

TF/BA35

DATED 22 NOVEMBER 2018

HOMES AND COMMUNITIES AGENCY

- and -

BOROUGH OF TELFORD & WREKIN

A G R E E M E N T

**Pursuant to Section 38 of the Highways Act
1980**

**Relating to land known as the Spine Road,
Telford Millennium Community**

NOVEMBER **AN AGREEMENT** made the TWENTY SECOND day of
Two thousand and Eighteen

PARTIES

1. **HOMES AND COMMUNITIES AGENCY** whose address for service is at Care of Legal Services, Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH ("the Owner")
2. **BOROUGH OF TELFORD & WREKIN** of Darby House, Lawn Central, Telford, TF3 4JA

WHEREAS:

- (1) The Council is the local highway authority for the County of the Wrekin and hereby certifies that this instrument is made in connection with the performance of its functions under the Highways Act 1980 for the area in which the Roads are situated
- (2) The Owner is the registered proprietor at the Land Registry with freehold title under the Registered Title of the Estate which includes the site of the proposed Roads shown coloured pink on the Drawings
- (3) It is agreed 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 will undertake the subsequent maintenance thereof under section 38 of the Highways Act 1980 so that the Roads will become a highway maintainable at public expense
- (4) Notwithstanding that the Owner has covenanted to complete the Works and has covenanted to observe and perform other terms on its part within this Agreement, the Owner and the Council hereby acknowledge that the Developer shall actually undertake and complete the Works and shall also observe and perform all of the Owner's covenants herein.

Now in pursuance of Section 38 Highways Act 1980, Section 278 (as substituted by the New Roads and Street Works Act 1991), Section 111 of the Local Government Act 1972 and Section 33 Local Government (Miscellaneous Provisions) Act 1982 and of all other enabling powers enabling the parties

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 Administration Payment" **Seventy Thousand and Thirty Four Pounds (£70,034.00)** which has already been paid (and of which the Council acknowledges receipt)

"the Commuted Maintenance Payment" **Thirty Five Thousands Pounds (£35,000)** (including Indexation if applicable)

the "Developer" Taylor Wimpey Developments Limited (company registration number 00643420) of registered address Gate House, Turnpike Road, High Wycombe, Buckinghamshire, HP12 3NR and shall be deemed to include its successors in title

the "Drawings" means the drawings numbered **10348/1101 Rev F (Phase 1), 10348/1102 Rev D (Phase 2), 10348/1103 Rev A (Phase 3)**, annexed hereto and signed by or on behalf of the parties hereto and any other such drawing approved by the Proper Officer in accordance with the terms of this Agreement

"the Estate" the land known as the Spine Road, Telford Millennium Community

"the Estimated Cost" is the sum of **EIGHT HUNDRED AND TWENTY THREE THOUSAND NINE HUNDRED AND TWENTY SEVEN POUNDS (£823,927.00)** subject to Indexation if applicable

the "Final Certificate" means the final certificate to be issued by the Proper Officer to be issued on

	satisfactory completion of the Works in accordance with clause 8 hereof
The "Finish Date"	within 10 years from the date of this Agreement (subject to any extension)
"Indexation"	means an increase in line with any increase in the <i>Retail Prices Index</i> or if such index is not available its replacement or any other such suitable index as agreed between the parties in relation to sums payable hereunder, such increase commencing 12 months from the date any such payment became due under this Agreement to the date of payment of any such sum
"the Maintenance Period"	means the period between the issue of the Provisional Certificate by the Proper Officer and the issue of the Final Certificate by the Proper Officer
"Materials"	means such materials that are required to construct the Road or Roads in accordance with the Drawings, Schedule and Specification
the "Owner"	means Homes and Communities Agency and where the context so admits includes its successors and assignees under the Agreement
"Provisional Certificate"	means the provisional certificate to be issued by the Proper Officer on satisfactory completion of the Works in accordance with clause 7 hereof
the "Proper Officer"	means the Assistant Director of Neighbourhood and Leisure Services of the Council or other such officer employed by the Council and authorised by the Assistant Director of Neighbourhood and Leisure Services for the purpose of this Agreement or for any provision contained herein

"Registered Title"	means title numbers SL147362, SL136236, SL106192 and SL106258
the "Road or Roads"	means the carriageways and footways of the Road or Roads shown coloured pink on the Drawings including any off-site highway drainage shown on the Drawings and includes the footpaths street lighting all verges service strips service margins visibility splays vehicular crossings road surface water drainage system (if any) and all other things ancillary thereto
the "Service or Services"	means gas electricity telephone water cable television foul and surface water sewers
the "Specification"	means the Specification contained in the Manual of Contract Documents for Highway Works, November 2006 published by HMSO and the Design Manual for Roads and Bridges published by the Department for Transport and any amendments to or replacement thereof for the time being in force including any separate variations confirmed in writing by the Council
the "Statutory Undertaker"	means a Statutory Undertaker as defined in Section 48 of the New Roads and Street Works Act 1991
"the VAT"	value added tax imposed by VATA and legislation and regulations supplemental thereto and includes any other tax of a similar fiscal nature whether imposed in the United Kingdom (instead of or in addition to value added tax) from time to time
"the VATA"	the Value Added Tax Act 1994
the "Works"	means the Works specified in the Schedule (Parts One and Two) and the making up of the Road or Roads in

accordance with the Specification together with the testing of Materials specified therein

"Working day"

any day which is not a Saturday or a Sunday or a bank holiday or a public holiday in England

2. OWNER'S LIABILITY

2.1 The Owner shall submit to the Proper Officer for his approval such drawings, plans, and specifications, scheme for the collection of surface water from the Roads, and road safety audits as the Proper Officer may reasonably require. Within 28 days the Proper Officer will either:

2.1.1 notify the Owner in writing stating that drawings, plans and specifications, a scheme for the collection of surface water from the Roads and road safety audits are acceptable and that commencement of the Works can take place; or

2.1.2 notify the Owner in writing that he does not consider the drawings, scheme for the collection of surface water, plans, specifications and road safety audits are acceptable and in such notification specify any reasonable remedial issues which in his opinion must be addressed and rectified before the Proper Officer's confirmation in writing pursuant to clause 2.1.1 can be issued.

