

Dated the [redacted] day of [redacted] 20 [redacted]

**MINOR WORKS AGREEMENT**

Pursuant to Section 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 relating to works on the public highway at ("the Location")

**B E T W E E N**

- (1) **EAST SUSSEX COUNTY COUNCIL** (Governance Services) of County Hall, St. Anne's Crescent, Lewes, East Sussex BN7 1UE ("the County Council") and
- (2) [redacted] (Company Number [redacted] ) whose registered office is situated at [redacted] ("the Developer")

**W H E R E A S :**

- (a) The County Council is the Highway Authority for highways in the county of East Sussex
- (b) The Developer is the owner of or has the permission of the landowner to enter into this Agreement in order to secure the carrying out of the Works at the Location and has agreed that it will pay the full cost of the Works, in relation to the Planning Permission and in accordance with the terms and conditions of this Agreement.
- (c) The County Council agrees to enable the Works on the highway maintainable at public expense on the terms and conditions contained in this Agreement.
- (d) The County Council is satisfied pursuant to Section 278 of the Act that it will be of benefit to the public for it to enter into this Agreement for the execution of the Works by the Developer which Works it is authorised to execute pursuant to the Highways Act 1980.

**IT IS AGREED THAT:**

- 1. This Agreement is made pursuant to Section 59 and Section 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011
- 2. Where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons and references to that party shall include references to each or any of those persons
- 3. The provisions of Schedule A hereto shall apply to the construction and interpretation of this Agreement.
- 4. Any notice or approval given by the parties under the terms of this Agreement shall be given in writing both by email and by post to the following officials/persons at the respective addresses specified below:-  
The County Council : F.A.O - Transport Development Control Team Manager, Communities, Economy & Transport

The Developer: Email – developmentcontrol.transport@eastsussex.gov.uk  
Post – at the address set out above  
F.A.O – [redacted]  
Email – [redacted]  
Post – [redacted]

## 5. **Developer's Obligations**

### **The Developer hereby covenants with the County Council as follows:**

- 5.1 to carry out the Works at its own expense by a person or company approved by the County Council.
- 5.2 to pay to the County Council, on or before the execution of this Agreement, the sums specified in Schedule C
- 5.3 that the Works will require a Traffic Management Permit and the Works will not commence until the Traffic Management Permit has been issued
- 5.4 that the Works will not commence until this Agreement has been completed
- 5.5 that if the Works are subject to the CDM Regulations the provisions of paragraph 3 of Schedule C will apply
- 5.6 that under Section 59 of the Highways Act 1980 the Highway Authority is permitted to charge developers for damage caused by excessive weight and movements of vehicles to and from a site. The County Council will require the Developer to pay the costs of any excess repairs compared to normal maintenance costs and the Developer hereby agrees to pay such costs.
- 5.7 to give the County Council at least seven (7) days notice in writing of the proposed start date of the Works.
- 5.8 to commence the Works within [REDACTED] calendar weeks from the date of this Agreement and to carry out and complete the Works within the area hatched pink on the Agreement Drawing at no cost to the County Council in accordance with the Approved Drawings and any conditions attached to the Permit to Work.
- 5.9 not to commence the Works unless and until the Permit to Work has been issued.
- 5.10 to complete the Works within [REDACTED] calendar weeks of their commencement and to notify the County Council of completion of the Works in writing within seven (7) days of such completion.
- 5.11 to indemnify and keep indemnified the County Council in respect of all claims as specified in paragraph 2 of Schedule C
- 5.12 to undertake a Development Engineering Inspection Regime (to include pre-commencement survey) and to agree a programme of implementation of all necessary statutory utility works associated with the Development, including liaison between East Sussex Highways (as agent for the County Council) and the relevant Statutory Undertakers, to ensure that where possible the Works take the route of least disruption and occur at the least disruptive times for highway users.
- 5.13 upon receipt of the Preliminary Certificate to maintain the Works during the Maintenance Period to the satisfaction of the County Council
- 5.14 Before the expiry of the Maintenance Period to provide to the County Council:
  - (a) an electronic copy of As Built Drawings; and
  - (b) an electronic copy of the Health & Safety File.
- 5.15 to permit the County Council to enter onto and upon and remain upon with or without workmen plant and machinery so much of the land in the ownership of or under the control of the Developer as shall be necessary for the County Council to carry out its obligations under this Agreement and/or to fulfil its duties statutory but so that the County Council shall not obstruct or delay the carrying out of the Works
- 5.16 to give the County Council free and unrestricted access to every part of the Works during their construction upon reasonable prior notice except in the event of emergencies and at any time during the Maintenance Period.

