

Date 16th February ²⁰¹⁰
~~2009~~

HERTFORDSHIRE COUNTY COUNCIL

- and -

GASCOYNE HOLDINGS LIMITED

- and -

THE MOST HONOURABLE ROBERT MICHAEL JAMES
MARQUESS OF SALISBURY
and THE MOST HONOURABLE
ROBERT EDWARD WILLIAM CECIL

Agreement for Highway Works at
Hatfield Park and St. Audrey's Car Park
Hatfield Hertfordshire
pursuant to S.278 Highways Act 1980 and
S.106 Town & Country Planning Act 1990

Kathryn Pettitt
Chief Legal Officer
County Hall
Hertford
SG13 8DE
Ref: DO/AX 528

HERTFORDSHIRE COUNTY COUNCIL
SECTION 278 AGREEMENT

THIS AGREEMENT is made the 16th day of February 2010
2009

BETWEEN:

1. HERTFORDSHIRE COUNTY COUNCIL of County Hall Pegs Lane Hertford Hertfordshire SG13 8DE (the "County Council")
2. GASCOYNE HOLDINGS LIMITED (Co. Regn. No. 3764580) whose registered office is situated at ~~PO Box Rotherwick House~~
~~3 Thomas More Street London E1W 1YX~~ (the "Developer")
22 Chancery Lane, London. WC2A 1LS
3. THE MOST HONOURABLE ROBERT MICHAEL JAMES MARQUESS OF SALISBURY and THE MOST HONOURABLE ROBERT EDWARD WILLIAM CECIL both care of Hatfield Park Estate Office Hatfield Hertfordshire AL9 5NQ (the "Owner")

WHEREAS

- (1) The County Council is the Highway Authority for Hertfordshire
- (2) The Owner is the trustee of the unregistered freehold interest of the Land being part of the land comprised in a vesting deed dated 1 January 1926 and made between the Right Honourable Edgar Algernon Robert Gascoyne Cecil of Chelwood and the Right Honourable Richard Heathcoate Gascoyne Cecil (1) and the Most Honourable James Hubert Gascoyne Fourth Marquess of Salisbury K.G (2) for the benefit of which Land the highway works hereinafter referred to are carried out
- (3) The Developer is the owner of the equitable interest in the Land pursuant to:

- (a) an agreement dated 23 December 1936 and made between the Most Honourable James Hubert Gascoyne Fourth Marquess of Salisbury K.G (1) and Gascoyne Cecil Estates Company (2)
 - (b) an agreement dated 23 December 1936 and made between the Right Honourable Robert Arthur James Gascoyne Cecil M.P(1) and the Gascoyne Cecil Estates company (2)
 - (c) a conveyance dated 3 August 1966 and made between the Gascoyne Cecil Estates Company (in members voluntary liquidation) (1) Hugh Thayer Nicholson and Cecil Guillian Brown (2) the Honourable Robert Edwards Peter Cecil and Marjorie Olein Cecil (3)
- (4) The Owner has appointed the Developer to develop the Land
 - (5) The Developer is desirous of entering into this Agreement for the purposes of securing the carrying out of the Works and the Developer has agreed that it will pay the cost of construction and maintenance of the Works
 - (6) The Owner now wishes to dedicate as public highway the Blue Land which does not currently form part of the Highway and the County Council agrees to accept such dedication and adopt the Blue Land and the Works as highway maintainable at public expense on the terms and conditions hereinafter contained
 - (7) The County Council is satisfied pursuant to Section 278 of the Highways Act 1980 that it will be of benefit to the public for the County Council to enter this Agreement for the execution of the Works at the expense of the Developer which Works the County Council is authorised to execute pursuant to the Highways Act 1980 and which Works are the subject of conditions of the Planning Permission

NOW THIS AGREEMENT WITNESSETH as follows:

OPERATIVE PART

1. For the purposes of this Agreement the following words and phrases shall have the following meanings: -

"the Act" means the Highways Act 1980;