2.2. If the Proper Officer gives the Owner notification pursuant to clause 2.1.2 then the Owner on receipt of such notification shall commence and proceed with the completion of such specified remedial works to the reasonable satisfaction of the Proper Officer and shall after completion of the remedial works re-issue the drawings, plans, specification and road safety audits and the provisions of clause 2.1 shall apply thereto which procedure may be repeated as many times as necessary

2.3 The Owner shall carry out and complete the Works at the Owner's expense in a good and workmanlike manner and with proper Materials in accordance in all respects with the Specification and the Drawings to the reasonable satisfaction of the Proper Officer by the Finish Date or such

extension of time as may be agreed by the Proper Officer at its absolute discretion (acting reasonably)

- 2.4 In the event of the parties agreeing in writing to extend the period as provided for in the preceding sub-clause the Council may require the Owner to provide additional security to the reasonable satisfaction of the Proper Officer provided that the amount of the increase in the said guarantee or the amount of the said additional security as the case may be shall not exceed the difference between the Estimated Cost and the cost of carrying out (as reasonably estimated by the Proper Officer) that part of the Works which is outstanding at the time of the Proper Officer's agreement pursuant to the preceding sub-clause (including Indexation if applicable). When the Final Certificate has been issued the Council shall refund to the Owner the additional security and to the said sum refunded shall be added interest from the date of the payment to the date of the repayment of such sum
- 2.5 The Owner shall implement the said scheme for the collection of the disposal of surface water from the Roads (as approved by the Proper Officer).
- 2.6 The testing of Materials as specified in the Specification (and proposed to be used in the carrying out the Works) shall be carried out by a materials testing laboratory approved by the Proper Officer in writing (such consent shall not be unreasonably withheld or delayed) and the proper costs of making such tests together with the proper costs of any re-testing which the Proper Officer considers is reasonably necessary to undertake as a result of any Materials failing to comply with the necessary specification shall be paid by the Owner
- 2.7 The road safety audits referred to in 2.2 above shall be carried out by a road safety audit team reasonably approved in writing by the Proper Officer and the proper costs of carrying out such audits shall be paid by the Owner.
- 2.8 With the written permission of the Proper Officer the Works may be constructed otherwise than in conformity with the Drawings Provided That any variations to the Works shall be shown on the revised Drawings to be approved by the Proper Officer and read as supplemental to the Drawings referred to in the Agreement.

2.9 The Owner has the full right and liberty to appoint third parties (including without limitation contractors) and can at its entire discretion permit the Developer to carry out the Works and observe and perform all other Owner's obligations contained within the Agreement on the Owner's behalf.

3. DECLARATION

The Owner 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 reasonably necessary to connect the Road or Roads to a highway maintainable at the public expense within the meaning of the Highways Act 1980

4. STATUTORY UNDERTAKERS - CONNECTIONS TO EXISTING SERVICES

The Owner 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 for any Services laid in upon or under such highway or highways of the proposal to make such connections as if the connection were a work to be executed for road purposes and were mentioned in the New Road 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

5. INDEMNITY

The Owner hereby indemnifies the Council and its employees servants (whom each act in their respective courses of employment) and agents (whom have been instructed by the Council) against:

- 5.1 any claim occurring at any time from the commencement of the Works until the issue of the Final Certificate arising in respect of the Works (including the professional fees of agents and/or solicitors acting for a claimant which are deemed payable including any interest payable on any claims and the reasonable and proper costs of the Council in dealing with such claims) and from and against all or any

other actions costs claims and demands which may be made against the Council or its employees servants (whom each act in their respective courses of employment) or agents (whom have been instructed by the Council) arising directly or indirectly by reason of the failure by the Owner to perform and observe any of the terms and conditions on its part herein contained and against any loss suffered by the Council as a result of the exercise of any third-party rights granted in this Agreement other than those actions costs claims and demands arising out of or in consequence of any act neglect default or liability of the Council or those acting upon its behalf; and

- 5.2 any claim against the Highway Authority (of the Council) during the period of seven years following the issue of the Final Certificate for compensation under the Land Compensation Act 1973 arising in connection with or incidental to the carrying out of the Highway Works or their use thereafter,

PROVIDED THAT

- 5.2.1 the Council shall provide written notification to the Owner forthwith within 3 working days upon receipt of any claim action demand or costs, which is a subject of a claim for indemnity in accordance with clause 5.1 or 5.2; and
- 5.2.2 the Council shall not accept, settle or compromise such claim without:
- 5.2.2.1 having provided the full details of such claim to the Owner and having kept the Owner informed of the progress of the claim ;
 - 5.2.2.2 having provided the Owner a reasonable opportunity to comment and/or provide representations;
 - 5.2.2.3 having taken into account such comments and/or representations made by the Owner;
 - 5.2.2.4 using its best endeavours to mitigate the relevant liability or losses;
 - 5.2.2.5 the prior written consent of the Owner (such consent shall not be unreasonably withheld or delayed);

