

**HERTFORDSHIRE COUNTY COUNCIL
DRAFT MINOR WORKS SECTION 278 AGREEMENT**

This Agreement is made the day of 2011

BETWEEN:

1. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Pegs Lane
Hertford Hertfordshire SG13 8DE

2. **HOXA LIMITED** (Company Registration No 05846101) whose registered
office is situated at 156a Burnt Oak Broadway Edgware Middlesex
HA8 0AX

WHEREAS

- (1) The County Council is the Highway Authority for Hertfordshire

- (2) The Owner is the registered proprietor with title absolute of the Land for
the benefit of which the Works referred to in this Agreement are carried
out

- (3) The Owner now wishes to enter into this Agreement in order to secure
the carrying out of the Works and has agreed that it will pay the full cost
of construction and maintenance of the Works in accordance with the
terms and conditions of this Agreement

- (4) The County Council are 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 Owner which Works it is authorised to
execute pursuant to the Act

- (5) The County Council agrees to adopt the Works as highway maintainable at public expense on the terms and conditions contained in this Agreement

NOW THIS AGREEMENT WITNESSETH as follows:

1. Definitions Interpretation and General

- 1.1 In this Agreement the following terms shall have the following meanings: -

“the Act”	the Highways Act 1980
“the Approved Drawings and Specification”	the drawings and specification attached at Schedule B
“the Blue Land”	the area of land shown edged blue on the Plan
["the Bond"]	a bond in the sum of [£] from a Bondsman approved by the County Council in the approved form attached at Schedule C]
["the Cash Deposit"]	a cash deposit in the sum of [£]]
“the CDM Regulations”	the Construction Design and Management Regulations 2007
“the Certificate of Completion”	the certificate issued by the County Council upon completion of the Works to the satisfaction of the County Council

“the Certificate of Maintenance”	the certificate issued by the County Council after the expiry of the Maintenance Period
“the County Council”	Hertfordshire County Council and any statutory successors in title
“the Development”	the works to be carried out pursuant to the Planning Permission
“the Highway”	the area of land shown edged green on the Plan which is highway maintainable at public expense
[“Insolvency Event”	means any one of the following:

- (a) if the Owner is an individual or a firm: -
 - the presentation of a petition for the Owner’s bankruptcy; or
 - the making of a criminal bankruptcy order against the Owner or any partner in the firm; or
 - the Owner 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 Owner’s or firm’s affairs

- (b) if the Owner is a company: -
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 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 Land”

the land registered at HM Land Registry with title absolute under

	Title Number HD505111 shown edged red on the Plan for the purposes of identification only
“List of Approved Contractors”	the current list of approved contractors available from the County Council which may be amended from time to time
“the Maintenance Period”	the period of twelve months commencing on the date of the Certificate of Completion
“the Orange Hatched Land”	that part of the Land shown hatched orange on drawing no. [xxxxxxx]
“the Owner”	HOXA LIMITED and its successors in title
“the Permit to Work”	the permit issued by the County Council certifying that technical and construction approval have been granted in respect of the Works
“the Plan”	the plan attached to this Agreement
“the Planning Permission”	the planning permission granted by [] [District] [Borough] Council under reference number [] and dated [] a copy of which is attached at Schedule A

“Practical Completion” means construction of the Works has been completed

“the Works” construction of a new kerbed bellmouth
repair of any damage to any part of the highway caused during the execution of the Works or the construction of the Development or by any vehicle used for or in connection with the Works or the Development

- 1.2 Where in this Agreement reference is made to a Clause Paragraph Schedule Plan or Recital such reference (unless the context requires otherwise) is a reference to a Clause Paragraph Schedule Plan or Recital in this Agreement or in the case of a Plan a plan annexed to this Agreement
- 1.3 Words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa
- 1.4 The reference to any statute or section of a statute or regulations includes any statutory re-enactment or modification of it
- 1.5 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
- 1.6 Headings in this Agreement are for reference purposes only and are not incorporated into this Agreement and shall not be an indication of the meaning of the parts of this Agreement to which they relate

2. (a) This Agreement is made pursuant to Section 278 of the Act and Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000

(b) This Agreement is also made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) in that Clause [6.15] is a planning obligation enforceable by the County Council in its capacity as a local planning authority