"Blue Land" means that part of the Land edged blue on the drawing referred to in Schedule 1 upon which part of the Works are to be carried out;

"Bond" means a bond from the Surety in the sum of £16,500.00 being the total contract price of the Works plus 10% thereof together with the cost of any statutory undertakers' works which bond shall be in the form attached at Schedule 4 and to the effect specified in clause 3.1.6(i) hereof;

"CDM Regulations" means the Construction (Design and Management) Regulations 2007;

"Certificate of Completion" means the certificate issued by the Director under Clause 5.3 certifying that the Works have been completed to the satisfaction of the County Council;

"Certificate of Maintenance" means the certificate issued by the Director under Clause 5.3 certifying that the Works have become highway maintainable at public expense and that the Developer's obligations to maintain the Works have ceased;

"Chief Legal Officer" means the County Council's Chief Legal Officer for the time being and her officers and agents;

"Contract Drawings" means the detailed drawings submitted by the Developer to the County Council and technically approved by the County Council and listed at Schedule 3;

"Designer's Safety Plan" means the health and safety plan and risk assessment for the Works (known as the Construction Phase Health and Safety Plan under the CDM Regulations) submitted by the Developer and approved by the Director;

"Development" means the development on the Land to be carried out pursuant to the Planning Permission;

"Director" means the County Council's Director of Environment and Commercial Services for the time being and his officers and agents;

"Highway" means the area of land shown edged green on the drawing referred to in Schedule 1 which is highway maintainable at public expense;

"HSE" means the Health and Safety Executive;

"Event" means any one of the following:

- (a) breach or non-performance or non-observance of any of the terms or covenants on the part of the Developer and/or the Owner contained in the Agreement
- (b) if the Developer is an individual or a firm: - the presentation of a petition for the Developer's bankruptcy; or the making of a criminal bankruptcy order against the Developer or any partner in the firm; or the Developer or any partner in the firm making a composition or arrangement for the benefit of creditors; or the making of a conveyance or assignment for the benefit of creditors; or the appointment of an administrator to manage the Developer's or firm's affairs
- (c) if the Developer 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

and "Events" shall be construed accordingly;

"Land" means the land briefly known as land at Hatfield Park and St. Audrey's Car Park, Hatfield Hertfordshire being part of the land comprised in vesting deed dated 1 January 1926 and made between the Right Honourable Edgar Algernon Robert Gascoyne Cecil of Chelwood and the right Honourable Richard Heathcoate Gascoyne Cecil (1) and the Most Honourable James Hubert Gascoyne Fourth Marquess of Salisbury K.G (2) for the purposes of identification only shown edged red on the plan marked 'Proposed Site Plan' attached hereto;

"Maintenance Period" means a period of twelve months commencing on the date of issue of the Certificate of Completion;

"Orange Hatched Land" means that part of the Land shown edged and hatched orange on the drawing referred to at Schedule 1;

"Permit to Work" means the permit issued by the County Council certifying that technical and construction approval have been granted in respect of the Works;

"Planning Permission" means planning permission reference S6/2008/690/FP dated 25 May 2008 granted by Welwyn Hatfield Borough Council;

"Programme" means a programme of work for the Works prepared by the Developer and approved by the County Council;

"Specification" means Volumes 1 and 2 and 3 of the Manual of Contract Documents for Highway Works published by Her Majesty's Stationery Office in 1998 as modified and extended by the Supplements and Revisions published by Her Majesty's Stationery Office and as further modified and extended by "Roads in Hertfordshire – A Guide for New Developments - June 2001" published by the County Council all as in force at the date of commencement of the Works;

"Surety" means a bank or other financial institution approved by the County Council;

"Works" means the highway works described in Schedule 1.