- 5.2.3 The Council shall following the acceptance settlement or compromise of any claim (pursuant to clause 5.2.2) notify the quantum thereof to the Owner in writing
- 5.3 The Owner shall pay to the Council the amount of claim as identified in the notice served on the Owner pursuant to clause 5.2.3 within 56 days of receipt of said notice
- 5.4 The Owner shall not be liable for any breach of any of the obligations or conditions on the Owner's part in this Agreement which shall occur after it has disposed of its interest in the whole or part of the Roads (as appropriate) in respect of which any such breach shall occur provided that the Owner shall procure a direct covenant from the buyer of the Roads (or part thereof) in terms that such buyer shall observe and perform any provisions of this Agreement which are outstanding at the date of that disposal and to complete any part of the Works in respect of which the Final Certificate has not been issued at the date of this transfer,
- Providing that;
- The buyer of the Roads (or part thereof) secures a bond for those Works in respect of which the Final Certificate has not been issued, and the bond is of the type which indemnifies the Council against failure of the buyer to complete the roads to an adoptable standard.
- 5.5 The Council may at its own expense settle adjust compromise any action claim or demand against the Owner by reason of any default or neglect on the part of the Council (but not take over the conduct of any such action claim or demand in the name of the Owner nor act in the name of the Owner)
- 5.6 For the avoidance of doubt, the Council shall not be permitted to take over the conduct of any claims where the Owner has conduct and notwithstanding anything to the contrary in this clause 5, the Council shall not be permitted at any time to act in the name of the Owner in connection with any matters contained or referred to in this clause 5.

6. ACCESS TO THE SITE

Upon receiving prior communication , the Owner shall during the carrying out of the Works give access (or procure that the Developer shall give access but subject to the Owner not being liable where the Developer is unable for whatever reason to give access) to the Proper Officer and any other officer of the Council at reasonable times to every part of the Works and sites thereof for the purpose of inspecting the Works and all Materials used or intended to be used therein and will (if requested to do so) open up or uncover any such Works (if reasonable to do so) and shall provide samples of Materials used or to be used when required to do so by the Proper Officer for the purposes of testing and retesting the same and the Council in enjoying access as aforesaid shall not cause any unnecessary damage nor unnecessarily impede the progress of the Works

7. PROVISIONAL CERTIFICATE

7.1 When the Owner considers that the Works have been completed, he shall provide the Proper Officer with a notice to that effect

7.1.1 The Proper Officer will either:

7.1.1.1 issue a Provisional Certificate to the Owner (copied to the Developer) and the Maintenance Period shall commence during which the Owner shall at his own expense maintain the Works including all grassed and planted areas and carry out such routine maintenance and cleansing as may be reasonably necessary to facilitate use by vehicles and pedestrians; or

7.1.1.2 notify the Owner in writing (and copied to the Developer) that he does not consider that a Provisional Certificate can be properly issued and in such notification specify any reasonable remedial works which in his opinion must be carried out and completed before the Provisional Certificate can be so issued

7.2 If the Proper Officer gives the Owner notification pursuant to 7.1.1.2 then the Owner on receipt of such notification shall commence and diligently proceed with the completion of any specified remedial works to reasonable satisfaction of the Proper Officer and shall soon as reasonably practicable after completion of such remedial work reissue the Owner's notice and the provisions of paragraph 7.1.1 shall apply thereto which procedure may be repeated as many times as necessary

8. FINAL CERTIFICATE

Prior to the expiration of the Maintenance Period the Owner shall forthwith 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 drainage system) of which he has been notified in writing by the Proper Officer so that the Works comply with the Drawings, Schedule and Specification **AND THEN PROVIDED THAT:**

- 8.1 the Owner has paid to the Council all amounts due to the Council under this Agreement **AND**
- 8.2 all defects have been remedied and made good by the Owner at its own expense and to the reasonable satisfaction of the Proper Officer (such defects to include damage or excessive wear caused to the Works during the maintenance period) **AND**
- 8.3 the Owner has delivered to the Proper Officer drawings showing the Works as constructed **AND**
- 8.4 the Road or Roads is/are directly connected to and accessible from another highway maintainable at the public expense which carries the same or greater public rights of way **AND**
- 8.5 where the surface water sewers (other than gullies and connections) draining the Highway Works and foul sewers serving the Development are to be vested in and under the control of the Council or Water Authority in accordance with the provisions of the Water Industry Act 1991 written confirmation has been received by the Council from the appropriate authority that the sewers have been constructed to its satisfaction and that consent has been given to discharge into them **AND**
- 8.6 the Drainage Rights matters referred to at clause 10 below have been satisfied **AND**
- 8.7 at least 12 months have elapsed since the date of the Provisional Certificate **AND**
- 8.8 all sewers gullies catch pits and manholes have been cleansed and the carriageway and footpaths have been swept and the grass has been cut all to the reasonable satisfaction of the Proper Officer **AND**

8.9 the Works have been provided with proper traffic signs road markings and street name plates and furniture to the reasonable satisfaction of the Proper Officer (in accordance with the Part 1 and Part 2 of the Schedule) **AND**

