”	means and its successors in title
the "Road or Roads"	means the carriageways and footways of the road or roads hereinbefore referred to including any off-site highway drainage shown on the Drawings and includes the footpaths street lighting all verges service strips service margins vehicular crossings road surface water drainage system (if any) and all other things ancillary thereto
"Publications”	means the following: • “Code of Practice for Maintainability Assessment in Street Highway and Design First Edition April 2006” – Birmingham City Council Publication • “Common Standards for Streetworks Management First Edition April 2006” – Birmingham City Council Publication • “Manual For Streets March 2007” • The upgraded version of the “Specification for Highway Works” – Published by The Stationery Office as Volume 1 of the Manual of Contract Documents for Highway Works

	The following will only apply when carrying out works which involve trees or works within close proximity to trees: • “BS 5837:2005 – Trees in Relation to Construction” • “NJUG10 – Proximity of Trees To Services”
"Statutory Undertaker"	means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water drainage and whose apparatus is pursuant to such authorisation at the date of this Agreement already installed in under or upon the land on which the Works are to be carried out and any authorised successor to any such undertaking
the "Street Furniture Schedule”	means a complete list of all the street furniture supplied as part of the Works including details of the manufacturer and details of the maintenance requirements for such street furniture
the "Works"	means the works specified in the Schedule hereto for the making up of the Road or Roads
the "Workshop Manual"	means a manual detailing the surface finishes which shall include a complete list of all types of materials which are to be used in the carrying out of the Works including details of the manufacturer and details of the maintenance requirements for such finishes

2. Developer's Liability:

(1) THE Developer shall carry out and complete the Works at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Publications and the Drawings to the satisfaction of the Director

(2) THE Part 1 Works shall be completed within 12 calendar months from the date hereof and the Part 2 Works shall be completed within 12 calendar months of the date of issue of the Part 1 Certificate

(3) PRIOR to the issuing of the Final Certificate the Developer shall provide the Director with the Workshop Manual and the Street Furniture Schedule

3. Public Procurement:

(1) THE Developer shall comply with all relevant Directions on public procurement as may apply from time to time issued by the European Commission and shall provide evidence of such compliance to the Council as required and indemnify the Council against failure to comply

(2) THE Developer shall display on the site of the Works notices giving details of the Works the progress of the said Works a telephone number where information concerning the Works can be obtained and the participants of the contractor carrying out the Works who for the avoidance of doubt will be a contractor from the Council's Considerate Contractor Scheme unless first agreed by the Council in writing

4. Declaration:

THE Developer hereby declares and warrants to the Council that he has and will throughout the duration of this Agreement maintain full right liberty and consent to carry out such Works as may be necessary to connect the Road or Roads to a vehicular highway or highways

5. Statutory Undertakers - Connections to Existing Services:

THE Developer shall before connecting the Road or Roads with any highway or highways maintainable at the public expense give notice to each person board or

authority being the Statutory Undertaker for the time being of any service or services laid in upon or under such highway or highways of the proposal to make such connection as if the connection were a work to be executed for road purposes and were mentioned in Section 83, 84 & 86 of the New Roads and Street Works Act 1991 and shall indemnify the Council in respect of the cost of any works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection

6. Indemnity:

(1) THE Developer shall indemnify the Council from and against all claims demands actions proceedings costs and penalties arising out of or in connection with or ancillary to the carrying out of the Works or any part or parts thereof including but without prejudice to the generality of the foregoing any liability of the Council as a result of the application of the provisions of the Highways Act 1980 Compulsory Purchase Act 1965 Land Compensation Act 1973 or by virtue of the Noise Insulation Regulations made thereunder including any liability falling upon the Council by virtue of it exercising its discretionary powers under the said Acts and Regulations save for any claims arising as a result of the negligence of the Council

(2) THE Developer shall comply with all aspects of the Construction (Design and Management) Regulations 2007 and in particular shall ensure that all obligations imposed on the client (as defined in the said Regulations) are satisfied and will indemnify the Council against all claims liabilities actions arising out of a failure to do so

(3) THE Developer shall provide the Director with a copy of the Health and Safety File prepared under the above Regulations on completion of the Works

7. Access to the Site:

THE Developer shall during the carrying out of the Works give to the Director and any other officer of the Council access to every part of the Works and site(s) thereof for the purpose of inspecting the Works and all materials used or intended to be used therein

8. Traffic Regulation Orders:

AT any time prior to adoption of the said land as highway under this Agreement and at the discretion of the Council a traffic regulation order whether temporary experimental or permanent may be deemed necessary and any application preparation advertisement consultation or ancillary work relating to such a traffic regulation order whether or not the traffic regulation order is made shall be at the Developer's expense and any highway works or measures relating to such a traffic regulation order shall form part of the Works under this Agreement

