DATED

ACCESS AND ADOPTION AGREEMENT

PURSUANT TO SECTION 38 AND 278 OF THE HIGHWAYS ACT 1980

among

DORSET COUNCIL

and

NEIL JOHN OVERTON AND MARK WOODWARD

and

WELBECK STRATEGIC LAND LLP

This agreement is dated

Parties

(1) **DORSET COUNCIL** whose registered office is situate at County Hall, Colliton Park, Dorchester, Dorset, DT1 1UZ (**Council**)

(2) **NEIL JOHN OVERTON** of Oak Tree House, Limpers Hill, Mere, Warminster, Wiltshire, BA12 6BB and **MARK WOODWARD** of Womble Bond Dickinson (UK) LLP, 3 Temple Quay, Temple Back East, BRISTOL, BS1 6DZ (**Owners**)

(3) **WELBECK STRATEGIC LAND LLP** incorporated and registered in England and Wales with company number OC359671 of Woodstock Studios, 13 Woodstock Street, London, W1C 2AG **(Promoter**)

BACKGROUND

(A) The Council is the local highway authority for the area in which the Development Site is situated.

(B) Pursuant to the Funding Agreement, the Council has been awarded funding from Homes England to construct the proposed Road which shall be located on the Development Site and is required to facilitate the Development of the Development Site and other land.

(C) The Owners are the registered proprietors of that part of the Development Site subject to the Promotion Agreement and registered at HM Land Registry under title number DT327171.

(D) The Promoter has an interest in that part of the Development Site registered to the Owners pursuant to the Promotion Agreement.

(E) The Outline Planning Permission for the Development Site is accompanied by the Section 106 Agreement which contains an obligation requiring the Owners and the Promoter to enter into an agreement under section 38 and 278 of the Highways Act 1980 in respect of the Highway Works and this agreement is entered into in satisfaction of that obligation in respect of that part of the Development Site registered to the Owners.

(F) The Owners and the Promoter have requested that after the Highway Works have been completed, the Council shall adopt the Road as a highway maintainable at the public expense, which the Council has agreed to do on the terms and conditions of this agreement.

Agreed terms

1. Interpretation

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

1.1 Definitions:

Ancillary Land: the Flood Compensation Land, the Planting Mitigation Land and the Working Space.

Ancillary Work: all other works which the Council is obligated to undertake on the Development Site to facilitate the Highway Works as set out in the Highway Works Planning Permission and detailed in Schedule 3 of this agreement.

Advance Notice: reasonable prior notice served by the Council on the Owners and Promoter confirming the date on which the Council intends to commence the Highway Works.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (*SI 2015/51*).

Client: the client as defined by the CDM Regulations.

Date of Commencement: the date notified to the Owners and the Promoter pursuant to clause 5.2.

Development: means the development of the Development Site pursuant to the Outline Planning Permission and the Section 106 Agreement.

Development Site: means the land registered at the Land Registry under title numbers DT372171 and DT437488 as shown edged in red on the plan

Drawings: the Drawings listed in Schedule 2 and attached to this agreement and signed by or on behalf of the parties.

Final Certificate: the certificate to be issued on satisfactory completion of the Highway Works under clause 7.2.

Flood Compensation Land: the land shown coloured brown on the Plan.

Funding Agreement: an agreement dated 13th December 2019 and made between the Council and the Homes and Communities Agency trading as Homes England.

Highway Works: the works summarised in Schedule 1 and shown on the Drawings including any alterations or additional works which may be required as a result of a Road Safety Audit.

Highway Works Planning Permission: the planning permission granted by the Council on 18th November 2020 with reference number 2/2020/0379 (or any revision thereto or replacement thereof).

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

Licence Period: means the period from the Date of Commencement to the date of the issue of the Final Certificate.

Outline Planning Permission: the planning permission to be granted by the Council with reference number 2/2018/0036/OUT (or any revision thereto or replacement thereof).

Plan: the plan annexed to this agreement being drawing number HI1177-62-03-Orig

Planting Mitigation Land: the land shown coloured green on the Plan.

Promotion Agreement: an agreement dated 23rd December 2014 between the Owners and the Promoter (as may be varied and/or supplemented from time to time).

Proper Officer: any officer of the Council for the time being appointed for the purposes of this agreement.

Road: the carriageway and footway of the private road shown coloured pink on the Drawings, including:

a) any off-site highway drainage shown by blue lines the Plan;

b) the footpaths, street lighting, all verges, service strips, service margins, vehicular crossings, road surface water drainage system (if any); and

c) all other ancillary items.

and **Roads** shall mean more than one of them.

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

Road Safety Audit: safety audits of the Highway Works to be carried out in accordance with the Design Manual for Roads and Bridges GG119 Revision 2 Road Safety Audit.

Section 106 Agreement: an agreement dated between (1) the Council (2) the Promoter (3) Owners and (4) Sarah Elizabeth Anne Shields, Catherine Patricia Mitchell and Richard Charles Pike (5) Jeremy Douglas Hine, Russell Hine and Graham William Hine.