3. Unless otherwise specified where any agreement certificate or approval is to be given by the County Council under the terms of this Agreement then the same shall not be unreasonably withheld or delayed

4. Any notice or approval to be given in writing by the parties under the terms of this Agreement shall be deemed to be duly given if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses specified: -

In respect of the County Council:

Stephen Murphy Assistant Network Manager
Mid Herts Hertfordshire Highways Area Office
Highways House 41-45 Broadwater Road Welwyn Garden City
Herts AL7 3AX

In respect of the Owner:

[Name/Position]

[Address]

5. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto

Owner's Covenants

6. The Owner hereby covenants with the County Council as follows:
- 6.1 To carry out and complete the Works at no cost to the County Council strictly in accordance with the Approved Drawings and Specification and any conditions attached to the Permit to Work and in any event to complete the Works within 12 calendar months from the date of this Agreement
 - 6.2 To use only a contractor on the County Council's List of Approved Contractors or such other contractor approved by the County Council in writing prior to construction of the Works
 - 6.3 To give the County Council at least ten (10) days notice in writing of the proposed start date of the Works
 - 6.4 Not to commence the Works unless and until the Permit to Work has been issued
 - 6.5 To complete the Works within 12 calendar weeks of their commencement [and in any event the Works must be completed prior to any occupation of the Development]
 - 6.6 To indemnify and keep indemnified the County Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works 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 6.7 below shall apply
 - 6.7 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 for the purposes of

this indemnity the Owner is deemed to carry out the Works as agent for the County Council

6.8 Without prejudice to its liability under Clauses 6.6 and 6.7 above to indemnify the County Council the Owner 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 Owner 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

[6.9 To provide to the County Council on the date of this Agreement the Bond]

OR

[6.9 To provide to the County Council on the date of this Agreement the Cash Deposit which the County Council will hold in its general account and without undertaking any fiduciary obligations as trustee for the Owner PROVIDED THAT IF:

(a) the Owner fails to carry out and/or complete the Works within the period specified in Clause 6.5 above; or

(b) the Owner 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 in its absolute sole discretion); or

(c) an Insolvency Event occurs in respect of the Owner the County Council may itself carry out and/or complete the Works and may deduct from the Cash Deposit all costs

fees and expenses incurred by the County Council in so doing (including without prejudice to the generality of the foregoing the cost fees and expenses of preparing an alternative contract for the Works and of supervising the execution of such alternative contract) and all other sums due from the Owner under the terms of this Agreement

- 6.10 In relation to statutory undertakers for the time being of any service(s) the Owner shall:
- (a) prior to commencement of the Works make checks to establish whether there are any service(s) which will be affected by the Works; and
 - (b) give notice to each and every statutory undertaker for the time being of any service(s) which may be affected by the Works of the proposal to carry out the Works; and
 - (c) place orders and pay any costs to public utility undertakers for all works to their mains or services necessitated by the Works and shall relocate all street furniture affected to the satisfaction of the County Council
- 6.11 That if the Works are subject to the CDM Regulations:-
- 6.11.1 the Owner hereby elects itself to be treated as the only client for the purposes of the CDM Regulations; and
 - 6.11.2 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

- 6.12 To notify the County Council in writing of Practical Completion of the Works within 7 days of such completion
- 6.13 To maintain the Works following Practical Completion for the Maintenance Period to such standards as specified by the County Council
- 6.14 To provide to the County Council within 60 calendar days from the expiry of the Maintenance Period:
- (a) two (2) coloured copies of "as built" drawings in paper and electronic format; and
 - (b) the original Health and Safety Plan file
- 6.15 In relation to visibility splays:
- 6.15.1 That it will maintain the Orange Hatched Land as a visibility splay and keep such visibility splays free of obstruction to the reasonable satisfaction of the Director
 - 6.15.2 that it will not plant or permit any planting within the visibility splays other than those plantings agreed to in writing by the Director to ensure that such planting does not exceed 600 millimetres in height and that all such planting shall be properly cut pruned and trimmed at all times and shall not be allowed to obstruct or interfere in any way with or become a source of danger to passage along the carriageway of footway and in the event that the Owner fails to comply with this obligation the County Council shall be entitled to carry out such pruning and/or trimming and recover the cost thereof from the Owner
 - 6.15.3 in the event that it fails to maintain the visibility splays as mentioned above to indemnify and keep

indemnified the County Council against all claims whatsoever arising out of the obstruction of visibility attributable to the planting or presence within the visibility splays of trees plants shrubs or structures on adjoining land which overhang or extend into the visibility splays PROVIDED THAT