9. Part 1 Certificate:

ON the completion of the Part 1 Works to the satisfaction of the Director in all respects the proper officer of the Council shall issue his Part 1 Certificate to the Developer

10. Stage 2 and Stage 3 Safety Audits:

(1) AT the Developers expense and prior to the approval of the detailed design a Stage 2 Safety Audit carried out by a safety auditor approved by the Council in accordance with the Department of Transport Standard HD 19/03 shall be submitted to the Director and any recommendations made in the safety audit report shall be implemented to the satisfaction of the Director

(2) AT the Developers expense and prior to the issue of the Final Certificate a Stage 3 Safety Audit carried out by a safety auditor approved by the Council in accordance with the Department of Transport Standard HD 19/03 shall be submitted to the Director and any recommendations made in the safety audit report shall be implemented to the satisfaction of the Director

11. Occupation of Buildings:

NO building erected by the Developer or on his behalf fronting adjoining or abutting on to the Road or Roads shall be occupied until:

(a) the Director has issued his Part 1 Certificate in respect of the Road or Roads or such part of the Road or Roads as will provide the occupier with access to a vehicular highway and where applicable a base course pedestrian access to such highway has been provided

AND

(b) the Road or Roads or such part of the Road or Roads have columns erected ready for lighting in accordance with the Publications and the Drawings and the Developer has arranged with the electricity board for an electricity supply thereto by giving at least six weeks' prior notice in writing or as may be otherwise agreed in writing by the Director

12. Part 2 Certificate:

(1) THE Developer shall provide to the Director 100mm diameter core samples and core sample assessment reports of the new carriageways and footways, the exact locations of which are to be first agreed with the Director. The Developer will agree with the Director all remedial/reconstruction/rectification works to the areas of new carriageway and footway shown by the core samples and core sample assessment reports not to be in accordance with the Drawings and then carry out all remedial/reconstruction/rectification works to the satisfaction of the Director. Upon the Director declaring that he is satisfied with the core samples and core sample assessment reports and any required remedial/reconstruction/rectification works AND that the Part 2 Works have been completed to his satisfaction in all respects THEN SUBJECT TO the requirements of clause 12(2) first having been satisfied the Director shall issue his Part 2 Certificate to the Developer and from the date thereof:

(a) the Maintenance Period shall commence to run

(b) the Road or Roads shall become a highway or highways and remain forever open for use by the public at large

(c) the Developer 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 or Roads shall become a highway or highways maintainable at the public expense

(2) The Developer shall prior to the issuing of the Part 2 Certificate pay the Maintenance Defects Sum into an account with Co-operative Bank plc 118 Colmore Row Birmingham 3 in the name of the Council such sum to be placed on deposit at the best rate of interest reasonably obtained

13. Obligation During the Maintenance Period:

DURING the Maintenance Period:

(a) the Developer at his own expense shall maintain the Works including all grassed and planted areas and carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians

(b) the Developer at his own expense shall undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs until formal adoption takes place at which time the Council will then be responsible

14. Final Certificate:

(1) (i) WITHIN fifty six (56) days of the expiration of the Maintenance Period (or such other period first agreed with the Council in writing) the Developer shall at his own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the Maintenance Period (including any defect in or damage to the road surface water system) of which he has been

notified in writing by the Director ("the Maintenance Defects Works") so that the Works comply with the Publications

(ii) If the Developer fails to comply with clause 14(1)(i) hereof within fifty six (56) days of the expiration of the Maintenance Period the Council shall be entitled to execute or complete the Maintenance Defects Works in default by its own employees or by contract and to use such amount of the Maintenance Defects Sum as is necessary to reimburse the costs properly incurred by the Council in carrying out the Maintenance Defects Works

AND THEN PROVIDED THAT:

(a) the Developer has paid to the Council all amounts due to the Council under the Agreement

AND

(b) any necessary reinstatement or other works have been completed by the Developer (or by the Council pursuant to clause 14(1)(ii) hereof) to the written satisfaction in all respects of the Director

AND

(c) the Developer has delivered to the Director the Drawings showing the Works as constructed

the Developer shall apply to the Director and the Director shall issue his Final Certificate to the Developer and shall release the Surety from all liability hereunder

(2) UPON the issue of the Final Certificate under clause 14(1) hereof the Council shall repay to the Developer the remainder of the Maintenance Defects Sum (including interest accrued thereon)

(3) IF the Developer does not apply for a Final Certificate within two years of the date of the issue of the Part 2 Certificate the Developer shall within 14 days thereafter pay to the Council a further administrative charge of five hundred pounds (£500)

15. Stage 4 Safety Audit:

(1) NOT before 12 months and not after 13 months from the date of issue of the Final Certificate the Council shall instruct an independent safety auditor to conduct a Stage 4 Safety Audit in accordance with the Department of Transport Standard HD 19/03 (which is to include a full on-site safety assessment of the Works) AND submit such safety audit to the Director