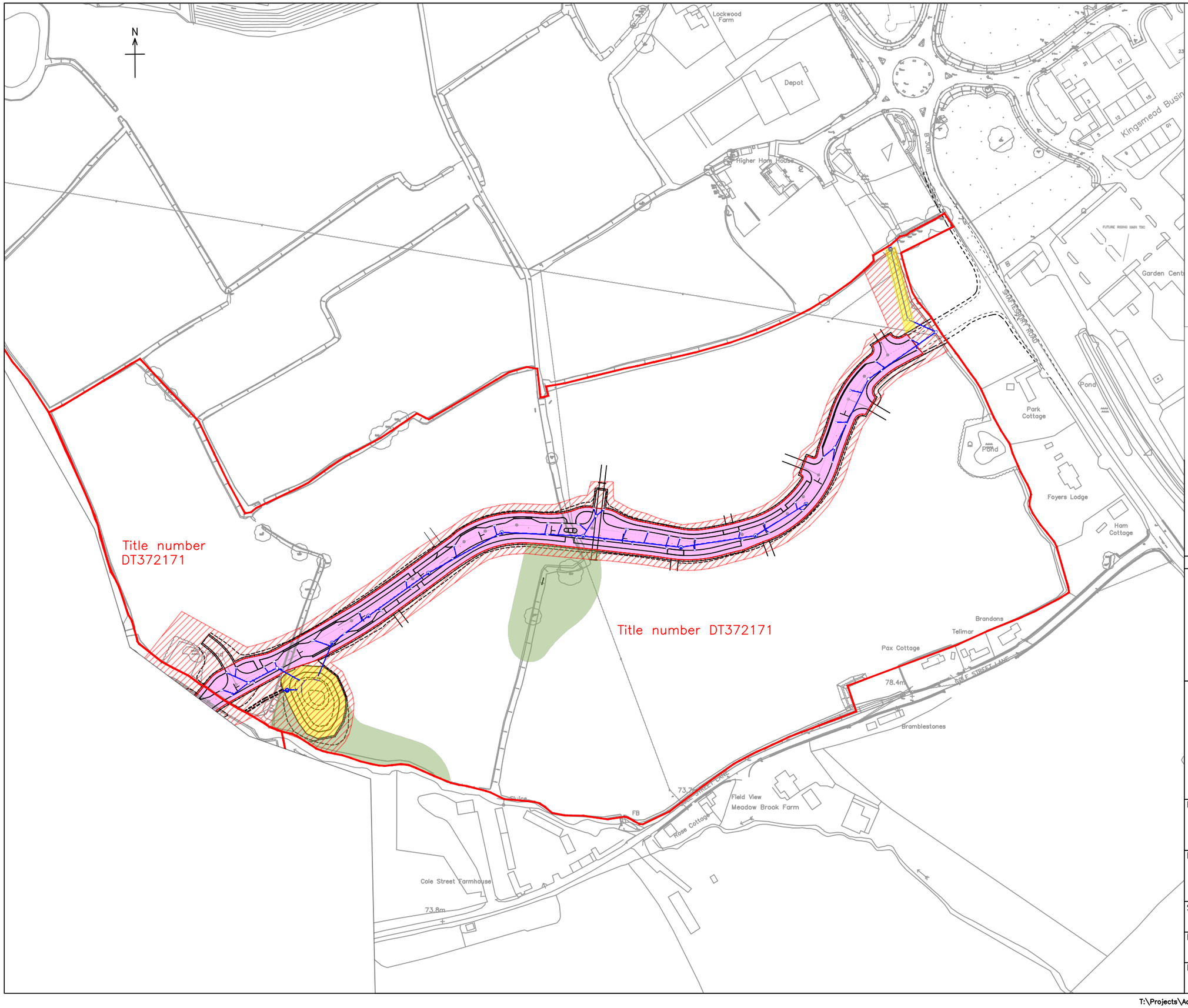
Sewer Adoption Agreement: an agreement made under section 104 of the Water Industry Act 1991.

Site Compound: that part of the Development Site shown coloured blue on the Plan.

Specification: means Highways England's Manual of Contract Documents for Highway Works, Volume 1 - Specification for Highway Works and any amendment to or replacement of it for the time being in force.

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

a) persons authorised under any enactment to carry on an undertaking for the supply of electricity, gas, water and any sewerage undertaking;



KEY

- Highway Extents
- Highway Drainage network
- Foul Sewer
- Working space for construction
- Highway surface water system easement areas
- Floodplain compensation area
- Planted areas
- Compound location

Rev	Date	Issue / Remarks	Checked
Orig	24Jun21	–	PLH

Dorset Council

DORSET HIGHWAYS

Matthew Piles

Economy Infrastucture and Growth

Project Title

GILLINGHAM PRINCIPAL STREET

Drawing Title

HIGHWAY AGREEMENT PLAN
TITLE No. DT 372171

Scale (A3 Size)	Drawn By	Date
1/2500	PLH	24 Jun 21

Drawing Number

HI1177/62/03/Orig

Drawing Status

–

T:\Projects\Active Projects\HI (Highway Improvements)\HI1177\Draw\HI1177-62.dwg

b) the Environment Agency;

c) a holder of a licence to operate telecommunication systems;

d) the Civil Aviation Authority; and

e) the holder of a licence to supply cable television.