1.2 In this Agreement :-

1.2.1 the clause headings do not affect its interpretation;

1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;

1.2.3 the reference to any statute or section of a statute includes any statutory re-enactment or modification of it;

1.2.4 any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Agreement and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;

1.2.5 references to the Land include any part of it;

1.2.6 where two or more people form a party to this Agreement the obligations they undertake may be enforced against them all jointly or against each of them individually;



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Rev.	Amendment	Date
A		

BROOKS / MURRAY
 ARCHITECTS
 8-10 NEW NORTH PLACE
 LONDON EC2A 4JA
 TEL: 020 7736 9955
 FAX: 020 7736 9944
 architects@brooks-murray.com

CLIENT:
GASCOYNE CECIL ESTATES

JOB:
**ST. AUDREY'S CAR PARK
 HATFIELD HERTS**

DATE: **APRIL 2008** SCALE:
1:250 @ A1 1:500 @ A3

DRAWING TITLE:
**PROPOSED SITE PLAN
 ownership diagram**

DRAWING NUMBER:
757-003-C08

- 1.2.7 any covenant by the Developer and/or the Owner not to do any act of thing includes a covenant not to permit or allow the doing of that act or thing;

EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to Sections 38 and 278 of the Act and Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other powers enabling the County Council thereunto
- 2.2 This Agreement is also made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) in that Clause 4.1(ii) is a planning obligation enforceable by the County Council in its capacity as a local planning authority
- 2.3 The Developer enters into this Agreement for itself and its successors in title with the County Council to the intent that the covenants hereunder shall be enforceable not only against the Developer but also against the successors in title of the Developer and any person claiming through or under the Developer an interest or estate in the Site or any part thereof

DEVELOPER'S COVENANTS

- 3.1 The Developer hereby covenants with the County Council as follows:

3.1.1 The Works

- (i) To carry out and complete at its own expense and at no cost to the County Council the Works as contractor for the County Council in a good and workman like manner and with proper materials and in accordance in all respects with the terms and conditions of this Agreement and
- (ii) to commence the Works within 12 calendar months of the date hereof and once commenced to complete the Works in accordance with Schedule 2 paragraph 9

3.1.2 Payments

To pay to the County Council:

- (i) on the date hereof the whole of the ^{and reasonable} proper costs incurred by the Chief Legal Officer in the preparation of this Agreement
- (ii) on written demand the ^{and reasonable} proper costs incurred by the County Council of: -
 - (a) approving the Contract Drawings for the Works
 - (b) ^{reasonable} any costs associated to the safety audits referred to in Schedule 2
 - (c) inspecting the Works and ^{reasonable} any costs of any alterations to the Works arising out of the Stage 3 Safety Audit PROVIDED THAT such alterations do not incur in aggregate additional expense in excess of £6,000.00 and such expenses shall not include the costs mentioned in paragraph (d) below
 - (d) carrying out the Stage 3 Safety Audit and ^{reasonable} any costs of approving and inspecting alterations (if any) to the Works consequent upon such Stage 3 Safety Audit
- (iii) on written demand the full ^{and reasonable} ~~and~~ proper costs of processing advertising and implementing any road traffic regulation orders required as part of or to facilitate the Works
- (iv) on demand the full ^{and reasonable} cost to the County Council of registration of the easement referred to at clause 4.2 below against the freehold of title to the Land

3.1.3 Indemnity

That it hereby indemnifies 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 3.1.5 below shall apply

3.1.4 Public Liability Insurance

That it shall without prejudice to its liability under clauses 3.1.3 and 3.1.5 hereof indemnify the County Council and be insured against public liability risks for a sum of at least £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 against public liability risks and the Developer or any person authorised by it to carry out the Works shall on request by the County Council produce for inspection the relevant policies of insurance together with receipts for the premiums paid

3.1.5 Land Compensation Act Claims

That it hereby indemnifies the County Council against all claims including (including all costs arising out of or in connection with or incidental to such claims) under Part I and Part II of the Land Compensation Act 1973 (including claims the County Council determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975 as amended by the Noise Insulation (Amendment) Regulations 1988) arising out of the use of the Works and for the purposes of this indemnity the Developer is deemed to carry out the Works as agent for the County Council

