

DATED 24 July **2023**⁵

**(1) THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF HARINGEY**

AND

(2) WESTON HOMES PLC

AND

(3) HSBC BANK PLC

**AGREEMENT RELATING TO LAND KNOWN AS
Land on the east side of Caxton Road, London
PURSUANT TO SECTION 278
OF THE HIGHWAYS ACT 1980 AND
ALL OTHER ENABLING PROVISIONS**

London Borough of Haringey
Alexandra House
10 Station Road
Wood Green
London N22 7TR

Legal Ref: LEG/PP/JXF/66307

THIS AGREEMENT is made the 24th day of July 2023

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY** of the Civic Centre Wood Green London N22 4LE ("**Council**")
- (2) **WESTON HOMES PLC (Company Registration Number 02133568)** whose registered office is at The Weston Group Business Centre, Parsonage Road, Takeley, Essex, CM22 6PU ("**Owner**")
- (3) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED (Company Registration Number 06447555)** whose registered office is at 8 Canada Square, London, E14 5HQ ("**Mortgagee**")

together the "**Parties**"

RECITALS:

- (i) The Council is the Local Highway Authority for the area within which the works described in Schedule 1 hereto are to be situated.
- (ii) The Planning Permission was granted by the Council to develop the Property.
- (iii) This Agreement is entered into for the purpose of discharging the obligation in the Section 106 Agreement to enter into a highway agreement pursuant to section 278 of the 1980 Act.
- (iv) The Council proposes to carry out works at the expense of the Owner as described in Schedule 1 hereto and shown on the Drawing ("**the Works**").

- (v) The Owner is the owner of the freehold of the Property (registered under title number AGL538520).
- (vi) The Council as Highway Authority is satisfied that the Works and adoption of the Works will be of benefit to the public and is therefore entering into this Agreement.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. Interpretation

In this Agreement unless the context demands otherwise the following expressions shall have the meanings set out below:

"1980 Act" means the Highways Act 1980 as amended from time to time or any subsequent re-enactment of that act;

"1990 Act" means the Town and Country Planning Act 1990 as amended;

"Development" means the Development pursuant to the Planning Permission;

"the Drawing" means the drawing numbered LBH-YGS-CAXTONFPS Rev C annexed hereto at Schedule 3 signed by or on behalf of the parties hereto;

"the Engineer" means the Council's Engineering Consultancy Manager of their Engineering Consultancy Unit or such other qualified person as the Council shall appoint from time to time for the purpose of carrying out the functions of the Engineer herein contained;

"Highways Sum" means the sum of ~~£447,587.91~~ ^{N 536.47} ~~£314,727.41~~ (adjusted in accordance with any proportional increase in the Index from the date hereof to the date on which payment is made);

"Index" means the All-Items Index of Retail Prices issued by the Office for National Statistics or any replacement publication or index agreed by the Council in the event that the All-Items Index of Retail Prices becomes no longer maintained;

"the Property" means the land and premises known as land on the east side of Caxton Road, London shown edged red on the plan at Schedule 2 of this Agreement;

"Occupy" means that any part of the Development (or any part as may be specified) is occupied for the purposes set out in the Planning Permission (which for the avoidance of doubt shall not include occupation for the purposes of fitting out or marketing the Development);

"Planning Permission" means the grant of planning permission for the Development with planning reference HGY/2020/0795 and granted on 4 May 2021;

"the Road" means the carriageways and footways of the road or roads hereinbefore referred to including any off-site highway drainage shown on the Drawing and includes the footpaths street lighting all verges service strips service margins vehicular crossings road surface water drainage system (if any) and all other things ancillary thereto;

"Section 106 Agreement" means the agreement entered into by the Council and the previous owner, Caxton Road LLP and Hemnall Limited pursuant to section 106 of the 1990 Act and other enabling powers dated 4 May 2021 as varied by deed of variation dated 6 July 2021 in relation to the Planning Permission;

"the Specified Date" means the date upon which any obligation arising under this Agreement is due to be performed;

"Statutory Undertaker" means a 'statutory undertaker' as defined in Section 329(1) of the 1980 Act and British Telecommunications plc;

"Working Day" means any day from Monday to Friday inclusive which is not Christmas Day, Good Friday, a statutory holiday or a day between Christmas Day and New Year's Day;

"the Works" means the works to the Road specified in Schedule 1;

2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies corporate, unincorporated associations and partnerships.
3. Words denoting an obligation on a party to do any act manner or thing include an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction.
4. Any reference to an Act of Parliament shall include any modification extension or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom.
5. Headings in this Agreement are for reference purposes only and are not incorporated into this Agreement and shall not be deemed to be an indication of the meaning of the parts of the Agreement to which they relate.