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

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

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

Working Space: the areas of land shown coloured red and yellow on the Plan.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

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

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.11 A reference to **writing** or **written** excludes fax but includes e-mail.

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

1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.14 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.15 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Statutory provisions

This agreement is made under section 38 and section 278 of the Highways Act 1980, section 111 of the Local Government Act 1972, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling powers of the Council.

3. Owner's Declaration

3.1 Subject to any matters disclosed by the Owners in replies to enquiries or in the title deduced or as would otherwise be discoverable from the carrying out of usual conveyancing searches the Owners warrant that there is no person, other than those individuals party to this agreement, who have an interest in that part of the Development Site registered at the Land Registry to the Owners whose consent may be required to carry out the Highway Works and the Ancillary Works.

4. Access for Construction and Maintenance

4.1 In consideration of the Council's obligations under this agreement the Owners grant the Council licence to occupy the Road Land and the Ancillary Land for the Licence Period subject to the terms and conditions of this clause 4.

4.2 The Council may only occupy the Road Land and the Ancillary Land at their risk for the purposes of carrying out its obligations under this agreement including the construction and maintenance of the Highway Works and the construction of the Ancillary Works.

4.3 The Council acknowledge that the Council shall occupy the Road Land and the Ancillary Land as licensee and that no relationship of landlord and tenant is created between the

Owners and the Council by this licence. The Council further acknowledge that the licence to occupy granted by this clause 4 is personal to the Council and is not assignable and the rights granted hereunder may only be exercised by the Council, its employees and contractors.

4.4 The Council acknowledges that the Owners retain control, possession and management of the Road Land and the Ancillary Land and that the Council has no right to exclude the Owners or the Promoter from the Road Land and the Ancillary Land, except as provided for in clause 4.5.

4.5 During construction of the Highway Works and the Ancillary Works, the Council shall give to the Owners and their employees free access across the Road Land and the Ancillary Land for the purpose of carrying on farming operations on the adjoining land provided that the Owners and their employees shall at all times comply with any reasonable health and safety requirements notified to them by the Council.

4.6 The Council shall indemnify the Owners and keep the Owners indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from the rights granted under this clause 4.

5. Council's obligations

5.1 The Council shall use all reasonable endeavours to carry out and complete the Highway Works and the Ancillary Works:

(a) in a good and workmanlike manner;

(b) using only good quality materials;

(c) in accordance with this agreement, the Specification, the Drawings and the Highway Works Planning Permission;

(d) in compliance with all relevant British Standards, codes of practice and good building practice and any risk assessments completed and ensuring that appropriate levels of public liability insurance cover are in place before commencement of any works; and

(e) within 12 calendar months of the date of this agreement or such longer period as the parties may agree in writing.

5.2 At the expiration of the Licence Period the Council will ensure that the Road Land and the Ancillary Land are left in a clean and tidy condition with all equipment and materials removed and any damage made good.

5.3 The Council shall give to the Owners and the Promoter Advance Notice of its intention to commence to the Highway Works and the Ancillary Works.

5.4 The Council shall maintain the Road Land under the provisions of this agreement until such time as the Road is adopted as highway maintainable at the public expense. The Council shall maintain the Flood Compensation Land and the Planting Mitigation Land under the provisions of this agreement until the Road Land is adopted as highway maintainable at the public expense and thereafter the responsibility for the maintenance of Flood Compensation Land and the Planting Mitigation Land shall be governed by the Section 106 Agreement.

5.5 The Council shall pay the sum of ONE PEPPERCORN to the Owners in consideration of the rights granted under this agreement.

5.6 The Owners acknowledge that the consideration paid under clause 5.5 above, includes all compensation for all heads of claim including damage sustained to the Owners by reason of severance of the Road Land from its other land or other injurious affection of its other land and for disturbance.

5.7 The Owners further acknowledge that the consideration paid under clause 5.5 above is in full satisfaction for all works and things which might otherwise be required to be made or done for the better enjoyment, protection or accommodation of the Owners remaining land following the adoption of the Road Land as highway maintainable at the public expense.

6. Suspension of the Highway Works

6.1 If the Council intends to suspend construction of the Highway Works for a period of more than 7 Working Days, the Council shall notify the Owners in writing of:

(a) the intended suspension not less than 3 Working Days before the start of the suspension; and

(b) the Council's intention to re-commence construction of the Highway Works not less than 3 Working Days before such re-commencement.

7. Construction Certificates and Maintenance

7.1 The Council shall notify the Owners of the date of Substantial Completion of the Highway Works and the Ancillary Works and shall thereafter:

(a) maintain the Highway Works, including all grassed and planted areas, and carry out routine maintenance of the Road, including sweeping, gully emptying and snow clearance; and

(b) clear all abandoned vehicles, rubbish, or other unauthorised materials from the Road.