3.1.6 Bond

To provide to the County Council on the date of this Agreement the Bond which Bond shall be to the effect that if the Director in his absolute discretion shall certify that an Event has occurred then the Surety shall within 28 days of the Director's written demand addressed to the surety ("the Demand") which Demand shall be deemed conclusive evidence that any or a combination of Events has occurred) pay to the County Council such sum as may be specified in the Demand to be required in order to complete the

Works or reinstate the Highway or complete such alternative works as the Director considers appropriate and remedy any defects prior to the Works becoming maintainable at public expense or occurring or discovered during the Maintenance Period and the costs or any other sums due under the terms of this Agreement and such further sum as the Chief Legal Officer may certify to be necessary to fully reimburse the County Council in respect of any costs and expenses incurred by the County Council in the enforcement of the obligations on the part of the Developer under this Agreement together with the cost to the County Council of preparing an alternative contract and of supervising the execution of this alternative contract PROVIDED THAT if no claims shall have been made by the County Council and that no claims or liability have arisen under the Bond or this Agreement the Bond Figure shall be reduced by seventy five per cent (75%) upon issue of the Certificate of Completion and the Surety shall be released and discharged upon issue of the Certificate of Maintenance

DEVELOPER'S AND OWNER'S COVENANTS

4. The Developer and the Owner for themselves and their successors in title so as to bind the Land and every part thereof hereby jointly and severally covenant with the County Council as follows:

4.1 Dedication

- (i) That they hereby dedicate the Blue Land as public highway such dedication to take effect from issue of the Certificate of Completion PROVIDED THAT on default by the Developer of any of the terms of the Agreement the County Council shall have the right to enter the Blue Land to complete the Works and in this case dedication shall be effective from the date of such entry
- (ii) That they shall not develop or use the Blue Land as anything other than public highway

4.2 Easement

- (i) That for the benefit and protection of the adjoining Highway they hereby GRANT to the County Council (and its successors in title and all persons authorised by it) with full title guarantee and with effect from issue of the Certificate of Completion the right in fee simple to enter upon the Orange Hatched Land at all times with or without vehicles materials plant machinery and contractors for the purpose of inspection maintenance repair renewal or alteration of any equipment associated with the lamp column forming part of the Works referred to in Schedule 1 paragraph (d) subject to the County Council doing as little damage as reasonably possible to the Orange Hatched Land and making good as soon as reasonably practicable any such damage caused PROVIDED THAT should it be necessary for the County Council to execute or complete the Works in accordance with clause 5.3 the rights granted to the County Council pursuant to this clause 4.2(i) together with the right to install any part of the Works referred to in Schedule 1 paragraph (d) shall take effect from the date the County Council commences completion of the Works

- (ii) That for the benefit and protection of the adjoining Highway they shall not locate nor construct nor permit to be located or constructed any building shed structure plant or object whatsoever in upon or over the Orange Hatched Land which would prevent the exercise of the rights granted to the County Council pursuant to clause 4.2 (i) above

COUNTY COUNCIL'S COVENANTS

5. The County Council hereby covenants with the Developer as follows:

- 5.1 That it hereby authorises the Developer's contractor approved by the Director in accordance with paragraph 7.2 to carry out the Works within the Highway subject to and strictly in accordance with the terms conditions and stipulations in Schedule 2

- 5.2 Provided that the Developer has complied with the terms and conditions set out in Schedule 2 it will issue the Permit to Work
- 5.3 That upon completion of the Works to the satisfaction of the Director the County Council will issue the Certificate of Completion PROVIDED THAT THE Director shall be at liberty to delay the issue of the Certificate of Completion if in his opinion the Works are likely to be used by heavy vehicles driven by or on behalf of the Developer or his or its servants and agents or contractors in connection with road or building works carried out on the Land or on adjoining land and as from the date of such certificate that part of the Works as are at the date of this Deed within the public highway or which are on that part of the Land which will become public highway pursuant to clause 4.1(i) of this Agreement shall become maintainable at public expense SAVE THAT during the Maintenance Period the Developer shall maintain the Works and after the expiry of the Maintenance Period and provided always that the Works have been fully maintained as aforesaid and that any defects appearing during the said maintenance period have been made good the Director shall thereupon issue the Certificate of Maintenance FURTHER PROVIDED THAT if the Developer fails to complete any outstanding items or make good any defects to the satisfaction of the Director the County Council after giving not less than 10 working days in writing of its intention to the Developer may execute and complete the relevant work and recover its costs from the Developer or the Bond