- (i) the County Council shall notify the Owner forthwith upon receipt of any claim
- (ii) the County Council shall not accept any such claim without first having given the Owner details of such claim and having given the Owner the opportunity to make representations to the County Council as to the validity and quantum of such claim
- (iii) the County Council shall in settling any such claim give though and regard to any representations and due regard to any representations made by the Owner thereof
- (iv) the foregoing indemnity shall not extend to any damage wholly caused by or arising out of the neglect or default of the County Council as its officers servants agents or contractors

County Council Provisions

7. The County Council hereby :-

- 7.1 authorises the Owner and/or its approved contractor to carry out and complete the Works within the Highway subject to and strictly in accordance with the terms and conditions set out in Clause 6 above

7.2 agrees that upon completion of the Works to the satisfaction of the County Council:

7.2.1 it shall issue the Certificate of Completion PROVIDED THAT the County Council shall be at liberty to delay the issue of the Certificate of Completion if in its opinion the Works are likely to be used by heavy vehicles driven by or on behalf of the Owner or its servants and agents or contractors in connection with road or building works carried out on the Land or on adjoining land;**[and]**

[7.2.2 upon the issue of the Certificate of Completion it shall reduce the Cash Deposit by a maximum of seventy per cent (70%) and shall pay to the Owner a sum equivalent to such reduction (plus interest accrued on the sum to be paid to the Owner at the London Interbank Bid 7 day Rate (LIBID) from time to time upon such sum from the date of receipt to the date of release) provided that the amount of any reduction of the Cash Deposit shall be at the sole discretion of the County Council**]**

7.2.3 PROVIDED ALWAYS that the Director shall be at liberty to delay the issue of the Certificate of Completion and/or the Certificate of Maintenance in the event of a breach of any of the terms and conditions of this Agreement

7.3 agrees that after the expiry of the Maintenance Period and provided always that the Works have been fully maintained to the satisfaction of the County Council during the Maintenance Period and that any defects appearing during the Maintenance Period have been made good to the satisfaction of the County Council it shall issue a Certificate of Maintenance for the Works

and as of the date of the Certificate of Maintenance the Works shall become maintainable at public expense

[7.4 Agrees that upon the issue of the Certificate of Maintenance the County Council shall repay to the Owner either a sum equivalent to the balance of the Cash Deposit remaining after the reduction as referred to in Clause 7.2.2 (plus interest accrued at the London Inter Bank Deposit 7 day rate from time to time upon such sum from the date of receipt to the date of release) or in the event of the Cash Deposit being used in accordance with Clause 6.9 above a sum equivalent to the balance of such part of the Cash Deposit as remains (plus interest on such balance calculated as aforesaid)]

9. The parties to this Agreement hereby agree that this Agreement shall be registered as a local land charge on account of the planning obligation contained in Clause 6.15

IN WITNESS whereof the parties hereto have executed this Deed but not delivered this Deed the day first above written

The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of: -)

Chief Legal Officer/Assistant Chief Legal Officer

*The COMMON SEAL of)
[OWNER])
was hereunto affixed in the)
presence of:-)
)

Director/Company Secretary

OR *EXECUTED AS A DEED by)
[OWNER])
acting by a Director and its)
Secretary/two Directors)

Director

Director/Company Secretary

OR Signed as a Deed)
By [OWNER])
in the presence of: -)

Witness signature

Witness name

Witness address

Witness occupation

[Signed as a Deed)
By [OWNER])
in the presence of: -)

Witness signature

Witness name

Witness address

Witness occupation]

SCHEDULE A

Planning Permission

SCHEDULE B

Approved Drawings & Specification

SCHEDULE C

BOND

BY THIS BOND [**(name of financial institution)**] (Company Registration No []) whose registered office is situate at [**(address)**] (hereinafter called "the Surety") is held and firmly bound to the HERTFORDSHIRE COUNTY COUNCIL (hereinafter called "the County Council") in the sum of [] pounds (£ []) to be paid to the County Council for the payment of which sum the Surety binds itself and its successors