6. **County Council's Obligations**

**The County Council hereby:**

- 6.1 authorises the Developer to carry out and complete the Works subject to and strictly in accordance with the terms and conditions set out in clause 6 above
- 6.2 consents to the Developer being elected as the sole client for the purposes of the CDM Regulations
- 6.3 agrees that where any approval is to be given under this Agreement the same shall not be unreasonably withheld or delayed
- 6.4 agrees that upon practical completion of the Works:
- (a) it shall issue the Preliminary Certificate PROVIDED THAT if in the opinion of the County Council the Works will be used by the construction traffic associated with the Development, the County Council shall be entitled to delay the issue of the Preliminary Certificate until such time as such activities have ceased; and
  - (b) within one (1) calendar month of the issue of the Preliminary Certificate it shall reduce the Deposited Sum by a maximum of seventy five per cent (75%) and shall pay the Developer a sum equivalent to such reduction
- 6.5 agrees that:
- (a) after the expiry of the Maintenance Period and provided that any defects arising during the Maintenance Period from defective goods materials or workmanship have been made good to the satisfaction of the County Council it shall issue a Final Certificate for the Works and upon its issue the Developer shall no longer have any liability for the Works save for the indemnities provided in Schedule C
  - (b) upon the issue of the Final Certificate the County Council shall repay to the Developer the balance of the Deposited Sum remaining after the reduction as referred to in Schedule C Clause 1.5 or in the event of the Deposited Sum being used in accordance with Schedule C Clause 1.5 a sum equivalent to the balance of such part of the Deposited Sum as remains

**SCHEDULE A**

**Construction and Interpretation**

“Accredited Supervisor”	means a supervisor who is accredited under the New Roads and Street Works Act 1991
“Agreement Fee”	a sum being equal to 10% of the cost of the Works or the sum of TWO THOUSAND POUNDS (£2,000), whichever is the greater, being payment of the expenses incurred by the County Council in relation to this Agreement and any other expenses in connection with the inspection of the Works
“As Built Drawings”	the Approved Drawings revised by the Developer to include any changes to the Works arising from their construction
“Approved Drawings”	the drawings and specification attached at Schedule B submitted by the Developer to the County Council and approved by the County Council and subject to, as needed, any Road Safety Audit prior to the

“Commuted Sum”	<p>commencement of the Works within the publicly maintained highway.</p> <p>the sum of (€ )to meet the additional maintenance costs arising from the Works</p>
“CDM Regulations”	<p>the Construction (Design and Management) Regulations 2015 and any successor legislation</p>
“Deposited Sum”	<p>The sum of [REDACTED] (€ ) being a cash deposit equal to the cost of the Works including any Statutory Undertakers costs</p>
“Development Engineering Inspection Regime”	<p>To ensure throughout the duration of the Works that they are supervised by an Accredited Supervisor as necessary for the proper superintendence of the Works.</p>
“Development”	<p>the construction works associated with the implementation of the Planning Permission</p>
“Final Certificate”	<p>the certificate issued by the County Council after the expiry of the Maintenance Period</p>
“Health & Safety File”	<p>a file produced in accordance with the CDM Regulations containing information content of which shall be as defined by the Approved Code of Practice and Guidance to the CDM and as specified by the County Council</p>
“Insolvency Event”	<p>means any of the following:</p> <p>if the developer is an individual or a firm:-</p> <p>the presentation of a petition for the Developer’s bankruptcy; or the making of a criminal bankruptcy order against the Developer or any partner in the firm; or the Developer or any partner in the firm making a composition or arrangement for the benefit of creditors; or the making of a conveyance or assignment for the benefit of creditors; or the appointment of an administrator to manage the Developer’s or firm’s affairs</p> <p>If the developer is a company:-</p> <p>the company passing a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction); or the making of an application for, or any meeting of its members resolving to make an application for an administration order in relation to it; or the giving or filing of notice by any party of intention to appoint an administrator of it; or the appointing of such an administrator or the making by the court of a winding up order, or the company</p>