8.10 where the street lighting is to be maintained by a body other than the highway authority the Owner has produced a certificate from that body of the satisfactory completion of the street lighting **AND**

8.11 where there have been works to Statutory Undertakers and/or service providers' apparatus written confirmation has been given by the Owner to the Council that the works have been carried out and completed to the satisfaction of the Statutory Undertakers and/or service providers

the Proper Officer shall issue his Final Certificate to the Owner and provide a copy thereof to the Developer

9. FORMAL DEDICATION

The Owner hereby agrees to make available for public use from the date of issue of the Provisional Certificate all that part of the Road or Roads which is or are not within the existing publicly maintainable highway to the intent that the same shall be added to and form part of the publicly maintainable highway from the date of the issue of the Final Certificate

10. DRAINAGE RIGHTS

The Owner hereby warrants that he has the full right and liberty to drain the Road or Roads in the manner detailed in the Drawings in respect of such part of the surface water drainage system of the Road or Roads as are situate outside the limits of the Road or Roads and will forthwith execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Proper Officer necessary to secure to the Council those full drainage rights and the Proper Officer shall not issue the Final Certificate until such deeds are completed to the reasonable satisfaction of the Proper Officer and further the Council shall not be liable for the payment of compensation or legal or other costs or fees arising on account of the execution of any such deeds

11. ADOPTION

Upon the issue of the Final Certificate the Council agrees that they will maintain the Works which have been carried out on the Roads

and the Roads shall become a highway or highways maintainable at Public Expense

12. LIMITATIONS

Only the highway gullies connections and drains shown coloured blue on the Drawings will be adopted as part of the highway.

13. COUNCIL FEES

13.1 On the completion of this Agreement the Owner shall pay to the Council the Administration Payment **in** respect of the costs incurred by the Council in administering this Agreement and inspecting the Works including Indexation if applicable together with the sum of **THREE THOUSAND ONE HUNDRED AND FIFTY SEVEN POUNDS AND ELEVEN PENCE (£3,157.11)** in respect of the Council's legal and administrative fees

13.2 The Owner shall, in the event of the parties hereto agreeing in writing to extend the period of this Agreement in accordance with clause 2.3 above, pay such additional reasonable sum as determined by the Proper Officer (acting reasonably) in respect of the additional examination of the performance of this Agreement necessitated by the said extension to this Agreement such sum (together with any associated properly incurred Council's legal costs) to be paid on the date of the signing of any written agreement pursuant to clause 2.3 to extend the Agreement including Indexation if applicable

13.3 No inspections will be carried out by or on behalf of the Council until such time as all fees due under this Agreement have been paid to the Council which include the following:

13.4 before issue of the Provisional Certificate under clause 7 the sum of £70.00 in respect of each additional lighting column over and above the existing provision towards the cost of commissioning and electricity supply to the lighting column referred to in the Schedule to this Agreement

13.5 the Council's full proper and reasonable legal and administrative costs incurred in the preparation and/or making of traffic regulation orders necessitated by the Works and the full proper and reasonable cost of such traffic signs and markings (including labour costs) as the Proper Officer shall deem reasonably necessary to give effect to the same as

and when any costs have been incurred and within 56 days of receipt by the Owner from the Council of invoices therefor

- 13.6 On the issuing of the Final Certificate, the Owner shall pay to the Council the sum of **THIRTY FIVE THOUSAND POUNDS (£35,000.00)** by way of a commuted maintenance payment in respect of the **SEVENTY (70) TREES** as itemised in the Schedule Part 1, in the Roads including Indexation if applicable

14. TERMINATION BY THE COUNCIL

14.1 Subject to clause 14.2, if the Owner fails to perform or observe any of the conditions stipulations or obligations on his part contained herein the Council may without prejudice to any of its rights claims or remedies against the Owner in respect of such non-performance or non-observance terminate this Agreement (except for clauses 15, 16 and 17 hereof) by notice in writing signed by the Head of Legal Services for the time being of the Council and delivered to the Owner in accordance with clause 19

14.2 the Council shall give the Owner (following any failure on its part to perform or observe as set out in clause 14.1) a period of time not exceeding 56 days to enable it to compel the Developer to rectify any defaults and to compel the Developer to continue to observe and perform as aforesaid and only where the Owner remains in default after the expiry of this 56 day period shall the Council be able to terminate this Agreement pursuant to clause 14.1

15. POWER TO EXECUTE WORKS IN DEFAULT

Without prejudice to clauses 2 and 14 hereof if the Owner fails to execute or complete the Works in accordance with the Owner's obligations hereunder the Council shall at not less than 28 days' notice in writing to the Owner be entitled to execute or complete the works in default by its own employees or by contract or otherwise and to recover the actual proper costs as reasonably certified by the Proper Officer from the Owner and the provisions of clauses 15.1 to 15.4 shall apply.

15.1 The Owner shall give access (or procure that the Developer shall give access but subject to the Owner not being liable where the Developer is unable for whatever reason to give access) to the Proper Officer and any other officer of the Council to every part of the Works and sites thereof (as reasonably necessary) for the purpose of inspecting the Works.

15.2 The Proper Officer or any other officer of the Council shall provide a notice of approximate costs which the Proper Officer or any other officer of the Council deems proper and reasonably necessary to perform the obligations of the Owner under this Agreement to the Owner.