(c) undertake routine maintenance of all Street Furniture; and

(d) be responsible for the supply of energy and all associated costs for all the Street Furniture.

7.2 The Council shall maintain the Planting Mitigation Area for a period of 5 years from

7.3 Subject to clause 7.3, the Council will issue the Final Certificate within one year of Substantial Completion.

7.4 The Council shall not be obliged to adopt the Road as highway maintainable at the public expense until:

(a) any sewers constructed on or under the Road, in accordance with a Sewer Adoption Agreement are subject to a Sewer Adoption Agreement and have been placed on maintenance in accordance with the provisions of that agreement or adopted by a Statutory Undertaker;

(b) the Owners and the Promoter have obtained and delivered to the Council all necessary deeds of easement under clause 11 ;

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

8. New Roads and Street Works Act 1991

8.1 Until the date of issue of the Final Certificate, the Council shall:

(a) appoint a supervisor qualified in accordance with the provisions of section 67 of the New Roads and Street Works Act 1991; and

(b) remain the street manager of the Road under section 49(4) of the New Roads and Street Works Act 1991.

9. Keeping the Road clean

From the date of the Substantial Completion the Owners shall use reasonable endeavours to prevent mud and other materials from being deposited on the Road through the farming or construction operations on the Development Site and any such substance deposited by the Owners, their employees and contractors shall be promptly removed at no cost to the Council.

10. Connecting to existing services

10.1 Before connecting the Road to the carriageway of a highway maintainable at the public expense, the Council shall give notice to the relevant Statutory Undertaker of any service or services laid in, on, or under the existing highway of the proposal to make such

connection as if the connection were works for road purposes or major highway works as defined in section 86 of the New Roads and Street Works Act 1991.

11. Grant of easements and other rights

11.1 Before the Council issues a Final Certificate, the Owners and the Promoter shall execute and complete:

(a) any deeds of easement that are in the opinion of the Council necessary to secure for the Council the right to install, use and thereafter maintain such parts of the surface water drainage system of the Road Land that are not within the Road Land but within that part of the Development Site registered to the Owners. For the avoidance of doubt the Council shall require an easement to use and maintain those parts of the surface water drainage system located in the land shown coloured yellow on the Plan.

(b) any other deeds of easement required by the Council to install and thereafter maintain any Street Furniture not within the Road Land but within that part of the Development Site registered to the Owners.

(c) Any Sewer Adoption Agreement necessary to vest any sewer constructed on or under the Road in the relevant water authority

provided that any easements are substantially in the form attached to this agreement at Schedule 4 subject to any amendments agreed by all parties acting reasonably.

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

11.3 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the completion of any deeds of easement referred to in clause 11.1 or due to the subsequent use of the easement.

12. CDM Regulations

12.1 The parties agree that the Council is to be treated as the only Client in respect of the Highway Works and the Ancillary Works for the purposes of the CDM Regulations.

12.2 The Council agrees to undertake all the obligations of a Client and to use all reasonable endeavours to ensure that the Highway Works and the Ancillary Works are carried out in accordance with the CDM Regulations.

12.3 Before commencement of the Highway Works and the Ancillary Works, the Council shall ensure that the Highway Works and the Ancillary Works are properly notified to the Health and Safety Executive in accordance with the CDM Regulations and shall, if requested,

give the Owners and/or the Promoter a copy of the notification and any acknowledgement from the Health and Safety Executive.

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

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

12.6 The Council shall indemnify and keep the Owner's and the Promoter indemnified against any breach of the Council's obligations under this clause 12.

13. Specification to take precedence

If there is any conflict between the Specification and the Drawings, the Specification shall take precedence.

14. Dedication of Highway Rights over Road Land

14.1 The Owners hereby dedicate that part of the Road in their ownership to the public to the intent that the same shall become highway upon the date of Substantial Completion and subsequently highway maintainable at the public expense on the issue of the Final Certificate including the right to use the part of the said highway constructed as carriageway as a right of way for mechanically propelled vehicles.

14.2 As soon as practicable following the date of completion of this Agreement the Council shall apply to enter this agreement and its terms and conditions in the Local Land Charges Register and the Owners hereby consent to such registration.

15. Indemnities

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

(a) third party claims for death, personal injury or damage to property;

(b) statutory or other liability for the safety or security of the Road Land and Site Compound, working methods, employment practices, protection of the environment and control of pollution.

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

15.3 The indemnification referred to in clause 15.2 includes:

compensation payments under Part I of the Land Compensation Act 1973;

(a) all fees incurred by claimants, and those of the Council or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);

(b) statutory interest payments to claimants and their professional advisors; and

(c) the Council's reasonable and proper legal costs in making the compensation, fees and interest payments under clause 15.3.

