

DATED

19TH APRIL

2018

APPLETHWAITE LIMITED

-and-

THE LANCASHIRE COUNTY COUNCIL

AGREEMENT

made pursuant to Section 278 of the Highways Act 1980 and all other enabling powers relating to highway works at Liverpool Road, Hutton in the County of Lancashire.

Legal & Democratic Services
Lancashire County Council
PO Box 78 County Hall
Preston Lancashire
PR1 8XJ
Tel: 01772 530370
(Ref: LSG4/HL1/894.3948/)

THIS AGREEMENT is made 19TH APRIL 2018

BETWEEN:

- (1) **APPLETHWAITE LIMITED** (Co Reg No. 05187755) whose registered office is at Sceptre House, Sceptre Way, Bamber Bridge, Preston, PR6 5AW (the "Developer"); and
- (2) **THE LANCASHIRE COUNTY COUNCIL** of PO Box 78 County Hall Preston Lancashire PR1 8XJ (the "County Council").

1. DEFINITIONS AND INTERPRETATION

In this Agreement where the context admits:

- 1.1 "Cancellation Notice" means a notice to be given in writing by the Developer to the County Council as soon as reasonably practicable in the event that the Highway Works are not going ahead or have been stopped from going ahead in accordance with the Traffic Management Act 2004;
- 1.2 "Certificate of Actual Cost" means the certificate to be given by the County Council to the Developer at the same time as the Defects Correction Certificate certifying the actual cost incurred by the County Council in the approval of the Design and inspection of the Highway Works;
- 1.3 "Certificate of Estimated Costs" means a certificate to be given by the County Council to the Developer certifying the proper and reasonable estimate by the Head of Service – Highways of the costs likely to be properly and reasonably incurred by the County Council in the approval of the Design and the inspection of the Highway Works;
- 1.4 "Certificate of Final Satisfaction" means a certificate to be given by the County Council to the Developer certifying that the Developer has complied with each

and all of its duties and obligations including but not limited to the payment of all sums due under this Agreement (save for any claims arising under clause 5.25) following the issue of the Defects Correction Certificate;

- 1.5 "Certificate of Substantial Completion" means a certificate to be given by the County Council to the Developer certifying that the Highway Works have attained a sufficient standard of construction so as to enable the same to be regarded by the Head of Service – Highways acting reasonably as substantially complete subject only to any necessary correction of defects;
- 1.6 "Construction Period" means the period of 4 weeks commencing on the date of commencement of the Highway Works or in the event of there being any delay by any cause beyond the control of the Developer (and the Developer making representation to the Head of Services - Highways) such longer period as the Head of Service – Highways acting reasonably may agree for completion of the Highway Works;
- 1.7 the "County Council" includes its successors in title or other person or body having the responsibility for the exercise of the functions of the principal highway authority for the County of Lancashire from time to time and for the time being;
- 1.8 "Defects Correction Certificate" means a certificate to be given by the County Council to the Developer not earlier than the date of expiration of the Defects Correction Period certifying that the Developer has completed the correction of all defects (if any) in the Highway Works to the reasonable satisfaction of the Head of Service – Highways;
- 1.9 "Defects Correction Period" means the period of twelve (12) calendar months commencing on the date specified in the Maintenance Certificate or such longer period as the Head of Service – Highways in his absolute discretion may allow to the Developer for the rectification of any defects in the Highway Works;

- 1.10 "Design" means the design and scheme of works to be prepared by the Developer or a consultant on its behalf (save in so far as prepared by the Head of Service – Highways) and approved by the Head of Service – Highways (approval of which shall not be unreasonably withheld or delayed) for the carrying out of the Highway Works and to include all appropriate drawings specifications conditions of contract and programmes of works;
- 1.11 "Developer" includes its successors in title and all persons deriving title under or through it and having any legal estate interest right or title in or to the Site or any part or parts of it;
- 1.12 "Development" means the residential development on the Site pursuant to and in accordance with the provisions of the Planning Permission;
- 1.13 "Director of Governance, Finance and Public Services" means an officer or employee of the County Council appointed or authorised by the Director of Governance, Finance and Public Services or such other person as he shall appoint to execute his functions under this Agreement;
- 1.14 "Head of Service – Highways" means an officer or employee of the County Council appointed or authorised by the Head of Service - Highways to implement any of the provisions of this Agreement on his behalf or in his stead;
- 1.15 "Highway Land" means the land forming part of the highway in the vicinity of the Site and shown for identification purposes only edged red on the Land-n Plan;
- 1.16 "Highway Works" means the works described generally in the First Schedule to be carried out by the Developer on the Highway Land and/or the Site in accordance with the Design;
- 1.17 "Land Plan" means the plan showing the Highway Land and marked 'Plan 1';

