

DATED

23rd December

2010

BATH AND NORTH EAST SOMERSET COUNCIL
as Local Planning Authority

CREST NICHOLSON OPERATIONS LIMITED
as Developer

WESSEX WATER SERVICES LIMITED
as Owner

ENIC GROUP LIMITED, PZ KEMSLEY AND VD GOLDSTEIN
as Mortgagee

CREST NICHOLSON (BATH WESTERN) LIMITED
as CNBWL

AGREEMENT

under section 106 of the Town and Country Planning Act 1990
(and other powers) relating to land at the Western Riverside Development Area, Midland
Road, Bath

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DATED 23rd December 2010

PARTIES

- (1) **BATH AND NORTH EAST SOMERSET COUNCIL** of Guildhall High Street Bath BA1 5AW (the "**Council**")
- (2) **CREST NICHOLSON OPERATIONS LIMITED** (company no 01168311) whose registered office is at Crest House Pycroft Road Chertsey Surrey KT16 9GN (the "**Developer**")
- (3) **WESSEX WATER SERVICES LIMITED** (company no 02366648) whose registered office is at Claverton Down Road, Claverton Down, Bath, Bath and North East Somerset BA2 7WW (the "**Owner**")
- (4) **ENIC GROUP LIMITED** (company no 00164062) whose registered office is at 748 High Road, London N17 0AP; **PAUL ZEITAL KEMSLEY** of 28 Newlands Avenue, Radlett, Hertfordshire WD7 8EL and **VINCENT DANIEL GOLDSTEIN** of 79 Russell Road, Buckhurst Hill, Essex IG9 5QF (the "**Mortgagee**")
- (5) **CREST NICHOLSON (BATH WESTERN) LIMITED** (company no 04736430) whose registered office is at Crest House Pycroft Road Chertsey Surrey KT16 9GN ("**CNBWL**")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated, is a local authority for the purposes of section 111 of the 1972 Act and is also a local highway authority for the purposes of the 1980 Act and therefore authorised by virtue of Part V of the 1980 Act to carry out improvements to certain highways within the Council's Area.

- (B) The Council is further the freehold owner of the Council's Land.
- (C) The Developer is the freehold owner of the Developer's Land and the party proposing to carry out development pursuant to the Planning Permission.
- (D) The Owner is the freehold owner of the Owner's Land. CNBWL has an equitable interest through an agreement dated 20 April 2007 in the Owner's Land.
- (E) The Council, the Developer and the Owner acknowledge that the Developer and the Owner do not own or have interests in the entirety of the Site. As a result, at the time this Agreement is entered into the planning obligations in this Agreement bind only the Developer's Land and the Owner's Land by operation of this Agreement.
- (F) Within the context described in Recital (E) and in order to ensure comprehensive development and an appropriate approach to the enforceability of planning obligations relating to the Development pursuant to the Planning Permission the Council require the obligations on the part of the Developer and the Owner in this Agreement to be complied with and impose a condition in the Planning Permission to require further agreements to be entered into to bind that part of the Site not part of the Developer's Land and the Owner's Land provided that such requirement does not affect the land outside the Owner's Land but within the Site and owned by the Owner as at the date of this Agreement, upon which development will not take place under the Planning Permission.
- (G) The Mortgagee has a charge over part of the Yellow Land.
- (H) The Developer submitted the OPA1 Application to the Council. At a series of meetings of the Council's Development Control Committee, most recently on 7 July 2010, the OPA1 Application has been considered. It has been resolved that the

OPA1 application (as revised) should be approved *inter alia* subject to satisfactory completion of a legal agreement making provision for the obligations covenants and undertakings herein contained.

- (I) The Developer is also promoting the Phase 1 Development, which is intended to comprise the first part of the Development, through the DPA1 Application. The planning permission issued pursuant to the DPA1 Application will have its own planning obligations under the DPA1 Agreement. It is not intended that the obligations under the DPA1 Agreement shall duplicate liability under this Agreement and so it is made clear at Clauses 1.13, 1.14 and 2.9 of this Agreement how they affect and interrelate with the provisions of this Agreement.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Allotment Payment" means a sum of sixty one thousand one hundred and eighty pounds (£61,180) to be applied towards the provision of new and enhancement of existing allotments by the Council within the vicinity of the Site.