MISCELLANEOUS

6.1 It is further agreed between the parties that:

6.1.1 If the Works are subject to the CDM Regulations then

- (i) the Developer elects itself to be treated as the only client for the purpose of the CDM Regulations and
- (ii) the County Council hereby 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) insofar as those duties relate to information in its possession

6.1.2 without prejudice to the terms hereof if the Developer fails to execute or complete the Works in accordance with its obligations hereunder the Council shall after not less than fourteen days notice in writing to the Developer be entitled to complete the Works or reinstate the highway or complete such alternative works as the Director considers appropriate in default with its own employees or by contract or otherwise and to recover the cost as certified by the Director

6.2 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

In respect of the Developer:

Hatfield Park Estate Office
Hatfield
Hertfordshire
AL5 5NQ

In respect of the County Council:

The Chief Legal Officer
Hertfordshire County Council
County Hall
Pegs Lane
Hertford
Herts
SG13 8DE
Ref: AX 528

6.3 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.

6.4 No waiver whether express or implied by the County Council of any breach or default by the Developer in performing or observing any of

the covenants contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing the relevant obligations or from acting upon any subsequent breach or default

- 6.5 Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the County Council or any officer of the County Council is required for any purpose under or in connection with the terms of this Agreement such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed
7. 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 4.1(ii)
8. The Developer shall use its best endeavours to apply for and secure registration of the rights granted to the County Council pursuant to clauses 4.2(i) and 4.2(ii) against the Developer's and the Owner's interests in the Land within 21 days of the date of this Deed and shall within 14 days of such registration provide the Chief Legal Officer with certified copies of the relevant Land Registry Certificates confirming registration of the said rights PROVIDED ALWAYS that in the event of the Developer failing to comply with the provisions of this clause 8 the County Council shall be at liberty to register the said rights and shall be entitled to recover from the Developer all its costs and expenses incurred in doing so
9. The Owner hereby agrees that the Works are for the benefit of the Land
10. This Agreement is governed by and interpreted in accordance with the law of England and Wales

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed but the same remains undelivered until the day and year first before written

SCHEDULE 1

1. The Works referred to in Recital 5 of this Agreement and shown in principle only drawing number 757-003-CO5 Rev D attached to this Agreement shall comprise the provision of:-
 - a) Provision of new vehicular access onto Church Lane Hatfield from St. Audrey's Carpark.
 - b) Road widening of Church Lane between the new access and A1000 Great North Road.
 - c) Works to facilitate and implement a Traffic Regulation Order for prohibition of buses onto The Broadway and waiting restrictions by means of double yellow lines
 - d) Relocation of lamp column

TOGETHER WITH such ancillary works as may be required by the Director which ancillary works may include inter alia the provision of street lighting traffic signs carriageway markings footways verges street furniture drainage and any necessary alterations to statutory undertakers equipment PROVIDED THAT if the Department for Transport Technical Design Standards or Advice is amended after the date of this Agreement the Director shall be at liberty to review the Works and require any amendments he deems necessary to ensure that the Works comply with the revised standards and advice SAVE THAT in circumstances where the Contract Drawings have been approved in writing by the Director and the Works are commenced within three months of the date of the written approval then the Director shall not seek any amendments to the Works

SCHEDULE 2

The Works shall be carried out in accordance with the following terms and conditions:

1. The Works shall not be commenced until:

- 1.1 detailed Contract Drawings a Designer's Safety Plan the Programme and traffic management measures have been prepared by the Developer and approved by the Director in writing and where the Works include highway structures or any means of highway support is affected express approval from the County Council's Technical Approval Authority is required
 - 1.2 any necessary licences have been obtained and notices given pursuant to the New Roads and Street Works Act 1991
 - 1.3 if the Works are subject to the CDM Regulations the Developer as the only Client has provided to the Director:-
 - 1.3.1 written details of the CDM co-ordinator and the Principal Contractor
 - 1.3.2 a copy of the Notification of Project (form HSE10) to the HSE pursuant to Regulation 21 of the CDM Regulations
 - 1.4 the Bond has been provided in accordance with Clause 3.1.6
 - 1.5 A noise survey and assessment in respect of the Works has been undertaken by a noise expert approved by the Director in such a manner and at such times and locations approved by the Director and a copy of the survey and assessment has been submitted to the Director and all and any requirements arising therefrom have been undertaken by the Developer at its own expense
 - 1.6 the original insurance policy and receipts referred to in Clause 3.1.4 have been produced
2. Detailed contract drawings for highway structures shall be prepared by the Developer and submitted for written approval to the Director's Bridge Office in accordance with Department of Transport Document BD2/02 and the structural design and checking procedure shall be carried out by a chartered engineer familiar with Department of Transport Codes of

Practice who shall state on Form TA1 the documents to be agreed as applicable

NB. [A series of notes applicable to highway structures shall be obtained from the Director before details are submitted for approval

3. Without prejudice to the Programme the Developer shall notify the Director in writing at least twenty eight (28) days prior to the commencement of any work connected with statutory undertakers equipment and shall further notify the Director in writing at least twenty eight (28) days prior to the commencement of the Works of its intention to proceed with the Works and shall further notify the Bridge Office of the Director in writing at least twenty four (24) hours prior to the commencement of each and every stage of excavation and concrete operations associated with highway
4. Before commencing any part of the Works the Developer shall give notice to each 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 shall 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 Director
5. The Works shall be signed and protected to at least the standards of Safety at Streetworks and Roadworks: A Code of Practice (ISBN 011551958-0) and the proposed arrangements shall be approved in writing by the Director and the Police before the Works commence
6. The Works shall be carried out in accordance with Specification
7. The Works shall be carried out:
 - 7.1 under the terms of a construction contract incorporating the fifth edition of the Conditions of Contract approved by the Institution of Civil Engineers jointly with the Association of Consulting Engineers and the Federation of Civil Engineering Contractors and commonly known as the ICE Conditions of Contract; and

- 7.2 by a roadworks contractor approved by the Director; and
- 7.3 under the direction of a Resident Engineer who shall be Chartered Civil Engineer to be employed by the Developer and approved by the Director and who shall be independent of the roads contractor
8. In relation to the inspection and supervision of the Works:
- 8.1 The inspection and direction of the Director shall be accepted and the Works shall be carried out in accordance with the Contract Drawings and to a standard of workmanship and quality of materials approved by the Director
- 8.2 During the progress of the Works the Director shall have free access to every part of the Works to inspect the same as they proceed and all materials used or intended to be used therein and the Developer shall give effect to any reasonable requirements made or reasonable direction given by the Director to conform to the Contract Drawings the Specification and the Programme
- 8.3 The Developer shall not cover up any works without the approval of the Director and shall afford full opportunity for him to examine and measure any work which is about to be covered up and to examine foundations before permanent work is placed thereon and shall give at least three (3) working days notice to the Director whenever any such work or foundations is or are ready for examination
- 8.4 The Director shall have power in his reasonable discretion to test or require the testing of materials plant and workmanship used or proposed to be used in the Works and to reject any materials plant or workmanship so tested which he may reasonably find to be not in accordance with the Contract Drawings and the Specification
- 8.5 The Developer shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found not in accordance with the Contract Drawings and the Specification with such as are in accordance