15.4 The Council shall only be required to indemnify the Owners in accordance with this agreement if:

(a) the Owners notify the Council as soon as reasonably practicable on becoming aware of any matter which becomes the subject of a claim for indemnity;

(b) the Owners keep the Council reasonably informed of all progress of which it is, or becomes, aware of in connection with that matter and of any proposed settlement;

(c) the Owners shall not settle or compromise that matter without the previous consent of the Council, such consent not to be unreasonably withheld or delayed. Where the Council does not consent it shall indemnify the Owners against all costs incurred by the Owners in litigating that matter and will assist the Owners in such litigation by providing such witnesses and other evidence as it is able to do relating to any matter in contention.

16. Insurance

From and including the Date of Commencement until the date of issue of the Final Certificate, the Council shall maintain public liability insurance to cover claims for injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £10,000,000 for any one occurrence or series of occurrences arising out of the same event.

17. Disputes

In the event of any dispute or difference arising between the Parties (or any of them) in respect of any matter contained in this Agreement such dispute or difference shall be

referred to an independent and suitable person (the 'Expert') holding appropriate professional qualifications to be appointed (in the absence of agreement) by or on behalf of the President of the Institute of Civil Engineers in England and the Expert shall act as an exert whose decision shall be final and binding on the parties to the dispute (in the absence of manifest error) and any costs shall be payable by the said parties in such proportion as the Expert shall determine and failing such determination shall be borne by the said parties in equal shares.

18. Legal and other costs

18.1 On the date of completion of this agreement or whenever demanded, within two months of written demand, the Council shall pay the Owners' reasonable and proper legal and professional costs and disbursements in connection with the preparation, completion and registration of this agreement subject to the limits set out in the letter of undertaking dated 18 March 2020 or as otherwise agreed.

19. Assignment

No party may assign this agreement without the prior written consent of the other parties such consent not to be unreasonably withheld or delayed.

20. Notices

20.1 A notice or other communication to be given under this agreement must be in writing.

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

(a) to the Council at: Highways, Dorset Council, County Hall, Colliton Park, Dorchester Dorset, DT1 1XJ marked for the attention of Mrs Emma Baker, Project Engineer or emailed to (*emma.baker@dorsetcouncil.gov.uk*)

(b) to the Owners at: c/o Womble Bond Dickinson, 3 Temple Quay, Temple Back East BS1 6DZ using reference 470431.1.

(c) to the Promoter at: Woodstock Studios, 13 Woodstock Street, London, W1C 2AG marked for the attention of Andrew Hodgson;

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

20.3 Any notice given in accordance with clause 20.1 and clause 20.2 will be deemed to have been received:

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

and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

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

(c) if sent by email, at the time of transmission or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 21.3(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt,

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

21. Promoter's Consent

21.1 The Promoter consents to the grant of the rights to the Council under this Agreement.

22. Step in Rights

In the event that the Council is in fundamental breach of any of its conditions, stipulations or obligations in this agreement or is in substantial breach of any of its conditions, stipulations or obligations and liabilities in this agreement and has failed to rectify the breach within a reasonable time frame after receiving notice then, subject to the Owners giving not less than 14 days' notice of the Owners intention to exercise this right to the Council, the Owners shall have the right to enter on to and remain on such parts of the Road Land and the Ancillary Land as are reasonably necessary with or without workmen plant and equipment for the purposes of carrying out the obligations of the Council under this agreement including the construction and maintenance of the Highway Works and the construction of the Ancillary Works and the Owners.

23. Third party rights

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

24. Governing law

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

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

EXECUTED as a **DEED** by the said

NEIL JOHN OVERTON

in the presence of:

Witness Signature:

Witness Name (Block Capitals):

Address:

EXECUTED as a **DEED** by the said

MARK WOODWARD

in the presence of:

Witness Signature:

Witness Name (Block Capitals):

Address:

EXECUTED as a **DEED** by affixing the **COMMON SEAL** of **DORSET COUNCIL** in the presence of:

Authorised Signatory:

Executed as a **DEED** by

WELBECK STRATEGIC LAND LLP

acting by

Wimpole Street Limited

……

Authorised Signatory of Wimpole Street Limited

in the presence of

Witnessed by: ……..…….....

Name:

Address:

Occupation

Schedule 1 The Highway Works

- All highway drainage.
- All other drainage contained within the Road.
- All kerbs , sub-base and binder course surfacing to pedestrian and cycle ways.
- Carriageway sub-base, base and binder courses, and any supporting structures to the same.
- Demarcation of sight lines and clearance of visibility splays.
- Operational street lighting and street furniture.
- Pedestrian ways and cycle ways surface course.
- Carriageway surface course including (where appropriate) speed restraint measures.
- Visibility splays, verges and service strips.
- Street name plates where appropriate.
- Road markings and traffic signs.
- All other works described in the Specification and shown in the Drawings.