15.3 The notice of estimated costs pursuant to clause 15.2 shall be provided to the following address or such other address as notified by the Owner from time to time;

Executive Director for Midlands
Home and Communities Agency
5 St Philip's Place
Colmore Row
Birmingham
B3 2PW

(copied to: Care of Legal Services
Homes and Communities Agency
Arpley House
110 Birchwood Boulevard
Birchwood
Warrington
WA3 7QH)

15.4 The Owner shall pay to the Council within 56 days of the notice in clause 15.2 being provided to the Owner such sum of money as the Proper Officer or any other officer of the Council sets out in such notice.

15.5 The sum set out in the notice as per clause 15.2 shall not exceed the Estimated Cost.

16. THE COUNCIL'S COVENANTS

The Council hereby covenants with the Owner:

16.1 to use its best endeavours to mitigate any loss or damage sustained by reason of any default by the Owner hereunder by taking such reasonable steps as the Council shall deem fit.

16.2 where any agreement certificate consent permission expression of satisfaction or other approval is to be given by the Proper Officer under this Agreement (including but without limitation to the Provisional Certificate or the Final Certificate) the same shall not be unreasonably withheld or delayed and where any requirements

or decisions are to be made by the Proper Officer under the terms of this Agreement they shall be made acting properly and imposed as promptly as possible.

17. PHASES

17.1 Notwithstanding anything hereinbefore contained the Owner may from time to time during the currency of this Agreement apply to the Proper Officer for a Provisional Certificate in respect of any phase of the Works described in Part 1 of the Schedule and if the Proper Officer (whose decision, when acting reasonably, shall be final) shall be reasonably satisfied that the phase of the Works so defined is in all respects suitable to be treated as a separate Road for the purposes of construction and adoption in accordance with this Agreement then he may issue a Provisional Certificate in respect of that phase

17.2 IN THE EVENT a Provisional Certificate is issued pursuant to clause 17.1 above thereafter the same procedure may be taken in respect of the said phase of the Road or Roads as if the said phase was the subject of a separate Agreement under which the terms of this Agreement apply to the said phase 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

18 ASSIGNMENT

This Agreement may not be assigned by the Owner without the consent of the Council which consent shall not be unreasonably withheld or delayed

19 NOTICES

19.1 Any notice to be given under this agreement must be in writing.

19.2 Any notice to be served on the Owner shall be sufficiently served on the Owner by being delivered by hand or forwarded by special delivery or recorded delivery post to Homes and Communities Agency Arpley House 110 Birchwood Boulevard Birchwood Warrington WA3 7QH (marked for the attention of Legal Services)

19.2.1 Any notice to be served on the Council shall be sufficiently served on the Council by being delivered by hand or forwarded by special delivery or recorded delivery post to Telford and Wrekin

Council, Darby House, Lawn Central, Telford, Shropshire, TF3 4JA
(for the attention of Legal Services)

19.2.2 or to such other addresses as otherwise specified by the relevant party by notice in writing to each other party from time to time

19.3 Any notice given in accordance with this clause 19 shall be deemed to have been received:

19.3.1 if delivered by hand on signature of a delivery receipt or at the time the notice is left at the relevant address provided that if delivery occurs at or before 12.00 pm 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 12.00 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

19.3.2 if sent by recorded delivery or special delivery post the notice will be deemed to have been received at the time of a signature given acknowledging receipt

20 ARBITRATION

20.1 Any dispute or disagreement between the parties to this Agreement concerning any aspect of this Agreement shall be negotiated between the parties whom shall use their best endeavours and act reasonably and in good faith to resolve that dispute.

20.2 Subject to a resolution not being reached under clause 20.1, in the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed 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 re-enactment or modification thereof and the costs of arbitration shall be payable by the parties hereto in accordance with the proportions determined by the sole arbitrator (or if the arbitrator makes no direction as to costs, then equally)

20.3 This Agreement shall be governed by and construed in accordance with the law of England and Wales.

21. VALUE ADDED TAX

21.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of VAT and VAT will be payable by the Owner on the monies due under this Agreement subject to the Council issuing a valid VAT invoice to the Owner

21.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall at the time VAT becomes chargeable have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

22. **CONTRACTS (Rights of Third Parties) Act 1999**

No person who is not a party to this Agreement ("Third Party") has or shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement and no consent of any Third Party shall be required under that Act to any cancellation or variation to this Agreement

THE SCHEDULE

Part 1

1. Phase 1

The Drawing numbered 10348/1101 Rev ~~F~~ H

Estimated Cost -£177,188.00

Commuted Sums- 14 trees at £350.00 per tree, total sum of
£4,900.00

2. Phase 2

The Drawing numbered 10348/1102 Rev D

Estimated Cost -£274,642.00

Commuted Sums- 41 trees at £350.00 per tree, total sum of
£7,350.00

3. Phase 3

The Drawing numbered 10348/1103 Rev A

Estimated Cost -£372,097.00

Commuted Sums- 45 trees at £350.00 per tree, total sum of
£10,500.00

Part 2

The Works

1. Any necessary protection of trees and landscaped areas
2. Road drainage and other drainage contained within the highway including all necessary interceptors and outfalls.
3. Topsoiling and grassed areas and any planting scheme as required
4. New areas of carriageway and footway
5. All kerbs, channels, edgings etc. including the necessary foundation and backing
6. Provision of traffic signs (including associated electrical works) and road marking
7. Provision of road name plates and other road furniture
8. Provision of road lighting (including associated electrical works)
9. Statutory Undertaker's apparatus which, in the opinion of the Statutory Undertakers, are required as a result of the Works
10. Maintenance of the Works during the Maintenance Period
11. Works arising from the Road Safety Audits pertinent to the Works
12. All ancillary works to the above