- 1.18 "Maintenance Certificate" means a certificate to be given by the County Council to the Developer (not earlier than the date of issue of the Certificate of Substantial Completion) certifying that the Developer has complied with its obligations under this Agreement including but not limited to the provision to the County Council of the items specified in the Third Schedule (but excluding correction of defects) and confirming the date of commencement of the Defects Correction Period and that the Highway Works are deemed to be maintainable at public expense SUBJECT TO any remedial works or defects;
- 1.19 "Notice of Actual Start" means a notice to be given in writing by the Developer to the County Council such notice to be received by the County Council before the end of the day following the start of the Highway Works setting out the date upon which the Highway Works were started in accordance with the Traffic Management Act 2004;
- 1.21 "Notice of Major Works" means a notice to be given in writing by the Developer to the County Council no later than three (3) months before the start of the Highway Works setting out the date upon which the Highway Works are scheduled to start in order to comply with the Traffic Management Act 2004;
- 1.22 "Notice of Start Date" means a notice to be given in writing by the Developer to the County Council no later than ten (10) days before the start of the Highway Works setting out the date upon which the Highway Works are scheduled to start in order to comply with the Traffic Management Act 2004;
- 1.23 "Planning Permission" means the planning permission for the carrying out of the Development granted by the South Ribble Borough Council as the local planning authority pursuant to the provisions of the Town and Country Planning Act 1990 (as amended) on 21 April 2016 under Reference Number 07/2015/1845/FUL as varied by the planning permission dated 25th August 2016 under Reference Number 07/2016/0509/VAR;

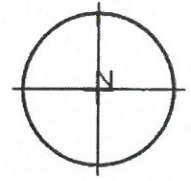
- 1.24 "Revised Certificate of Estimated Costs" means a certificate to be issued by the County Council to the Developer in accordance with the provisions of Clause 7.3;
- 1.25 "Revised Duration Notice" means a notice to be given in writing by the Developer to the County Council as soon as reasonably practicable in the event that the Highway Works are going to take longer than the duration previously indicated in the Notice of Actual Start in accordance with the Traffic Management Act 2004;
- 1.26 "Scheme Liaison Sheet" means the form attached at the Fourth Schedule of this Agreement
- 1.27 "Site" means the land situate on the north side of Liverpool Road, Hutton Lancashire as the same is for the purposes of identification only shown edged blue on the Site Plan;
- 1.28 "Site Plan" means the plan showing the Site edged blue and which is marked 'Plan 2';
- 1.29 "Works Closed Notice" means a notice to be given in writing by the Developer to the County Council such notice to be received by the County Council before the end of the day following the completion of the Highway Works and the clearing of the Site in order to comply with the Traffic Management Act 2004;
- 1.30 Clause paragraph and schedule headings and the table of contents do not form part of this Agreement and must not be taken into account in its construction or interpretation;
- 1.31 References to clauses paragraphs and schedules in the absence of anything expressed to the contrary are references to the clauses paragraphs and schedules of this Agreement;

Liverpool Road, Hutton.

PLAN 2.



- The Copyright of this drawing belongs to MPSL Planning & Design Ltd and shall not be used or reproduced in any form without its express permission.
- Do not scale from this drawing. Views to larger dimensions only. All dimensions to be checked on site prior to the execution of any work.
- For the avoidance of doubt all dimensions are measured to wall structures and not the finishes unless otherwise stated.
- Where any discrepancy is found to exist within or between drawings and/or documents it should be reported to the architect immediately.
- MPSL Planning & Design Ltd shall not be liable for any use of drawings and documents for any purpose other than for which the same were prepared by or on behalf of MPSL Planning & Design Ltd.