EXECUTED as a Deed this [] day of [] 200[]

WHEREAS

- (1) By an Agreement dated [] 200[] and made between the County Council (1) and [**(Owner's name)**] (hereinafter called "the Owner") (2) [and **(Owner's name)** ("the Owner")] ("the Agreement") the Owner covenanted to undertake the Works (as defined in the Agreement)
- (2) By the provisions of the Agreement the Owner contracted to provide a bond to secure its obligations under the terms of the Agreement in respect of the carrying out the Works and the Owner now intend(s) to discharge such obligation

NOW THIS DEED WITNESSETH

1. The Surety is hereby bound to the County Council in the sum of [] pounds (£ []) ("the Bond Figure")
2. The Surety shall upon the occurrence of any of the following events (each hereinafter referred to as an "Event"):
 - 2.1 breach or non-performance or non-observance of any of the terms or covenants on the part of the Owner contained in the Agreement

2.2 occurrence of any of the following where the Owner is an individual:

- 2.2.1 bankruptcy
- 2.2.2 presentation of a bankruptcy petition
- 2.2.3 entry into a voluntary arrangement with creditors
- 2.2.4 presentation of a proposal to a nominee with regard to a voluntary arrangement
- 2.2.5 an application for an interim order pursuant to section 253(1) or section 253(3) Insolvency Act 1986
- 2.2.6 appointment of an administrator

2.3 where the Owner is a firm:

- 2.3.1 occurrence of any of the Events specified in sub-clauses 2.2.1 to 2.2.6 inclusive with regard to any member of the firm
- 2.3.2 a determination or order to wind up

2.4 where the Owner is a company:

- 2.4.1 liquidation whether compulsory or voluntary
- 2.4.2 entry into administrative receivership
- 2.4.3 entry into a company voluntary arrangement for the benefit of its creditors
- 2.4.4 presentation of a proposal to a nominee in connection with a voluntary arrangement
- 2.4.5 making of an application for, or any meeting of its members resolving to make an application for an administration order in relation to the Owner
- 2.4.6 the giving or filing of notice by any party of intention to appoint an administrator
- 2.4.7 passing of a resolution for winding up or dissolution
- 2.4.8 the appointment of an administrator
- 2.4.9 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
- 2.4.10 the making by the court of a winding up order

2.5 occurrence of any events or proceedings which have an analogous effect to any referred to in clauses 2.2 to 2.4 (inclusive) above

pay to the County Council within 28 days of a written demand ("the Demand") which Demand shall be deemed and accepted as conclusive evidence that an Event or a combination of Events has occurred) the Specified Sum (as hereinafter defined) provided that the total sums payable by the Surety shall not exceed the Bond Figure

3. The Specified Sum shall be such sum or sums of money as:

3.1 the Director certifies to be necessary:

3.1.1 to complete the Works or reinstate the highway or complete such alternative works as the Director considers appropriate; and

3.1.2 to remedy any defects occurring or discovered during the Maintenance Period; and

3.1.3 to maintain the said alternative works and/or the Works for a period of twelve months following their completion; and

3.1.4 to cover the costs or any other sums due under the terms of the Agreement; and

3.2 such further sums as the Chief Legal Officer may certify to be necessary to fully reimburse the County Council in respect if any costs incurred in the enforcement of the obligations on the part of the Owner under the Agreement and of preparing an alternative contract for the Works and of supervising the execution of this alternative contract

4. The County Council shall be entitled to make more than one Demand under this Bond

5. If no claims shall have been made by the County Council and no claims or liability have arisen under this bond or the Agreement THEN the Bond Figure shall be reduced by a maximum of seventy per cent (70%) upon

Date _____ 2011

HERTFORDSHIRE COUNTY COUNCIL

- and -

HOXA LIMITED

Agreement for Highway Works at
Land at the rear of 59 Station Road Cuffley
pursuant to S.278 Highways Act 1980

KATHRYN PETTITT
Chief Legal Officer
County Hall
Hertford
SG13 8DE

REF: WE 358