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereunto affixed the day and year first before written

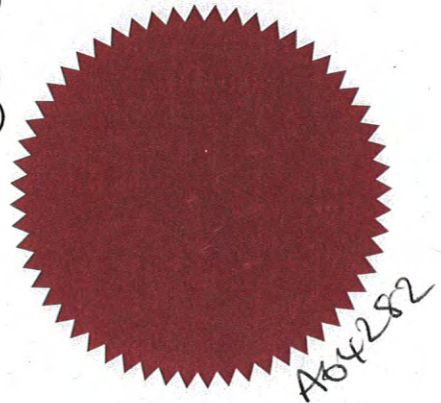
THE COMMON SEAL of)
HOMES AND COMMUNITIES AGENCY)
was hereunto affixed in the)
presence of:-)

A. Nelson

Authorised Signatory

Print Name

Andy Nelson
Head of Housing Programmes



THE COMMON SEAL of)
BOROUGH OF TELFORD &)
WREKIN was hereunto affixed)
in the presence of:-)

I. Ross

IAN ROSS
TEAM LEADER: PLACES



Sharkey, Ann

From: Yvette Morgan <YvetteMorgan@hewitsons.com>
Sent: 14 November 2018 16:24
To: Sharkey, Ann
Subject: RE: S38 Telford Millennium Community Spine Road

Dear Ann

I can confirm that you can make the amendment.

Kind regards
Yvette

mailto:yvettemorgan@hewitsons.com Yvette Morgan | Partner, Real Estate | Hewitsons LLP | ☎: 01908 247012 | 📠: F: 01908 247020 | ✉ yvettemorgan@hewitsons.com | Website Profile

From: Sharkey, Ann [mailto:Ann.Sharkey@telford.gov.uk]
Sent: 14 November 2018 16:01
To: Yvette Morgan <YvetteMorgan@hewitsons.com>
Subject: S38 Telford Millennium Community Spine Road

Dear Yvette,

I have received the engrossment copies; thank you.

The new drawing has been inserted, but the wording within the document still refers to drawing no 10348/1101 **Rev F** (instead of **Rev H**)

Could you please confirm (by email) that your client is happy for me to make a manuscript change to that affect?

Kind regards,

Ann

Ann Sharkey
Legal Assistant
Governance & Legal
Governance, Procurement & Commissioning
Telford and Wrekin Council

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Document: 006647/913621

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Hewitsons LLP

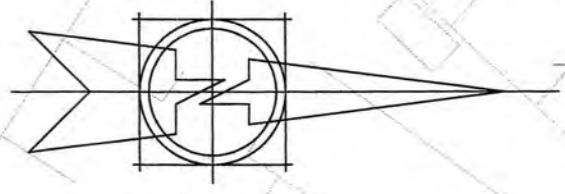
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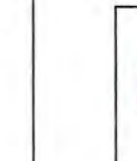
Key



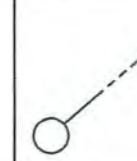
Section 38 Spine Road



Streetlights



Highway Drain



Gully & Connection



Approved

10/03/14
TEAM LEADERS

11/03/14
M.M. DAVIS

H	25.10.18	SS8 Area amended	DJA
G	23.10.18	SS8 Area amended	DJA
F	19.12.17	SS8 Area amended	WB
E	21.02.17	SS8 Area amended	JTH
D	22.01.15	Background amended	JTH
C	10.07.14	Background amended	JTH
B	18.06.14	SS8 Area amended	JTH
A	20.06.14	SS8 Area amended	JTH
REV	DATE	DESCRIPTION	BY

JOB
Telford Millennium Community Village

TITLE
S38 Spine Road Phase 1

SCALE
1/500 @ A1

DRAWN
DATE
11.03.14

CHECKED BY
DA

Taylor Wimpey West Midlands Ltd
39 Dominion Court, Station Rd, Solihull
B91 3RT
Telephone 0121-703 3900
Fax 0121-703 3900



DWG No. 10348 / 1101

H



Key



Section 38 Spine Road



Streetlight



Highway Drain



Gully & Connection



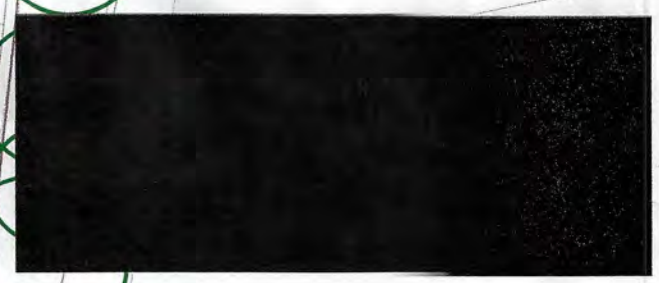
BEVERLEY ROAD

KETTLEBY PARK ROAD

JOB	Telford Millennium Community Village	
	TITLE S38 Spine Road Phase 3	
SCALE	1/500 @ A1	DRAWN JTH
DATE	11.03.14	CHECKED BY DA
DWG No. 10348 / 1103		BY JTH
REV	DATE	DESCRIPTION
A	22.06.16	S38 area amended
Taylor Wimpey West Midlands Ltd 39 Dominion Court, Station Rd, Solihull B91 3RT Telephone 0121-7103 3300 Fax 0121-7103 3380		