*Ant
C. Murray*

Authorized Signatory
Robins



applethwaite	
SITE LAYOUT Plan 2 - Section 278	
Proposed Residential Development Liverpool Road, Hutton	
1:500 @ A1	Sept 2017
FOR COMMENT	
MPSL	

1.32 References to any statute include reference to any statutory amendment modification or re-enactment of such statute and all delegated legislation made under it;

1.33 Words importing any one gender include every other gender;

1.34 Words importing the singular number include the plural and vice versa and where any party comprises more than one person covenants and obligations on the part of that party shall be deemed to be the joint and several covenants and obligations of those persons.

2. POWERS TO EXECUTE

2.1 The County Council is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and the local highway authority for the purposes of the Highways Act 1980 for highways other than trunk roads in the county of Lancashire.

2.2 The Planning Permission has attached to it certain conditions for the carrying out of highway works (inter alia) within the Highway Land in connection with the Development.

2.3 The County Council enters into this Agreement pursuant to the provisions of section 111 of the Local Government Act 1972 sections 278 and 305 of the Highways Act 1980 and all other powers enabling it to do so.

3. WARRANTIES

3.1 The Developer warrants that it is registered as proprietor with an Absolute Freehold Title of the Site under Title Number LAN184106 free from incumbrances.

3.2 The County Council warrants that in its capacity as local highway authority it has approved the carrying out of the Highway Works subject only to the

Developer complying with and observing and performing the provisions of this Agreement and that it is satisfied that this Agreement shall be of benefit to the public.

4. **ENDURING COVENANT**

The Developer admits that the covenants on its part contained in this Agreement are intended to annex to and run with the Site and each and every part of it and to bind the owner or owners of the Site into whosoever hands it may come.

5. **DEVELOPER'S COVENANTS**

The Developer **COVENANTS** with the County Council:

- 5.1 That before commencing any part of the Design it shall inform the Head of Service – Highways in writing of the name of the Principal Designer to be appointed by the Developer in accordance with the provisions of the Construction (Design and Management) Regulations 2015 (as amended) made under the Health and Safety at Work etc Act 1974 and shall provide that upon the issue of the Defects Correction Certificate the Head of Service – Highways shall be provided with a copy of the Health and Safety File relating to the Highway Works.
- 5.2 That before commencing any part of the Highway Works it shall:
 - 5.2.1 submit the Design to the Head of Service – Highways for his approval in writing (approval not to be unreasonably withheld or delayed) and shall produce evidence that the same has been approved by the local planning authority;
 - 5.2.2 complete and submit to the Head of Service – Highways a copy of the Scheme Liaison Sheet a copy of which is attached as the Fourth Schedule of this Agreement; and

- 5.2.3 submit in writing to the County Council the Notice of Major Works and/or the Notice of Start Date and (once the Highway Works have commenced) the Notice of Actual Start.
- 5.3 The Developer shall pay to the County Council the amount specified in the Certificate of Estimated Costs without any deduction or set-off and shall not commence the Highway Works or any part of them until such sum has been paid.
- 5.4 That before commencing any part of the Highway Works it shall supply the County Council with details of the contractor or if more than one each contractor to be appointed by the Developer to carry out the Highway Works and unless such contractors are nominated from the Head of Service – Highways approved list shall not make any appointment or commence any part of the Highway Works until the Head of Service – Highways shall have approved in writing (approval not to be unreasonably withheld or delayed) each of such contractors.
- 5.5 That before commencing any part of the Highway Works the Developer shall inform the Head of Service – Highways in writing of the details of the person responsible and duly authorised by the Developer for the organisation co-ordination and execution of the Highway Works.
- 5.6 That before commencing any part of the Highway Works the Developer shall inform the Head of Service – Highways in writing of the details of the person appointed by the contractor (or each of them if more than one) to be responsible for safety in accordance with Regulation 7 of the Management of Health and Safety at Work Regulations 1999.
- 5.7 That before commencing any part of the Highway Works the Developer shall inform the Head of Service – Highways in writing of the details of the person to be appointed by the Developer as Traffic Safety and Control Officer (with Deputy if appropriate).