"BCIS" means the indices of the Building Cost Information Service for the South West Region.

"BRTS" means the Bus Rapid Transit System being promoted by the Council at the date of this Agreement, or such other rapid transport system promoted by the Council that has substantially the same effects for the Development, or another public transport scheme or schemes which the Developer agrees acting reasonably is of direct benefit to the Development.

"BRTS Contribution" means the sum of one million nine hundred and eighty eight thousand nine hundred pounds (£1,988,900) to be applied to the delivery and provision of BRTS.

"Bath Western Riverside SPD Area" means the area covered by the Bath Western Riverside supplementary planning document adopted in March 2008.

"Baxter" means the Monthly Bulletin of Indices - Price Adjustment Formula Indices (Civil Engineering) Series 2 published on behalf of the Department for Trade and Industry weighted in the proportions below set out against each such index namely: labour - 30%; plant - 20%; aggregates - 12%; bricks and clay - 1%; cement - 7%; cast iron - 1%; coated roadstone - 15%; gas/oil - 6%; timber - 5%; reinforced steel - 3%, adjusted according to fluctuations (or if at any time for any reason it becomes impracticable to compile the said composite index then an index compiled in such other manner as may be agreed to by the parties).

"Blue Land" means that part of the Site coloured blue on Plan 2.

"Bridge Maintenance Contribution" means the sum of One hundred and seventy nine thousand pounds (£179,000) as a commuted sum towards the cost of maintaining the Destructor Bridge and the New Pedestrian Bridge.

"Bus Contribution" means a sum of Five hundred and seventy five thousand eight hundred pounds (£575,800) to be applied towards the provision of the Bus Service.

"Bus Service" means the provision of new and/or enhancement of existing bus services and/or associated facilities on the Upper Bristol Road and Lower Bristol Road which serve the Site and the city centre of Bath.

"CPZ Contribution" means the sum of One hundred and eleven thousand pounds (£111,000) to be applied towards the provision of controlled parking zones within the vicinity of the Development.

"Class" means a use class prescribed by the Town and Country Planning (Use Classes) Order 1987 (as amended).

"Commencement of the Development" means the carrying out of a material operation as defined in section 56(4) of the 1990 Act save that for the avoidance of doubt the carrying out of the following shall not constitute a material operation for the purposes of this Agreement and shall not (individually or collectively) amount to Commencement of the Development:

- (a) ground investigation, site investigation and site survey;
- (b) temporary fencing and hoarding;
- (c) archaeological investigations;
- (d) environmental investigations and any enabling or remediation works to the Site;
- (e) site preparation (and for these purposes the term "site preparation" shall not include any works connected with the construction of the development platform or the laying of foundations for the Development);
- (f) site clearance, demolition of existing buildings, structures and infrastructure;
- (g) the laying of sewers and services including the diversion of existing services or the installation of replacement services (including without

prejudice to the generality of the foregoing gas mains and gas governors and associated ancillary works);

- (h) works implemented under the Enabling Works Permissions including the construction of Pines Way Access and which are not implemented pursuant to the Development,

and "**Commence**" or "**Commenced**" in relation to the Development shall be construed accordingly.

"**Commencement Date**" means the date of Commencement of the Development or (as the case may be) the part of the Development in connection with which the expression is used.

"**Commercial Units**" means any useable floorspace within buildings to be provided within the Development other than Dwellings intended to be occupied by a commercial operator during the course of its business (and not a public authority).

"**Condition**" means a condition imposed on the Planning Permission.

"**Confirmatory Deed**" means a deed executed as a unilateral undertaking in compliance with the requirements of section 106 of the 1990 Act in the form as attached at Schedule 6 or in a form as may be amended from that attached provided that all such amendments are approved in writing in advance by the Council.

"**Council's Area**" means the Council's administrative area.