(2) NOT before 36 months and not after 37 months from the date of issue of the Final Certificate the Council shall instruct an independent safety auditor to conduct a further Stage 4 Safety Audit in accordance with the Department of Transport Standard HD 19/03 (which is to include a full on-site safety assessment of the Works) AND submit such safety audit to the Director

(3) ON the signing of this Agreement the Developer shall pay to the Council the sum of one thousand pounds (£1,000), such sum to be used towards the costs incurred by the Council in connection with Clauses 15(1) and 15(2) hereof

16. Grants of Rights of Drainage:

BEFORE the issue of his Final Certificate by the Director the Developer shall without any cost to the Council execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Road or Roads as are situate outside the limits of the Road or Roads

17. Procedure for Inspection and Issue of Certificates:

WITHIN fourteen days of receipt of written application from the Developer for the issue of a Part 1 Certificate or Final Certificate pursuant to this Agreement and within twenty-eight days of written application from the Developer for the issue of a Part 2 Certificate pursuant to this Agreement the Director shall inspect the Works and where necessary provide the Developer with a definitive list in writing of any remedial works required to be carried out before the issue of that Certificate. Any such remedial works shall be subject to the same inspection procedure detailed herein until such time as the

remedial works shall be completed to the reasonable satisfaction of the Director who within twenty-eight days thereafter shall issue the relevant Certificate

18. Adoption:

UPON the issue of the Final Certificate the Road or Roads shall become a highway or highways maintainable at the public expense

19. Supervision Fee:

(1) ON signing this Agreement the Developer shall pay to the Council the sum of POUNDS (£) in respect of the costs incurred by the Council in inspecting the Works being six and a half per cent of the Estimated Cost

(2) RECEIPT by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the Council will 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 Council

20. Determination by the Council:

IF the Developer fails to perform or observe any of the conditions stipulations or obligations on his part contained herein or if a receiving order in bankruptcy is made against him or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 21, 22 and 23 hereof) by notice in writing signed by the Director and delivered to the Developer or sent by post to the Developer's address stated in this Agreement

21. Power to Execute Works in Default:

WITHOUT prejudice to Clauses 2, 14 and 20 hereof 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 days notice in writing to the Developer and the Surety be entitled to execute or complete the Works in default by its own employees or by contract or otherwise and to recover the cost as certified by the Director from the Developer

22. Surety's Obligations:

(1) IF the Developer at any time fails to perform or observe any conditions stipulations or obligations on his part contained in this Agreement or if a receiving order in bankruptcy is made in respect of the Developer's estate or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation) the Director may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement send to the Surety notice in writing (hereinafter referred to as the "default notice") -

(a) specifying the work (hereinafter referred to as the "default work") to be carried out in order that the Works may be executed out or completed as the case may be in accordance with this Agreement;

AND

(b) containing an estimate by the Director of the cost of carrying out the default work and of the cost of maintaining the Works for a period of twelve months prior to the Road or Roads becoming maintainable at the public expense and also a statement of the amount of the usual establishment charges of the Council (together hereinafter referred to as the "default cost") which cost -

(i) shall not exceed the sum of POUNDS (£) being the Estimated Cost of the Works

(ii) shall not exceed the sum of POUNDS (£) on and after the issue of the Part 1 Certificate

(iii) shall not exceed the sum of POUNDS (£) on and after the issue of the Part 2 Certificate

(2) WITHIN twenty-eight days after the Surety has received the default notice the Surety shall -

(a) pay the default cost to the Council;

OR

(b) send to the Council notice in writing (hereinafter referred to as the "Surety's counter notice") of the intention of the Surety to carry out the default work

(3) IF the Surety having sent the Surety's counter notice to the Council fails to start the default work within fifty-six days after the Surety received the default notice the Surety shall forthwith pay the default cost to the Council with simple interest thereon at the rate of two per cent above the average base lending rate of the four big banks per annum calculated from the date on which the Surety received the default notice

(4) IF the Surety having sent the Surety's counter notice to the Council starts the default work and the said work is not completed within four months after the Surety's counter notice was received by the Council or within such further period as may be agreed by the Council the Surety shall subject to Clause 22(5) hereof forthwith on demand by the Director pay to the Council such sum as the Director may determine as being the cost of carrying out any default work not carried out by the Surety or the cost of maintaining the Works for the period of twelve months prior to the Road or Roads becoming maintainable at the public expense as may be the case (or as being the cost of both) and also pay to the Council the amount determined by the Director as being the amount of the appropriate usual establishment charges of the Council

(5) THE sum payable under Clause 22(4) hereof shall not exceed the default cost and the covenant in Clause 23(c) hereof shall apply with respect to such sum and on the issue of the Final Certificate the Surety shall be released from all liability hereunder