- 5.8 That the Developer shall not enter upon any part of the public highway (other than Highway Land) for the purposes of carrying out the Highway Works or any rectification of defects in them without first obtaining the written approval of the Head of Service – Highways (approval not to be unreasonably withheld or delayed).
- 5.9 That the Developer shall not commence any of the Highway Works without first giving to the County Council a notice in writing that the Developer or a contractor acting on its behalf shall carry out and complete the Highway Works within the Construction Period.
- 5.10 That the Developer or its appointed contractor shall at its own cost and within the Construction Period commence diligently proceed with and complete the Highway Works in a good and workmanlike manner and with good and sound materials of their respective kinds in accordance with the Design and the provisions of this Agreement and to the reasonable satisfaction of the Head of Service – Highways in all respects.
- 5.11 That at all times during the construction of and the correction of defects in the Highway Works the Developer shall comply with all statutory provisions and requirements including (but not limited to) the provisions of the New Roads and Street Works Act 1991 and shall serve all statutory notices that may be necessary or required pursuant to such provisions or requirements and if called upon to do so shall produce evidence of compliance with this clause.
- 5.12 That at all times during the construction of and the correction of defects in the Highway Works the Developer shall permit the Head of Service – Highways to enter with or without equipment machinery materials plant vehicles and workmen upon such parts of the Site as shall be affected by the Highway Works for the purposes of inspecting and testing the Highway Works and any components materials tackle or methods of work used in connection with them.

- 5.13 That at all times during the carrying out of the Highway Works and the correction of defects in them the Developer shall afford to the Head of Service – Highways full power to test at the expense of the Developer all components materials tackle or workmanship and to reject any which in his reasonable opinion shall appear to him to be unsatisfactory and in the event of any and every such rejection then the Developer shall replace the rejected parts with such replacements as shall be acceptable to the Head of Service – Highways and in this regard the Developer shall permit the Head of Service – Highways to have access (in so far as is practicable) to all components materials or tackle intended for use in the carrying out of the Highway Works whether on Site or the Highway Land or in any other place whatsoever and shall permit the taking up and removal of any part or parts for analysis and testing.
- 5.14 That if called upon to do so by the Head of Service – Highways the Developer shall within one month of receipt of notification of the requirement carry out such additional works as the Head of Service – Highways may certify as being in his reasonable opinion necessary as a result of a post opening safety audit and in the event of such works being necessary they shall be subject to the same provisions of this Agreement as if they were incorporated into the Design and carried out as part of the Highway Works.
- 5.15 Before the commencement of the Highway Works and at no expense to the County Council to obtain such consents deeds of grant easements licences or permissions as may be required for the purposes of carrying out the Highway Works and to comply with the same and indemnify and keep indemnified the County Council from and against all liabilities costs claims actions and demands or expenses which may arise from the Developer's failure to obtain or to comply with such licences consents or permissions.
- 5.16 That the Developer shall within one (1) calendar month after the issue of the Certificate of Substantial Completion supply to the County Council the items specified in the Third Schedule;

- 5.17 **SUBJECT TO** clause 5.19 that the Developer shall within the Defects Correction Period rectify all and any defects in the Highway Works which may become apparent and in particular (but without prejudice to the generality of the foregoing) shall rectify all and any defects which may be specified by the Head of Service – Highways in any list of defects which may be given by the Head of Service – Highways to the Developer during the Defects Correction Period.
- 5.18 That the Developer within ten (10) working days of receipt of the Certificate of Actual Cost shall pay to the County Council the difference (if any) between the amount paid under the Certificate of Estimated Costs and the amount certified in the Certificate of Actual Cost without any deduction or set-off.
- 5.19 In the event that there are any defects in the Highway Works which become apparent during the Defects Correction Period and which in the opinion of the Head of Service – Highways require immediate rectification for reasons of safety the Developer shall rectify such defects within the period specified in the notice served by the County Council in accordance with clause 7.4 of this Agreement.
- 5.20 In the event that the Developer does not comply with the provisions of any notice served in accordance with clause 7.4, the County Council may remedy the specified defects and call upon the bondsman in accordance with the provisions of clause 5.29.
- 5.21 Prior to the commencement of the Highway Works the Developer shall give notice to statutory undertakers and the County Council's Street Works Co-ordinator of the proposal to carry out the Highway Works as if they were works for road purposes or major highway works as defined in section 86 of the New Roads and Street Works Act 1991 and at the same time deliver a copy of such notice to the Head of Service – Highways.
- 5.22 During the period over which the Highway Works are being executed

the Developer shall comply with the provisions of Chapter 8 "Traffic Safety Measures and Signs for Road Works and Temporary Situations" of the Department of Transport's 'Traffic Signs Manual (1991)' and any amendments thereto for the lighting and the signing of the Highway Works and any further requirements of the County Council.