“Legal Fees”	making a composition or arrangement with its creditors, or the appointment of an administrative receiver, receiver or manager or supervisor by a creditor or by the court, or the taking of possession of its property under the terms of a fixed or floating charge the sum of FIVE HUNDRED POUNDS (£500.00) required to meet the County Council's legal costs
“Permit to Work”	the permit issued by the County Council certifying that technical and construction approval have been granted in respect of the Works
“Planning Permission”	the permission issued pursuant to the planning application as set out in Schedule B
“Preliminary Certificate”	the certificate issued by the County Council upon practical completion of the Works to the satisfaction of the County Council
“Land”	the land shown edged red on the Approved Drawings
“Maintenance Period”	the period of twelve (12) months commencing on the date of issue of the Preliminary Certificate
“Traffic Management Permit”	the permit to carry out the Works issued by the County Council under the terms of the Traffic Management Act 2004.
“Safety Audit Report”	the formal report produced by either the County Council or the Developer examining the safety performance of the Works
“Statutory Undertaker”	shall have the meaning ascribed to it by Section 329 of the Highways Act 1980 and shall include persons authorised under any enactment to carry on an undertaking for the supply of electricity gas or water and any sewerage undertaking and shall also include the Environment Agency the holder of a licence to operate telecommunication systems the Civil Aviation Authority and the holder of a licence to supply cable television
“Sums Payable”	Together the:- Agreement Fee Commutated Sum Deposited Sum; and Legal Fees
“Works”	the alteration of the existing publicly maintained highway as described in

**SCHEDULE B**

The Development:	Brief description of the planning application
Address:	
Planning application reference number:	
Approved Drawing reference number	

Full Description of the Works:	as illustrated on the Approved Drawings together with any other ancillary works reasonably required by the Director.
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**SCHEDULE C**

**1 Sums payable by the Developer:**

- 1.1 the Agreement Fee, the Commuted Sum and the Legal Fees
- 1.2 Within 14 days of demand the full cost to the County Council in applying for obtaining altering and implementing any necessary Traffic Regulation Orders required for the works whether or not such Traffic Regulation Orders are confirmed
- 1.3 Within 14 days of demand the full cost to the County Council in preparing any Safety Audit Reports including the cost of any correspondence and additional reports related to the Safety Audit Reports
- 1.4 The Deposited Sum which the County Council will hold in its general account and without undertaking any fiduciary obligations as trustee for the Developer PROVIDED THAT IF:
  - (a) The Developer fails to carry out and or complete the Works within the period specified in this Agreement, or
  - (b) the Developer having received written notice from the County Council fails to remedy any defects and or carry out any remedial works specified in such notice to the satisfaction of the County Council within the period of time specified in such notice (or such longer period as the County Council may agree in writing and its absolute sole discretion); or
  - (c) An Insolvency Event occurs in respect of the Developer  
the County Council may itself carry out and complete the Works or at its discretion restore the safe operation of the public highway affected by the Works and deduct from the Deposited Sum all costs fees and expenses incurred by the County Council in so doing including the cost fees and expenses of preparing an alternative contract for the Works and of supervising the execution of such alternative contract and all of the sums due from the Developer under the terms of this Agreement not payable by Deposited Sum.

**2. Developer’s Indemnities**

- 2.1 to indemnify and keep indemnified the County Council against all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works and their subsequent use and any works required by any Statutory Undertaker other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions of clause 2.2 below shall apply
- 2.2 to indemnify and keep indemnified the County Council against all claims under Part I and Part II of the Land Compensation Act 1973 arising out of the use of the Works and all fees reasonably incurred by the claimants and those of the County Council or its agents or contractor in negotiating any claims (together with Value Added Tax payable upon the claimant’s professional advisors’ fees) and statutory interest payments to claimant and their professional advisors together with the County Council’s reasonable legal costs in making such payments of compensation and interest. For the purpose of this indemnity the Developer is deemed to carry out the Works as agent for the County Council
- 2.3 without prejudice to its liability under Clauses 2.1 and 2.2 above to indemnify the County Council the Developer shall take out and maintain public liability insurance for a sum of at least ten million pounds (£10,000,000) in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured and the Developer or any person authorised by it to carry out the Works shall on request by the County Council produce for inspection the relevant policies of insurance together with receipts for the premiums paid

**3. Construction Design and Management (CDM) Regulations**

If the Works are subject to the CDM Regulations:-

- (a) the Developer hereby elects itself to be treated as the only client for the purposes of the CDM Regulations; and
- (b) the County Council consents to such election and shall not be subject to any duty owed by a client under the CDM Regulations save for the duties in regulations 5(1)(b) 10(1) 15 and 17(1) in so far as those duties relate to information in its possession

**4. Jurisdiction**

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

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year before written.

**EXECUTED as a DEED** by affixing hereto    )  
the **COMMON SEAL** of **EAST SUSSEX**        )  
**COUNTY COUNCIL** in the presence of:-    )

.....  
Authorised Signatory

**For limited company**

**EXECUTED as a DEED on behalf of**

In the presence of:

Director.....  
(Signature)

.....  
(Name – Block Capitals)

Director/Company Secretary.....  
(Signature)

.....  
(Name – Block Capitals)

**For individuals**

**SIGNED as a DEED**

By

Signature.....

Signature of witness.....

Witness name (Block Capitals).....

Witness address.....

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