23. Council's Covenants:

THE Council HEREBY COVENANTS with the Developer and with the Surety for the benefit of all building plots fronting adjoining or abutting the Road or Roads and for each and every one of them:

(a) to use its best endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the Council shall think fit

(b) to apply all monies received from the Surety as hereinbefore mentioned towards the expenditure involved in executing or completing the Works and maintaining and making good all defects for a period of twelve months after completion and the amount so received shall be deducted from any sum which would otherwise be recoverable from the owners of premises fronting the Road or Roads under the provisions of the Highways Act 1980 or any other Act for the time being in force replacing or amending the same

(c) in the event of the sum paid by the Surety to the Council exceeding the cost of executing or completing the Works and maintaining and making good all defects as aforesaid together with the amount of the Council's usual establishment charges to repay to the Surety within twenty-eight days after the Road or Roads become maintainable at the public expense the amount of such excess with interest calculated at half-yearly rates on the unexpended balance for the time being of the sum paid by the Surety to the Council at the rate of interest prevailing from

time to time on monies held in a deposit account with the Council's bankers

THE Council HEREBY FURTHER COVENANTS that the Final Certificate will be issued in accordance with this Agreement and that the Surety will be released from all liability under this Agreement in accordance with this Agreement

24. Part or Parts:

NOTWITHSTANDING anything hereinbefore contained the Developer may from time to time during the currency of this Agreement apply to the Director for his Part 1 Certificate or his Part 2 Certificate in respect of any part of the Road or Roads (being the whole width of the Road or Roads between points to be defined in the application) and if the Director shall be satisfied that the part so defined is in all respects suitable to be treated as a separate Road for the purposes of construction and adoption in accordance with the several provisions contained in this Agreement then he shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that part and thereafter the same proceedings may be taken in respect of the said part of the Road or Roads as if the said part were the subject of a separate Agreement under which the terms of this Agreement applied to the said part separately from the remainder of the Road or Roads but without prejudice to the application of this Agreement to the remainder of the Road or Roads and the liability of the Surety shall be reduced as may be agreed by the Director with the Developer

25. Assignment:

THIS Agreement may not be assigned by the Developer or the Surety without the written consent of the Council which consent shall not be unreasonably withheld

26. Arbitration:

IN the event of any dispute under or arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties to the dispute or failing agreement to be nominated (upon the application of any such party to the dispute) by

the President for the time being of the Law Society 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 re-enactment or modification thereof for the time being in force

27. Fees:

THE Developer shall pay to the Council upon completion of this Agreement the Council's reasonable legal costs in respect of the preparation and completion of this Agreement

28. Interest:

IF any payment due under any of the provisions of this Agreement is not made on or before the date on which it is due ("the Due Date") the party from whom it was due shall at the same time as making the payment pay interest to the other party at two per cent above the rate payable in respect of compensation under section 32 Land Compensation Act 1961 as the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is made and for the avoidance of doubt this Clause shall not apply to any repayments which are delayed as a result of a late initial payment falling under this Clause

29. Contracts (Rights of Third Parties) Act 1999:

EXCEPT in relation to successor bodies and successors in title and assigns to the parties to this Agreement, it is agreed that nothing in this Agreement entitles a person who is not a party to this Agreement to enforce any of the terms of this Agreement

30. Jurisdiction:

THIS Agreement is governed by and interpreted in accordance with the law of England and Wales

THE SCHEDULE

PART 1

1. All highway drainage
2. All other drainage contained within the highway
3. All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps
4. Carriageway sub-base road base and any supporting structures thereto
5. Carriageway base course surfacing where appropriate
6. Demarcation of sight lines and clearance of vision splays

PART 2

7. All outstanding kerbing not completed in Part 1
8. Pedestrian ways
9. Carriageway wearing course and/or carriageway base course
10. Vision splays and verges
11. Street lighting and street furniture
12. Street name plates
13. Road markings
14. All other works shown in the Drawings in so far as they are referred to in the Publications

EXECUTED as a Deed by the parties the day and year first before written

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of [DEVELOPER])
LIMITED)
in the presence of:-)

Director

Secretary

[OR WHERE AGREEMENT IS NOT SIGNED UNDER SEAL USE:
EXECUTED AS A DEED by [DEVELOPER]
acting by its:-

Director

Director/Secretary]

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of [SURETY])
in the presence of:-)

Authorised Signatory

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of)
BIRMINGHAM CITY COUNCIL)
in the presence of:-)

Authorised signatory

DATED 2013

[DEVELOPER]

- AND -

BIRMINGHAM CITY COUNCIL

- AND -

[SURETY]

AGREEMENT

Under Section 38 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 in connection with

DS/SN/S38/DSP

Ref: STP/AD/SON/S278/DSP_

Birmingham City Council
Sustainability Transportation
and Partnerships
PO Box 14992
Birmingham
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