6. Unless the context otherwise requires, reference to any clause, sub-clause or schedule or appendix is to a clause, sub-clause, schedule or appendix (as the case may be) of or to this Agreement.
7. References to any party shall include the successors in title to that party and any person deriving title through or under that party in the case of the Council shall include the successors to its statutory functions.
8. No waiver (whether express or implied) by the Council or any breach or default of the Owner or their agents servants or assigns in performing or observing any of the covenants or obligations contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any such covenant or obligation or from acting upon any subsequent breach thereof.
9. If any provision in this Agreement shall in whole or in part be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.
10. Save as otherwise expressly provided in this Agreement, any agreement, approval, certificate, confirmation, consent or expression of satisfaction to be given by any party under this Agreement shall be given in writing and will not be unreasonably withheld or delayed.

Statutory Powers

11. This Agreement is made pursuant to Part V and section 278 of the 1980 Act and section 16 of the Greater London Council (General Powers) Act 1974 and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other powers thereby enabling and the obligations and covenants herein contained are covenants to which these statutory provisions apply and are enforceable by the Council.
12. Nothing in this Agreement shall fetter prejudice or affect the Council's powers to enforce any specific obligation or term or condition nor shall anything contained in this Agreement fetter prejudice or affect any provisions rights powers duties and obligations of the Council in the exercise of any of its statutory functions.

The Works

13. The Council hereby covenants that it will by itself or its contractor carry out the Works and that it will co-ordinate manage and supervise the Works.
14. Immediately following the completion of this Agreement the Council and the Owner shall use all reasonable endeavours to agree:
 - a. a mutually acceptable date for the commencement of the works ("**the Agreed Start Date**") such as to leave at least four months from agreement until commencement of the Works; and
 - b. a timetable for the progression of the Works.
15. A change in the Agreed Start Date notified by one party to the other shall only be permitted if necessitated by circumstances outside the control of either party and in any event shall be such as to leave at least one month

from notification until practical commencement of the Works provided that there shall not be deemed to be any contravention caused by any unavoidable delay arising from the need to open any part of the Works or any other land in the vicinity of the Works for purposes connected with the provision of services by statutory authorities or Statutory Undertakers or arising from circumstances relating to the physical nature of the land being developed or of the Works which were not reasonably foreseen by both parties at the commencement of the Works and in each case the Council shall notify the Owner in writing of any such delay and shall provide details of the same.

16. The Owner shall permit the Council its contractor and their respective workmen and agents upon giving reasonable notice to the Owner to have access to the Site for all proper purposes connected with the carrying out of the Works and it is agreed that the Council and its contractor shall maintain reasonable access for the Owner and its workmen in connection with operations to construct the Development in accordance with the Planning Permission.
17. In the event that any leaseholder interest remains or part thereof the Owner shall ensure that any such leaseholder shall permit the Council its contractor and their respective workmen and agents upon giving reasonable notice to the Owner to have access to the Site for all proper purposes connected with the carrying out of the Works and it is agreed that the Council and its contractor shall maintain reasonable access for the Owner and its workmen in connection with operations to construct the Development in accordance with the Planning Permission.

18. The Owner covenants not to Occupy the Development until the Engineer has confirmed that the Works have been completed.

Council's Covenants

19. The Council covenants with the Owner:

- a. to construct the Works in accordance with the terms of this Agreement and to maintain reasonable access to the Development;
 - b. to use the Highway Sum solely for carrying-out the Works and the future maintenance of the same;
 - c. to notify the Owner of completion of the Works;
- to engage the Engineer to confirm Works have been completed as soon as the Works have been completed and in any event within 10 Working Days of completion.