- 5.23 That the Developer shall not cause or permit or suffer any part of the Development to be occupied until the Certificate of Substantial Completion has been issued.
- 5.24 That the Developer will remove from the Site and the Highway Land on the issue of the Certificate of Substantial Completion all constructional plant surplus material rubbish and temporary equipment and reinstate the Highway Land to a tidy condition in the reasonable opinion of the Head of Service – Highways.
- 5.25 That the Developer shall at all times indemnify and keep indemnified the County Council against all actions claims costs demands expenses and liabilities of whatever nature (including but not limited to claims under Parts I and II of the Land Compensation Act 1973 and the Noise Insulation Regulations 1975) (as amended) which may be made at any time in connection with or incidental to the carrying out of the Highway Works within the existing highway unless such claim arises exclusively as a consequence of any negligent act default or omission of the County Council.

PROVIDED THAT the County Council shall :-

- a) Notify the Developer of any actions liabilities costs claims or proceedings in respect of which it intends to make a claim on the Developer pursuant to clause 5.25 above; and
- b) On receipt of a written request from the Developer to the County Council to inform the Developer of the progress of any such action liability costs claims or proceedings ; and

- c) On receipt of a written request from the Developer to the County Council to submit to the Developers a written breakdown of any fees costs disbursements compensation or interest that it seeks to recover from the Developer in accordance with clause 5.25 above
- 5.26 That the Developer shall pay to the County Council on the completion of this Agreement the sum of **ONE THOUSAND FIVE HUNDRED POUNDS (£1500.00)** as a contribution to the legal costs and the sum of **ONE THOUSAND TWO HUNDRED AND FIFTY POUNDS (£1250.00)** as a contribution to the Head of Service – Highways administration and staffing costs incurred by the County Council in the preparation negotiation and completion of and ordinary administration of this Agreement.
- 5.27 Within fourteen (14) days of the issue of the Certificate of Substantial Completion the Developer shall pay to the County Council the sum of **THREE HUNDRED AND FIFTY POUNDS (£ 350.00)** by way of a commuted sum for the costs of the future maintenance of the items specified in the Second Schedule;
- 5.28 That on the completion of this Agreement the Developer shall deliver to the County Council a properly executed and completed Bond issued by a reputable surety in a form approved by the Director of Governance, Finance and Public Services (which approval shall not be unreasonably withheld or delayed) for the sum of £15,000.00 (FIFTEEN THOUSAND POUNDS) (the "Bond Figure").
- 5.29 In the event that there is any material default on the part of the Developer in the performance of its obligations under this Agreement or non payment of any monies due to the County Council in respect of the Highway Works and such default or non payment shall not have been remedied within ten (10) working days after service upon the Developer and the surety by the County Council of a notice specifying the default or amount owing and requiring its remedy or payment the County Council may where the default requires remedial works itself enter and carry out such remedial works as may be necessary to rectify the default specified and may call upon the surety to pay to the County Council

the entirety of the proper and reasonable costs incurred by the County Council in remedying the default or the amount owing up to and including the Bond Figure and in all other cases may call upon the surety to pay to the County Council a sum equal to any loss or damage sustained by the County Council as a consequence of the default or non payment up to and including the Bond Figure.

- 5.30 Upon the issue of the Maintenance Certificate the Bond Figure as referred to in clause 5.28 shall reduce by 90% (ninety per cent) to of £1,500.00 (ONE THOUSAND FIVE HUNDRED POUNDS)
- 5.31 If no such claim is made or pending prior to the issue of the Certificate of Final Satisfaction and the Developer has paid all monies due under this Agreement or otherwise in respect of the Highway Works to the County Council then the County Council shall discharge the Bond in full as soon as reasonably practicable after the issue of the Certificate of Final Satisfaction.
- 5.32 That if the Highway Works are going to take longer than the duration indicated in the Notice of Actual Start to as soon as reasonably practicable send to the County Council the Revised Duration Notice.
- 5.33 That once the Highway Works have been completed and the Site cleared send to the County Council the Works Closed Notice.
- 5.34 If for any reason the Highway Works are not going ahead or have been stopped from going ahead then the Developer must send to the County Council the Cancellation Notice.
- 5.35 Without prejudice to the specific provisions of this Agreement to pay to the County Council all sums of money becoming due under this Agreement without any deduction or set-off.