Schedule 2 Drawings

Drawing Number	Revision	Drawing Title
HI1177/20/02	Orig	Protection Measures to Trees Affected by The Works
HI1177/55/01	A	Road1 Vertical Alignment Longitudinal Section
HI1177/55/02	A	Road1 Vertical Alignment Longitudinal Section
HI1177/56/01	B	Road1 Cross Sections
HI1177/56/02	B	Road1 Cross Sections
HI1177/56/03	B	Road1 Cross Sections
HI1177/56/04	B	Road1 Cross Sections
HI1177/57/08	A	Typical Sections Through Balancing Ponds
HI1177/70/01	Orig	Signs Sign1
HI1177/70/02	Orig	Signs Sign2
HI1177/70/03	Orig	Signs Sign3
HI1177/70/04	Orig	Signs Sign4
HI1177/70/05	Orig	Signs Sign5
HI1177/70/06	Orig	Signs Sign6
HI1177/70/07	Orig	Signs Sign7
HI1177/71/01	A	Road Markings
HI1177/100/01	Orig	Location Plan
HI1177/101/01	Orig	Site Extents and Limitations on Use
HI1177/102/01	Orig	Known Hazards
HI1177/103/01	Orig	Engineering General Layout Plan
HI1177/104/01	Orig	Existing Known Statutory Undertakers Apparatus and Proposed Diversion Locations
HI1177/200/01	Orig	Site Clearance
HI1177/300/01	Orig	Fencing and Accommodation Works
HI1177/510/01	B	Road Drainage Ditches Longitudinal Sections
HI1177/510/02	B	Road Carrier Drainage Longitudinal Sections

Drawing Number	Revision	Drawing Title
HI1177/510/03	C	Road Carrier Drainage Longitudinal Sections
HI1177/510/04	B	Road Carrier Drainage Longitudinal Sections
HI1177/510/05	B	Road Carrier Drainage Longitudinal Sections
HI1177/510/06	B	Road Carrier Drainage Longitudinal Sections
HI1177/520/01	Orig	Foul Sewer Longitudinal Section (Sheet 1 of 4)
HI1177/520/02	Orig	Foul Sewer Longitudinal Section (Sheet 2 of 4)
HI1177/520/03	Orig	Foul Sewer Longitudinal Section (Sheet 3 of 4)
HI1177/520/04	Orig	Foul Sewer Longitudinal Section (Sheet 4 of 4)
HI1177/700/01	Orig	Pavements
HI1177/1100/01/01	Orig	Kerbing (chainage 0 – 150)
HI1177/1100/01/02	Orig	Kerbing (chainage 150 – 300)
HI1177/1100/01/03	Orig	Kerbing (chainage 300 – 500)
HI1177/1100/01/04	Orig	Kerbing (chainage 500 – 700)
HI1177/1100/01/05	Orig	Kerbing (chainage 700 – 850)
HI1177/1100/01/06	Orig	Kerbing (chainage 850 – 1050)
HI1177/1100/01/07	Orig	Kerbing (chainage 1050 – 1300)
HI1177/1100/02	Orig	Footway detail within root protection zone
HI1177/1300/01	Orig	Street Lighting Proposals
HI1177_DC_00_00_M2_C_0001		East Watercourse Gabion Arrangements
HI1177_DC_00_00_M2_C_0002		East Watercourse Culvert & Gabion Arrangements
HI1177_DC_00_00_M2_C_0004		West Watercourse Gabion Arrangements
HI1177_DC_00_00_M2_C_0005		West Watercourse Culvert & Gabion Arrangements
HI1177_DC_00_00_M2_C_0006		Gabion Information
L-001-104	D	Street Trees & Planting Plan
L-001-105	B	Principal Street Rendered Masterplan

Drawing Number	Revision	Drawing Title
L-001-106	B	Soil Specification Plan
L-001-107	D	Planting Schedules & Details
L-002-104	D	Street Trees & Planting Plan
L-003-104	C	Street Trees & Planting Plan
L-004-104	C	Street Trees & Planting Plan
N/A	B	Seed schedule by areas
A111742/35/12/004/C1		Proposed Utilities Road Crossing Duct Layout – WYG drawing
Openreach BT 825349 - B3092		Openreach Diversion
SGN kh14720		SGN Medium Pressure Diversion
SQL/182404/001		S41 New Water Main - Wessex Water Drawing
SSE EQC453HV2		SSE HV Diversions
SSE EQC453HV2		SSE HV Diversions

Schedule 3: The Ancillary Works

The flood compensation area

An area of land between the proposed link road and the river Lodden is to be lowered to replace the flood storage volume lost by construction of the road embankment on the approach to the existing river bridge. All as shown on drawing number HI1177/82/02/Orig

The construction process would involve stripping the topsoil then excavating the subsoil to the required level and carting away the spoil before replacing the topsoil and re-seeding to return the area to agriculture. The lowered area will have gentle side slopes to the new levels which would be on average 0.6m lower than existing with a maximum depth of 1m. Access to form this area would be gained from the Principal Street site.

Planting and mitigation

To mitigate the effects of the road on the landscape and ecology some areas that will be outside the highway boundary are to be planted and managed in accordance with the Landscape and Ecological Management Plan dated 30TH October 2020. (a copy of which has been provided to the Owners).