The Highways Sum

20. The Owner covenants to pay to the Council the Highways Sum in full on completion of this Agreement and it is agreed that the Works will not commence until the Highways Sum has been received in full by the Council in accordance with this Agreement.
21. The Owner shall not be relieved of any obligation to pay the Council in whole or in part by reason of any non-compliance with or variation from the Drawing on the part of the Council or its contractor which is immaterial having regard to the nature and purpose of the Works or which arises from circumstances relating to the physical nature of the land being developed or of the works which were not reasonably foreseen by both parties at the

commencement of the Works and provided that such non-compliance or variation has been notified to the Owner in writing.

22. On completion of the Works the Council will provide the Owner with a final account of the total costs incurred by the Council in connection with the Works together with such supporting evidence as the Owner may reasonably require to support the calculation of the total costs and within 28 days of the provision of the final account the Owner shall pay to the Council the amount by which the said total costs exceed the paid Highways Sum or the Council shall re-pay to the Owner the amount by which the paid Highways Sum exceeds the said total costs and no interest shall be deemed to arise on any sum overpaid.
23. For the avoidance of doubt, the Highways Sum does not include any costs arising from the need to move or divert any apparatus or equipment belonging to a Statutory Undertaker to facilitate and carry out the Works and the Owner covenants to pay any such costs to move or divert apparatus or equipment belonging to a Statutory Undertaker within 28 days of receipt of written demand thereof from the Council or Statutory Undertaker.

Legal Costs

24. On or prior to the completion of this Agreement the Owner shall pay to the Council its legal costs of entering into this Agreement.

Indemnity

25. The Owner hereby indemnifies the Council, Statutory Undertakers and other bodies services in respect of all actions claims demands liability expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works or any part or parts thereof including but without prejudice to the generality of the foregoing any liability of the Council as a result of the application of the provisions of the 1980 Act the Compulsory Purchase Act 1965 Land Compensation Act 1973 or by virtue of the Noise Insulation Regulations made thereunder including any liability falling upon the Council by virtue of it exercising its discretionary powers under the said Regulations save for any claims arising as a result of the negligence of the Council.
26. The Council shall:
- a. Notify the Owner of any actions liabilities costs claims or proceedings in respect of which it intends to make a claim to the Owner pursuant to clause 26 above as soon as reasonably practical;
 - b. keep the Owner reasonably informed of all progress of which it is or becomes aware of in connection with that matter;
 - c. allow the Owner to make representations and to have due regard to such representations in connection with any particular claim; and
 - d. On receipt of a written request from the Owner to the Council to submit to the Owner a written breakdown of any fees costs disbursements compensation or interest that it seeks to recover from the Owner in accordance with clause 26 above.

The Owner

27. The Owner hereby agrees to its interests in the Property being bound by the terms of this Agreement and covenants and undertakes for itself and its successors-in-title with the Council that it shall not carry out or procure the Development or any part of the Development without performing and observing the terms and obligations contained in this Agreement.

The Mortgagee

28. The Mortgagee hereby consents to the Owner entering into this Agreement and acknowledges that from the date hereof that the Owner and the Property shall be bound by the terms of this Agreement and if the Mortgagee becomes and mortgagee in possession of the Property or any part thereof it shall be bound by the provisions of this Agreement as if it were a person deriving title from the Owner and the Mortgagee further agrees that it shall not carry out or procure the Development or any part of the Development without performing and observing the terms and obligations contained in this Agreement.

Licence

29. The Owner hereby gives to the Council (insofar as reasonably necessary for the Council to carry out and complete the Works in accordance with this Agreement) to enter onto the Property and remain on the Property with or without workmen, plant and machinery and (subject to later making good) to break open the surface and to carry out works in, on, above or under land and/or highway.

Third Parties Rights

30. The parties agree that no provision of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this agreement.

Arbitration

31. In the event of any dispute or difference arising out of or relating to this Agreement it may be referred to the arbitration of a person to be agreed between the parties by one party giving notice to the other party and in the event of a failure to appoint an agreed arbitrator within one month of a party giving such notice the dispute or difference shall be referred to a person to be appointed by the President for the time being of the Institution of Civil Engineers on the written application of either party.