6. **COUNTY COUNCIL'S COVENANTS**

The County Council **COVENANTS** with the Developer:

- 6.1 That the County Council shall commence the Design check upon the payment by the Developer of the amount specified in the Certificate of Estimated Costs and as soon as reasonably practicable shall notify the Developer of its approval of the Design or of such alterations or amendments as shall be reasonably necessary to enable such approval to be given.
- 6.2 That the County Council shall permit the Developer and those acting under its authority to enter at all reasonable times upon the Highway Land with or without equipment materials plant vehicles tackle and workmen for all proper purposes connected with or incidental to the carrying out of the Highway Works and the rectification of any defects in them.
- 6.3 That upon the Developer completing the Highway Works to the reasonable satisfaction of the Head of Service – Highways the County Council shall issue and give to the Developer a copy of the Certificate of Substantial Completion.
- 6.4 That upon the Developer becoming entitled to the issue of the Certificate of Substantial Completion and having completed its obligations under (inter alia) Clause 5.16 then the County Council shall issue and give to the Developer a copy of the Maintenance Certificate.
- 6.5 That upon the Developer completing the rectification of any defects in the Highway Works within the Defects Correction Period to the reasonable satisfaction of the Head of Service – Highways the County Council shall issue and give to the Developer a copy of the Defects Correction Certificate.
- 6.6 That upon the issue of the Defects Correction Certificate the County Council shall within fourteen (14) working days give to the Developer the Certificate of Actual Cost and shall refund to the Developer the amount of any excess in the

sum paid by the Developer under the Certificate of Estimated Costs over and above the sum certified in the Certificate of Actual Cost.

6.7 That upon the Developer having complied with all and singular its duties and obligations under this Agreement and having paid all monies due to the County Council in respect of the Highway Works the County Council shall issue and give to the Developer a copy of the Certificate of Final Satisfaction.

7. **PROVISOS**

7.1 The Developer shall be permitted to vary the Design with the prior written approval of the Head of Service – Highways which shall not be unreasonably withheld or delayed to enable the Developer to complete the Highway Works without unreasonable delay or expenditure due to any labour or materials being or becoming unavailable or available only at unreasonable cost or on terms which the Developer is not reasonably able to foresee in making up the Design.

7.2 Either or both of the Construction Period and the Defects Correction Period may be extended or enlarged by such further period as may be deemed reasonably appropriate in the circumstances by agreement between the Head of Service – Highways and the Developer in the event of any occurrence beyond the control of the Developer which impedes or inhibits the carrying out of the Highway Works or the rectification of any defects in them (as the case may be).

7.3 In the event that there is any material variation in the costs of the Design and inspection of the Highway Works then the County Council may at any time give to the Developer a Revised Certificate of Estimated Costs and within fourteen (14) days after such certificate has been given the Developer shall pay to the County Council any shortfall between the amounts paid by the Developer under the Certificate of Estimated Costs against the amount shown in the Revised Certificate of Estimated Costs. The County Council shall not be obliged to refund any overpayment until after the issue of the Certificate of Actual Cost.

7.4 In the event that there are defects in the Highway Works which

become apparent during the Defects Correction Period and require in the reasonable opinion of the Head of Service – Highways immediate rectification for reasons of safety the County Council shall serve notice on the Developer and the surety requiring the correction the defects within such time period as is specified in the notice.

- 7.5 If the Developer shall fail to rectify any defect in the Highway Works which may become apparent within the Defects Correction Period and further damage or defect ensues as a consequence of such default such further damage or defect shall be treated for all purposes and in all respects as if it formed part of the original defect requiring rectification.
- 7.6 If any sum or sums of money shall be due and payable to the County Council under the provisions of this Agreement and shall remain unpaid for more than twenty (20) working days after becoming due then interest shall accrue on such sum or sums from the date on which they became due to the date of actual payment at the rate of 4% above the base lending rate for the time being of National Westminster Bank plc and such interest shall be paid in addition to and at the same time as the principal sum or sums and the provisions of Section 305 of the Highways Act 1980 shall apply to all sums of money becoming due under this Agreement.
- 7.7 If the construction of the Highway Works shall not have commenced within five (5) years from the date of this Agreement then this Agreement shall cease to have effect.
- 7.8 Where any agreement certificate or consent permission expression of satisfaction or other approval is to be given by the County Council or any other person on its behalf under the terms of this Agreement the same shall not be unreasonably withheld or delayed.