Schedule 4: Agreed Form Of Easement

DATED

DEED OF EASEMENT FOR HIGHWAY DRAINAGE APPARATUS

relating to land at [ ]

between

[OWNER]

and

Dorset Council

This deed is dated

Parties

(1) **[ ]** incorporated and registered in England and Wales with company number [ ] and whose registered office is situate at [ ]. **(Grantor)**

(2) **DORSET COUNCIL** of County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ **(Council)**

BACKGROUND

(A) The Grantor owns the freehold interest in the Grantor's Property. The Council is the local highway authority for the administrative County of Dorset.

(B) By way of the Highways Agreement, the Council agreed to adopt that part of the Road shown coloured pink on the Plan as highway maintainable at the public expense.

(C) The Grantor has agreed to grant the Rights to the Council for the benefit of the Road.

AGREED TERMS

1. Interpretation

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

1.1 Definitions:

Designation Notice: a notice to be given by the Grantor under the provisions of clause 9.1.

Development: means the development of the Development Site pursuant to the Outline Planning Permission and the Section 106 Agreement.

Development Site: means the land registered at the Land Registry under title numbers DT372171 and DT437488 as shown edged in red on the plan

Drains: the drains, soakaways and ancillary apparatus to be used for surface water drainage located within the Easement Strip.

Easement Strip: the land shown coloured yellow on the Plan that forms part of the Grantor's Property.

Council's Covenants: the covenants set out in clause 4 and Schedule 2.

Grantor's Covenants: the covenants set out in clause 3 and Schedule 3.

Grantor's Property: the freehold land at [ ] as registered at the Land Registry with title number [ ].

Highways Agreement: the agreement dated and made between (1) the Council [ ] and made under section 38 of the Highways Act 1980 and other enabling powers.

Outline Planning Permission: the planning permission granted by the Council on [ ] with reference number 2/2018/0036/OUT (or any revision thereto or replacement thereof).

Plan : the plan annexed to this deed being drawing number [ ].

Relocation Works: the works to be carried out by the Council to relocate the Drains to the alternative easement strip designated in the Designation Notice.

Reserved Rights: the rights set out in Schedule 4

Rights: the rights set out in Schedule 1.

Road: that land shown coloured pink on the Plan.

Section 106 Agreement: an agreement dated [ ] between (1) the Council (2) the Promoter (3) Neil John Overton and Mark Woodward and (4) the Owners (5) Jeremy Douglas Hine, Russell Hine and Graham William Hine.

VAT: value added tax chargeable in the UK.

1.2 Any reference to the **Grantor** shall include that party's personal representatives, successors or permitted assigns.

1.3 Any reference to the **Council** shall include that party's statutory successors.

1.4 Clause, Schedule and paragraph headings shall not affect the interpretation of this deed.

1.5 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this deed and references to paragraphs are to paragraphs of the relevant Schedule.

1.6 The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

1.7 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from

time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.

1.9 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.10 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.11 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.12 A reference to **writing** or **written** excludes fax and email.

1.13 Any obligation in this deed on a party not to do something includes an obligation not to allow that thing to be done.

1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Grant

2.1 In consideration of £1.00 (one pound) (exclusive of VAT) paid by the Council (the receipt of which the Grantor acknowledges) and the covenant given by the Council in clause 4, the Grantor with full title guarantee grants to the Council the Rights in fee simple for the benefit of the Road.

2.2 The Rights are not granted exclusively to the Council and are granted:

(a) subject to the Reserved Rights and any other rights of the Grantor or any other person in relation to the Grantor's Property whether or not referred to in this deed; and

(b) in common with the Grantor and any other persons authorised by the Grantor or lawfully entitled to the Rights or to similar rights in relation to the Grantor's Property.

3. Grantor's covenants

The Grantor covenants with the Council so as to bind the Easement Strip and each and every part of it, for the benefit of the Road and each and every part of it, that the Grantor and its successors in title shall at all times observe and perform the Grantor's Covenants.

4. Council's covenants

The Council covenants with the Grantor so as to bind the Road and each and every part of it, for the benefit of the Grantor's Property and each and every part of it, that the Council, its successors in title and anyone authorised by any of them to use the Rights shall at all times observe and perform the Council's Covenants.

5. HM Land Registry

5.1 The Grantor consents to;

(a) the registration of the Rights on the registered titles to the Grantor's Property; and

(b) any restrictive covenants entered into in this deed by the Grantor being noted against the registered titles to the Grantor's Property.

5.2 On completion of this deed the Council shall

apply to HM Land Registry to register the Rights and to enter a notice of any restrictive covenants against the registered title to the Easement Strip.

5.3 The Council shall promptly give to the Grantor official copies of the registered titles to the Easement Strip once the Rights and any restrictive covenants made by the Grantor and/or Council have been properly and correctly registered pursuant to clause 5.2.

6. Reservation of rights

The Grantor reserves the Reserved Rights for itself, its successors in title and all other persons authorised by it to benefit from the same.