- 8.6 Within three (3) calendar months of the issue of the Certificate of Completion on site safety checks shall be carried out by the Director in the presence of the Resident Engineer and arising therefrom the Director shall be at liberty to require such alterations to the Works as maybe required to ensure the safety of users of the highway
9. The Works shall be completed to the satisfaction of the Director within 5 weeks of their commencement and in any event shall be completed prior to any occupation of the Development
10. The Developer shall not at any time give consent to the erection by any telecommunications operator of telegraph poles or telephone poles or to the erection by any Statutory Undertaker or public or private company firm or individual of any overground or underground equipment without the consent in writing of the Director
11. The Developer shall fully maintain the Works for the Maintenance Period and shall make good any defects or damage which may arise or be discovered during such period
12. The Developer shall provide the Director with the following three (3) calendar months before the expiry of the Maintenance Period :-

in respect of highway structures:

- (i) suitable scale "as built" drawings in paper and electronic format, soil reports, records of materials tested, safety files, maintenance manual, revised forms TA1 and design certificates

in respect of the Works generally:

- (ii) 12 copies of paper "as built" drawings in a scale approved by the Director and electronic copies of the same in a format approved by the Director

WHEREAS

- (1) By an Agreement dated [200] ("the Agreement") and made between the County Council (1) and ***** (hereinafter called "the Owner") (2) and ***** (3) (hereinafter called "the Developer") the Developer covenanted to undertake certain highway works as defined in the Agreement ("the Works")
- (2) By the provisions of the Agreement the Developer contracted to provide a bond to secure its obligations under the terms of the Agreement and the Developer now intends 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 Developer contained in the Agreement
 - 2.2 occurrence of any of the following where the Developer 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 Developer 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

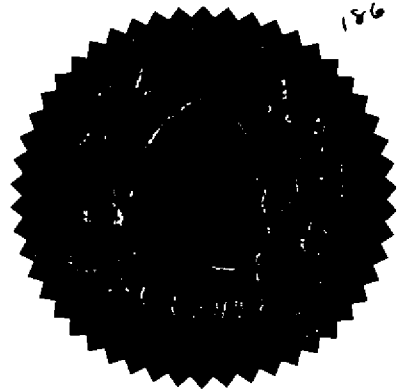
- 2.4 where the Developer is a company:
 - 2.4.1 liquidation whether compulsory or voluntary
 - 2.4.2 entry into administrative receivership
 - 2.4.3 entry into a company voluntary arrangement for the benefit of its creditors
 - 2.4.4 presentation of a proposal to a nominee in connection with a voluntary 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 Developer
 - 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 of any costs incurred in the enforcement of the obligations on the part of the Developer 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 seventy five per cent (75%) upon issue of the Certificate of Completion and the Surety shall be released and discharged upon issue of the Certificate of Maintenance
6. The Demand shall be deemed to be sufficiently served on the Surety if signed by the Director or the Chief Legal Officer and delivered to the Surety at its registered office or its place of business
7. The Surety shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Agreement or in the extent or nature of the Works and no allowance of time by the County Council

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



Chief Legal Officer/Assistant Chief Legal Officer:-

The COMMON SEAL of)
GASCOYNE HOLDINGS LIMITED)
was hereunto affixed to this)
Deed in the presence of:-)

Director (name):

Signature:

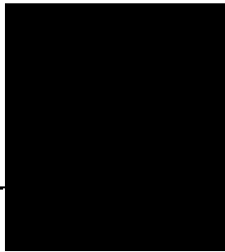
Director (name):

Signature:

Company Secretary (name):

Signature:

SIGNED AS A DEED by)
THE MOST HONOURABLE)
ROBERT MICHAEL JAMES)
MARQUESS OF SALISBURY)
in the presence of :-)



Witness (signature):



Name:



Address: 10 Birchwood Avenue
Hendon N10 3BE

Occupation: Personal Assistant

SIGNED AS A DEED by)
THE MOST HONOURABLE)
ROBERT EDWARD WILLIAM CECIL)
in the presence of :-)



Witness (signature):



Name:



Address: 10 Birchwood Avenue
Hendon N10 3BE

Occupation: Personal Assistant