8. **TERMINATION**

If the Developer fails to perform or observe any of the conditions stipulations or obligations on his part contained in this Agreement or if a receiving order in bankruptcy is made against him or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non performance or non observance determine this Agreement (except for clauses 5.25 & 5.29) by notice in writing by the Head of Service – Highways served on the Developer.

9. **DISPUTE RESOLUTION**

In the event of any dispute arising between the parties hereto in respect of the construction of the Highway Works the same shall at the request of either party be referred to a Chartered Civil Engineer to be agreed between the parties hereto or failing agreement as to the same within fourteen (14) days after such request to be appointed upon the application of either party hereto by the President for the time being of the Institution of Civil Engineers and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

10. **SERVICE OF NOTICES**

Any notice requiring to be served under this Agreement on the Developer shall be sufficiently given or served if posted to the Developer's registered office address set out in this Agreement or otherwise notified in writing to the Head of Service – Highways by pre-paid letter post or by Document Exchange post and shall be deemed to have been given or served forty eight (48) hours after posting in the case of pre-paid letter post or Document Exchange and any notice required to be served on the County Council (unless otherwise specified in this Agreement) shall be sufficiently given or served if sent by any of the methods above specified to the Director of Governance, Finance and Public Services whose address for service is as set out in this Agreement. Where under the specific provisions of this Agreement notice is to be given to the Head

of Service – Highways then it should be addressed to him at PO Box 78, County Hall, Preston Lancashire PR1 8XJ but otherwise the provisions of this clause shall apply.

11. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Pursuant to the provisions of Section 1 of the Contracts (Rights of Third Parties) Act 1999 the provisions of this Agreement shall not be enforceable by any person not a party to it.

12. **REGISTRATION**

For the avoidance of doubt the County Council shall procure the registration of this Agreement in the Register of Local Land Charges in accordance with the provisions of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982. Any fees that may be incurred by the County Council in effecting such registration shall be borne by the Developer and shall be payable by the Developer to the County Council on demand.

13. **JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and only the Courts of England and Wales shall have jurisdiction hereunder.

14. **NATURE OF DOCUMENT**

This Agreement is a deed and is executed by the parties as a deed.

IN WITNESS of which the parties have caused their respective Common Seals to be affixed to this their deed the day and year first above written.

THE FIRST SCHEDULE

Works to be carried out by the Developer or a contractor on its behalf ("The Highway Works") in accordance with the drawings the standard details and the provisions of this Agreement

Highway works at Liverpool Road, Hutton consisting of provision of a new access and the access to the Development comprising the following:

1. Carry out Highway works to the above roads and junctions adjacent to the development in accordance with the details.
2. Modification to and/or provision of highway drainage carriageway markings street lighting and ducts.
3. Associated and consequential works and any necessary alteration to Service Companies' plant and equipment necessitated by the roadworks.
4. Provision/alteration of footways and footway crossings.

Paragraphs 1-4 of this Schedule shall include:

- a. Excavation of any material and disposal to tip.
- b.
 - (i) Taking up existing kerb/edgings and dispose to tip.
 - (ii) Taking up highway signs and storing on site for re-use as required.
 - (iii) Removal of existing carriageway markings as required.
 - (iv) Taking up of existing lighting columns and storing on site for re-use as required.
 - (v) Taking up existing gully grates and frames and store on site or dispose to tip as required.
 - (vi) Take up hedges fences railings affected by the construction and visibility requirements.