7. Indemnity

The Council shall indemnify the Grantor against all liabilities, costs, expenses (including but not limited to those of the Grantor's professional advisers and agents), damages and losses suffered or incurred by the Grantor (including any VAT on any of them) arising out of or in connection with:

(a) the exercise of the Rights;

(b) the carrying out of any works permitted by this deed;

(c) any breach of any of the Council's Covenants; or

(d) any breach of the terms of this deed

by the Council, or by an employee or invitee of the Council, or by any other person who is allowed or permitted by the Council to exercise the Rights.

8. Extent of liability

8.1 Subject to clause 8.2, the Grantor is not liable for:

(a) the death of, or injury to the Council, its employees or invitees; or

(b) damage to any property of the Council or that of the Council's employees or invitees; or

(c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Council or the Council's employees or invitees in the exercise or purported exercise of the Rights.

8.2 Nothing in clause 8.1 shall limit or exclude the Grantor's liability for:

(a) death or personal injury or damage to property caused by negligence on the part of the Grantor or its employees or agents; or

(b) any matter in respect of which it would be unlawful for the Grantor to exclude or restrict liability.

9. Relocation of the Drains

9.1 The Grantor may from time to time, within a period of 10 years following the date of the issue of the Final Certificate under the Highways Agreement serve notice on the Council to carry out the Relocation Works in accordance with the terms of that Designation Notice.

9.2 The Grantor shall not serve a Designation Notice unless relocation of the apparats is reasonably necessary to facilitate the Development of the Development of the Development Site.

9.3 The Designation Notice shall specify a reasonable period of not less than 3 months from the Council’s receipt of the Designation Notice during which the Council must carry out and complete the Relocation Works as soon as reasonably practicable.

9.4 The Grantor shall pay the Council’s reasonable cost of carrying out the relocation of the Drains on a full indemnity basis within 28 Working Days of written demand.

9.5 The Grantor shall use reasonable endeavours to ensure that the part of the Development Site designated as an easement strip by the Grantors shall not be materially less convenient for the purposes of the Drains in so far as is reasonably practicable.

10. Third party rights

This deed does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

11. Governing law

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

12. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED by affixing

the COMMON SEAL of

DORSET COUNCIL

in the presence of:

Authorised Signatory

Schedule 1 The Rights

The right for the Council and its successors in title and those authorised by it or them, at all times subject to the Council giving reasonable prior notice to the Grantor (save in the case of emergency where no notice shall be required), to :

1.1 Retain the Drains in the Easement Strip.

1.2 Enter the Easement Strip with or without vehicles, plant and equipment (at the Council's expense and in a proper and workmanlike manner) to inspect, maintain, repair, alter, renew, replace and remove the Drains; and

1.3 To fell, trim or lop any trees, bushes and other vegetation on the Easement Strip which obstruct or interfere with the exercise of the rights granted to the Council by this deed provided that the Council removes from the Easement Strip all timber, wood and vegetation that is cut and leaves the Grantor's Property neat and tidy.

1.4 The free and uninterrupted right to discharge and divert surface water falling or running onto the Road through the Drains.

Schedule 2 Council's covenants

The Council shall:

1. Statutory requirements

When exercising the Rights, comply with all laws governing the installation and use of the Drains.

2. Damage

Not cause any damage to the Easement Strip, or to any property of the owners or occupiers of the Easement Strip, and shall as soon as possible make good any damage caused to the Grantor's reasonable satisfaction and pay full compensation to the Grantor in respect of any damage caused that is not made good and any loss caused to the Grantor due to such damage.

3. Repair

Keep the Drains in good repair and condition at all times.

4. Nuisance

Not cause any nuisance, annoyance, disturbance or inconvenience to the Grantor or occupiers of the Easement Strip or of any neighbouring land, or to any other person entitled to exercise the Rights in common with the Council or any other right over the Easement Strip.

Schedule 3 Grantor's covenants

The Grantor shall:

1. No interference with Drains

Not do anything or allow anything to be done on the Easement Strip that the Grantor interferes with or damage the Drains or interfere with, impede or obstruct the Council's access to or use of them provided that the exercise of the Reserved Rights shall not of itself constitute a breach of this covenant.

2. Prohibited activities

Not erect any building, structure or plant on or beneath the Easement Strip.

3. Ground Cover

Maintain a minimum level of ground cover of 0.7m above the Drains in the Easement Strip.

Schedule 4 Reserved Rights

The Grantor reserves the following Reserved Rights:

1. Right to enter to carry out obligations

The right to enter onto the Easement Strip at any time to carry out any obligation of the Grantor contained in this deed.

2. Right to enter to repair the Easement Strip

The right to enter onto the Easement Strip at any time to repair, maintain or replace any services, structures or facilities on any part of the Grantor's Property.

3. Right to build on the Grantor's Property

Subject to the Grantor's covenant in paragraph 2 of Schedule 3, the right to use any part of the Grantor's Property as the Grantor thinks fit, or to build on or develop any part of the Grantor's Property or any neighbouring land.