Late Payment

32. The Owner agrees with the Council that where any payment or part payment which the Owner is obliged to pay to the Council pursuant to this Agreement is not paid on the Specified Date, then (but without prejudice to any other right of the Council) interest at 4% above the base rate of the Barclays Bank plc from time to time calculated on a daily basis shall be paid by the Owner to the Council on and in addition to the outstanding balance of the payment from the date on which the payment or party payment became due to the actual receipt by the Council.

Notice

33. Any notice that may be given under this Agreement shall be sufficiently served if sent by prepaid first class post to the registered office of the Owner and/or (as applicable) the Owner and for the Council to the Ann Cunningham, London Borough of Haringey Traffic Management, 5th Floor Alexandra House, 10 Station Road, Wood Green N22 7TR or such other address as may be notified in writing by the Council to the Owner and/or Owner from time to time.

Confirmation of interest

34. The Owner hereby warrants and confirms that apart from the Parties hereto there are no other persons with a legal estate or beneficial interest in the rents and profits or proceeds of sale of the Property or any part thereof.

Jurisdiction

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

SCHEDULE 1

The Works

Works to the Road as shown on the Drawing.



SCHEDULE 2

The Property



SCHEDULE 3

The Drawing

IN WITNESS to the above the parties have executed this document as a Deed
and the Council has caused its Common Seal to be affixed the day and year first
above written:

THE COMMON SEAL of THE)
LONDON BOROUGH OF)
HARINGEY was affixed by order:)



Authorised Officer

M. J. C.

Senior Lawyer - Contracts

EXECUTED AS A DEED by **WESTON HOMES PLC**)
acting by affixing its common seal in the presence of)
two directors or a director and the company secretary)

Director:

GRAEME MITCHELL

Director/Secretary:

DAWN WYLIE

EXECUTED AS A DEED by)
HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED)
acting by two directors or a director and the company secretary)

Shard Khatri

Director:



Director/Secretary:

Attorney

SCHEDULE 3

The Drawing



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KEY PROPOSED

-  Extent of the Caxton Road / Mayes Road S278 works
-  Footway resurfacing area with 600 x 600 ASP.
-  Proposed footway reconstruction area paved with Charcon Andover Fleck light Grey or equivalent approved
-  Proposed cycle path construction with HRA. Green/Black colour surface course
-  Footway and Cycle path merging areas - to become share use, use Grey block paving on 50mm sand cement bed and on 150mm concrete base
-  Install Grey 400 x 400 x 65mm precast concrete tactile paving at pedestrian crossing
-  Install new 150x300 Granite kerbs constructed as per LBOH approved detail
-  Existing kerbs and edging at the boundary of new Cycle path and Footways to be replaced with conservation kerbs and edging kerbs.
-  Existing waiting and loading restrictions to be reinstated in front of new kerb lines
-  Introduce new gullies and connect to existing falls where possible or connect to existing sewers. Remove existing gullies and reinstate footways where necessary
-  Carriageway to be planned 25mm and resurfaced within the extent of the works before installing new road marking
-  Proposed HRA speed table or raised junction as per LBOH standard details.

Note

- 1) All new features to be constructed as per LBOH standard details or as approved during construction phase.
- 2) Dimensions shown are approximate and may vary during the construction phase as per the approvals of the LBOH.

Shand design

[Signature]

Rev	Description	Checked	Date
Project:	S278 DEVELOPMENT MAYES ROAD / CAXTON ROAD Former Petrol Station Site		
Title:	PROPOSED S278 HIGHWAY WORKS		
Author:	https://www.lbh.gov.uk/transport/roadworks/roadworks.html		
Designed:	SP/YGS	Drawn:	YGS
Scale:	NTS	Checked:	DG
Orig. No:	LBH-YGS-CAXTONFPS	Date Drawing Created:	April 2022
Rev:	C	Rev:	C
Environment & Neighbourhoods Direct Services			

M. O'Q
Senior Lawyer - Contracts