- c. Provision and laying of filling material to embankments verges and slopes including any soiling and grass seeding.
- d. Provision and laying of sub grade/capping layers and sub-base material to new or widened carriageways.
- e. Provision and laying of new kerbs to lines and levels.
- f. Provision and laying of new surface water drains and manholes and alterations to existing surface water drains and manholes.
- g. Provision and installation of new gully pots grates and frames and connections to new and existing surface water drains.
- h. Provision and laying of kerbs including all radius tapered or dropped kerbs and quadrants and including cutting into existing road construction as required.
- i. Provision and laying of road base basecourse and wearing course to new or widened carriageway and including regulating planning of existing carriageways to suit new layout.
- j. Provision and laying of ST1 concrete in narrow widenings roadbase basecourse and wearing course to widened carriageways.
- k. Provision and laying of footway edgings.
- l. Provision and laying of sub-base basecourse and wearing course to new footways including the re-grading of any existing footways as required.
- m. Provision and erection of new street lighting columns and re-erection of existing columns.
- n. Provision of sewer CCTV survey to new highway drains.

- o. Provision and erection of new highway signs.
- p. Provision and laying of ducts and cables to the above lighting columns and highway signs including connections to the public electricity supply.
- q. Provision and laying of all carriageway markings including centre lane edge stop line markings.
- r. Carry out any necessary protections diversions or relaying of any statutory undertakers' plant as may be required. Such works to be identified and agreed with the appropriate undertaker. It is the responsibility of the developer to notify and liaise with the appropriate undertakers and agree with them any necessary works.
- s. All fencing protection traffic control watching and lighting of the works. Traffic safety and management to be in accordance with the "Traffic Signs Manual" Chapter 8 "Traffic Safety Measures and signs for Roadworks and Temporary Situations.
- t. Replacement of any fences hedges and railings to new alignments.
- u. Removal of any trees.
- v. Carry out amendments to the design and implementation of the works as a consequence of safety audit requirements and Safety Audit post opening minor alterations.
- w. Provision of 'As Built' drawings.
- x. The processing of such an order as may in the reasonable opinion of the County Council be required in connection with or incidental to the Highway Works.

THE SECOND SCHEDULE

(Calculation of commuted sum)

	Units	Quantity	Cost/unit	Total cost
Additional area of carriageway	Sq. m.	25	£10.00	£250.00
Additional lighting columns	No.		£400.00	
New refuge islands/chicanes	No.		£250.00	
Signing/Roadmarkings per junction				
Full roundabout	No.		£1,000.00	
Mini roundabout	No.		£200.00	
T junction	No.	1	£100.00	£100.00
Gateway signs	No.		£150.00	
Zebra crossing	No.		£800.00	
Road humps	No.		£50.00	
Traffic signals				
New signalled junction	No.		£5,830.00	
New PUFFIN/TOUCAN	No.		£2,060.00	
New arm to existing signals	No.		£1,450.00	
<u>TOTAL COMMUTED SUM PAYMENT</u>				<u>£350.00</u>

THE THIRD SCHEDULE

(Items to be delivered by the Developer to the County Council under the provisions of Clause 5.16)

1. An as-built general plan;
2. An as-built drainage plan including manhole details (including cover and invert levels) and pipe sizes;
3. An as-built lighting and cabling layout plan including details of illuminated traffic signs and duct locations and sizes;
4. An inventory of electrical equipment removed and of newly-installed equipment;
5. Electrical Test Certificates for all lighting and cabling.

**THE FOURTH SCHEDULE
"Scheme Liaison Sheet"**

SCHEME LIAISON SHEET

JOB NAME			
Type of Work			
Location and District			
Grid Reference			
CONTACTS			
Contractor		Supervisor	
Name and Address	Tel No	Project Mgr / Eng Engineers Rep (full name and location)	Name
			Tel No
Agent	Name	Clerk of Works	Name
	Tel No		Site Tel No
Emergency 24 hr. Tel No		Emergency 24 hr. Tel No	
PROGRAMME INFORMATION		Details of Traffic Restrictions and Traffic Regulation Orders required to carry out the highway works	
Start Date			
Contract Period			
Working Hours			
Mon - Fri Sat & Sun Night			
INTERESTED PARTIES:- Indicate (tick) which of the following bodies have been consulted and notified of the Contractor, Start date, Traffic Management arrangements etc			
Police	Client		
District Council	Utilities		
Parish Council	Highways Agency		

THE COMMON SEAL of THE LANCASHIRE
COUNTY COUNCIL was affixed to this Deed
pursuant to the Scheme of Delegation to Chief
Officers in the presence of:



Authorised Signatory

Executed as a Deed by APPLETHWAITE LIMITED

acting by:-

Director
Name: COLIN HETHERINGTON.

Director/Secretary
Name: ALAN GUNDEY