Dotted line indicates for 50m exclusion zone for potter's work landfill



Key



Section 38 Spine Road



Streetlight



Gully & Connection



REV	DATE	DESCRIPTION	BY
D	01.02.17	SSB Area amended	JTH
C	23.12.16	SSB Area amended	JTH
B	22.06.16	SSB Area amended	JTH
A	20.05.14	SSB Area amended	JTH

TITLE
S38 Spine Road Phase 2

SCALE
1/500 @ A1

Taylor Wimpey West Midlands Ltd
Second Floor, Fore 2, Halesowen Way
B80 4SS, Shirley, Solihull
Telephone: 0121-703 3300





EVERSHEDS

Dated

7 September

2007

- (1) Borough of Telford and Wrekin
- (2) Commission for New Towns trading as English Partnerships

Deed of Variation

relating to the development of land at East Ketley, Telford Shropshire

Eversheds LLP
115 Colmore Row
Birmingham
B3 3AL
Tel: +44 (0) 121 232 1000
Fax: +44 (0) 121 232 1900

THIS DEED OF VARIATION is made the 7 day of September Two Thousand and Seven

BETWEEN

- (1) **Borough of Telford and Wrekin** of Civic Offices, Telford, TF3 4LD ("the Council")
- (3) **COMMISSION FOR THE NEW TOWNS trading as ENGLISH PARTNERSHIPS** whose registered office is situate at 414 - 428 Midsummer Boulevard, Central Milton Keynes, MK9 2EA ("the Owner")

- (a) In this Deed the following words and expressions shall where the context so admits or requires have the following meanings:-

"the Act" means the Town and Country Planning Act 1990 (as amended)

"the Development Site" the land edged red on the attached plan

"the 2006 Agreement" means an Agreement dated 6 February 2006 between (1) Borough of Telford and Wrekin (2) Commission for the New Towns pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and relating to the development of land at East Ketley, Telford

- (b) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Development Site is situate
- (c) The Owner is the freehold owner of the Development Site
- (d) The parties hereto wish to vary the 2006 Agreement in accordance with the Schedule of Variations below
- (e) Unless the context requires otherwise the expressions "the Owner" and "the Council" shall include their respective successors in title and assigns.

NOW THIS DEED WITNESSETH

1. This Deed is made pursuant to Section 106A(1)(a) of the Act and the obligations taken herein by the Owner are planning obligations for the purposes of the Act.
2. This Deed is a Local Land Charge and shall be registered as such.
3. It is hereby agreed with immediate effect that the 2006 Agreement shall be varied in accordance with Schedule of Variations below. Save as varied the provisions of the 2006 Agreement shall remain in full force and effect.
4. The Owner will pay the Council's reasonable costs incurred in connection with the preparation of this Deed on completion of the Deed.

IN WITNESS whereof the parties hereto have executed these presents as a Deed the day and year first above written

SCHEDULE OF VARIATIONS

1. In paragraph 1 of Schedule 6 of the 2006 Agreement the definition of "Staircasing Receipt" shall be inserted as follows:-

"Staircasing"

the exercise by any person of any statutory right to acquire or right of enfranchisement of any Affordable Housing Unit or the sale of any further share in the ownership of a Shared Ownership Housing Unit following the first acquisition by an occupier of an interest in a Shared Ownership Housing Unit

"Staircasing Receipt"

the monies received by an Affordable Housing Provider arising from Staircasing less any sum repayable to the Housing Corporation or grant providing body and the Affordable Housing Provider's costs of sale.

2. Paragraph 7 of Schedule Six to the 2006 Agreement shall be deleted and replaced with the following:

"The Owner shall ensure that the Affordable Housing Land shall be used only for the construction of the Affordable Housing Units and that the Affordable Housing Land and Affordable Housing Units shall be managed by the Affordable Housing Provider in accordance with its objectives or Articles of Association and the approved or deemed approved scheme AND FURTHER the Owner shall use reasonable endeavours to impose an obligation upon the Affordable Housing Provider to ensure the following:

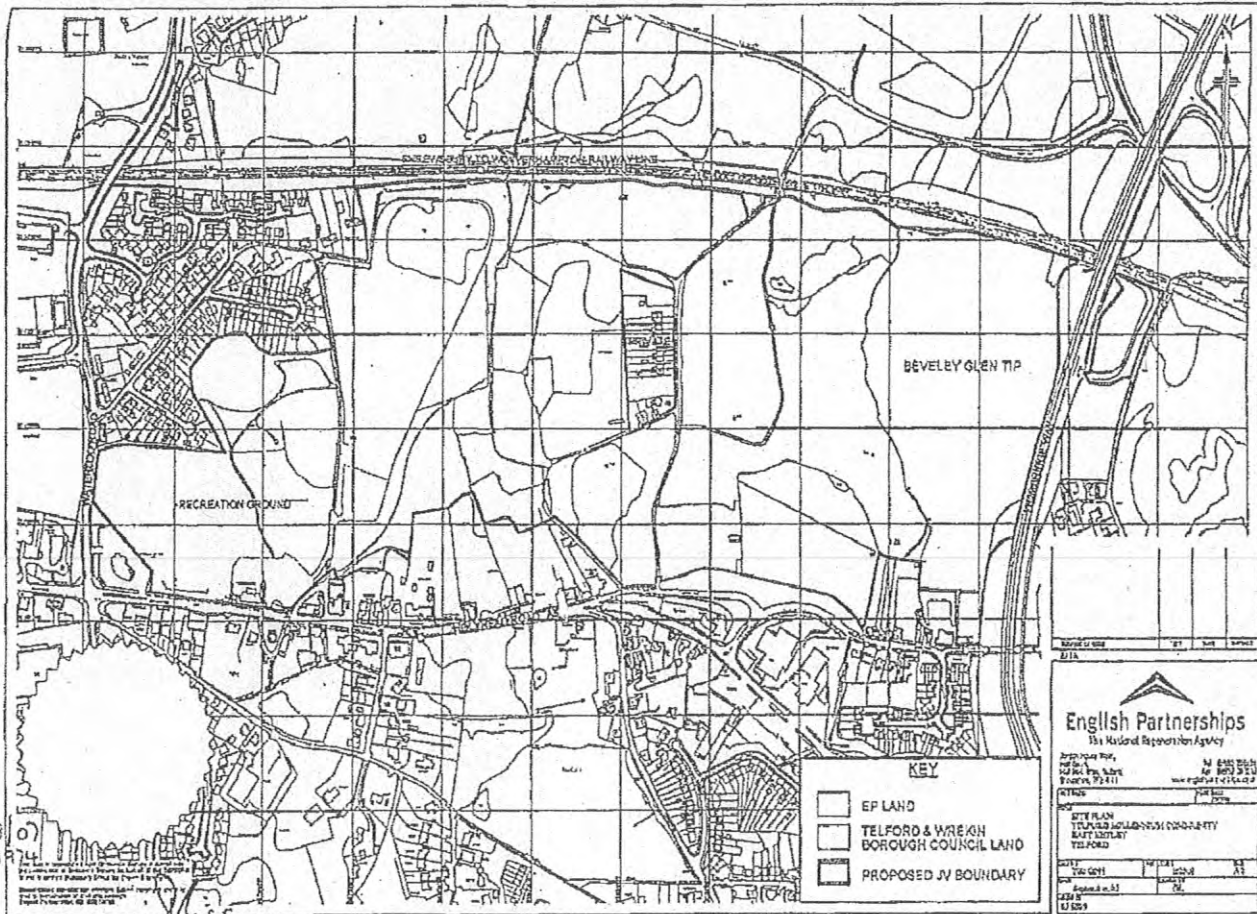
- (i) that any Staircasing Receipt received by the Affordable Housing Provider shall be recycled and used for the provision of further Rented Social Housing Units or Shared Ownership Housing Units on the Application Site or, with the written consent of the Council, (such consent not to be unreasonably withheld or delayed) on land outside the Application Site.
- (ii) that the Affordable Housing Provider will have a first right of refusal under the terms of the lease of each Shared Ownership Housing Unit to purchase the lessee's share in the Shared Ownership Housing Unit when it is offered for sale until such time as such lessee has acquired a 100% interest in that Shared Ownership Housing Unit.

3. Paragraph 10 of Schedule Six to the 2006 Agreement shall be deleted and replaced with the following:

"The restrictions upon the disposal and or occupation of an individual Affordable Housing Unit shall cease and shall not apply upon:

- (a) The exercise by any person of any statutory right to acquire or right of enfranchisement of the Affordable Housing Units;
- (b) The exercise of a power of sale by a mortgagee or the sale by a receiver appointed by such mortgagee of the Affordable Housing Units pursuant to statutory powers or the provision of any mortgage or charge;
- (c) The achievement by any lessee of 100% interest in a Shared Ownership Housing Unit by Staircasing

PROVIDED THAT the requirement in paragraph 7(1) of Schedule Six for the Affordable Housing Provider to recycle Staircasing Receipts received by the Affordable Housing Provider will arise upon the occurrence of any of the events set out in sub-paragraphs (a), (b) or (c) above (the "Events") but shall not apply to any monies due to the mortgagee under the terms of its mortgage or charge on the occurrence of the event described at sub-paragraph (b) and for the avoidance of doubt shall not apply at all to an Individual Affordable Housing Unit following the occurrence of any of the Events in respect of such Individual Affordable Housing Unit.



1578
777(e)

The land shown on this map is the property of the National Asbestos Agency. It is not to be used for any other purpose without the written consent of the Agency. The Agency is not responsible for any errors or omissions on this map. The Agency is not responsible for any damage to property or persons arising from the use of this map. The Agency is not responsible for any loss of data or information arising from the use of this map. The Agency is not responsible for any loss of data or information arising from the use of this map.

Gray Salsider

English Partnerships
The National Asbestos Agency

Asbestos Unit,
140 St. Pauls Way, Walsley, Walsley, Walsley, Walsley
Walsley, Walsley, Walsley, Walsley

01924 750000
www.englishpartnerships.co.uk

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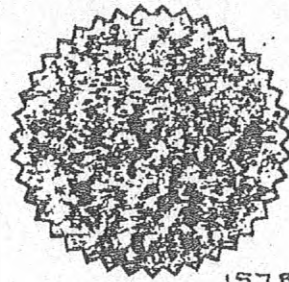
01924 750000
www.englishpartnerships.co.uk

THE COMMON SEAL of
BOROUGH OF TELFORD
AND WREKIN

was affixed to this deed in the presence of:

Authorised Signatory

Blair
GROUP SOLICITOR



1578/07
77 (e) 1974

THE COMMON SEAL of
COMMISSION FOR THE
NEW TOWNS

was affixed to this deed in the presence of:

Authorised Signatory

Ellis Scott