"**Council Highway Works**" means those works at Schedule 4 a selection of which are to be carried out by the Council at the cost of the Developer.

“Council Highway Works Payment” means the sum of Five hundred and forty two thousand three hundred pounds (£542,300) to be applied towards the cost of carrying out the Council Highway Works.

“Council Highway Works Payment Trigger” means the timings for the payment of each portion of the Council Highway Works Payment as set out in Schedule 3.

“Council’s Land” means that part of the Site shown coloured purple on Plan 2 in respect of which the Council is registered at the Land Registry with freehold title absolute under title numbers ST231916 and AV97678 and that part of the Site shown coloured orange on Plan 2 in respect of which the Council is registered at the Land Registry with freehold title absolute under title number ST218561.

“Cultural Building” means a building or part of a building to be provided within the vicinity of and for the enjoyment of (amongst others) the residents of the Bath Western Riverside SPD Area for the purposes of accommodating activities and groups carrying on artistic performances and other activities.

“Cultural Building Contribution” means the sum of Two hundred thousand pounds (£200,000) to be applied towards the construction and/or conversion and fitting out of the Cultural Building.

“Cultural Building Notice” means a notice served in accordance with paragraph 5.4 of Schedule 1 (Obligations of the Developer) to notify the Developer that the Council has obtained planning permission for the Cultural Building (to the extent that permission is required) and is ready to receive the Cultural Building Contribution. The notice will also contain a description of the proposed Cultural Building to which the Cultural Building Contribution will be applied including but not limited to a description of its location and function.

"Destructor Bridge" means the bridge marked Destructor Bridge and to be constructed between points marked indicatively A and B on Plan 3.

"Developer's Land" means that part of the Site shown coloured yellow on Plan 2 in respect of which the Developer is registered at the Land Registry with freehold title absolute under title numbers ST194640 and ST194641.

"Development" means development pursuant to the Planning Permission.

"DPA1 Agreement" means an agreement pursuant *inter alia* to section 106 of the 1990 Act in relation to the Phase 1 Development pursuant to the DPA1 Application and of even date with this Agreement.

"DPA1 Application" means the application referenced 06/04013/EFUL for 299 residential homes and apartments (Class C3); shops (Class A1); construction of roads, footways and cycleways, associated infrastructure and facilities, accommodation works and landscaping.

"Dwellings" means the residential units to be provided pursuant to the Development comprising the open market units and the affordable housing units and **"Dwelling"** shall be construed accordingly.

"Economic Development Investment" means an investment to the value of One hundred and thirty five thousand pounds (£135,000) to be made towards the enhancement of prospects for training qualifications and employment of Local Persons through the implementation of the Training and Employment Management Plan.

"Enabling Works Permissions" means permission referenced 07/00449/FUL for the provision of a footway to the rear of Victoria Buildings and provision of a replacement habitat for urban fauna dated 1 May 2008; permission referenced

07/02117/FUL for the construction of new vehicular access off Pinesway Gyratory dated 29 July 2009; and permission referred 07/02879/EFUL for enabling site works dated 22 June 2010.

“**Expert**” has the meaning assigned in Clause 8.

“**Financial Contribution**” means the Allotment Payment, the BRTS Contribution, the Bridge Maintenance Contribution, the Bus Contribution, the CPZ Contribution, the Council Highway Works Payment, the Cultural Building Contribution, the Economic Development Investment, the Library Contribution, the North Bank Public Footpath Improvements Contribution, the Oldfield Park Station Improvements Contribution, the Open Space Maintenance Payment, the Pedestrian/Cycle Path Contribution, the Police Contribution, the River Wall Maintenance Investment; the SDRP Contribution, the Social Services Contribution, the Street Cleaning Contribution, the Street Furniture Contribution, the Traffic Regulation Orders Contribution, the Victoria Bridge Contribution, the Weston Road Traffic Calming Contribution either respectively or together as the case may be.

“**First Sustainable Energy Strategy**” means the document titled BWR Energy & Sustainability Strategy Addendum April 2010 - Outline Planning Application.

“**Green Land**” means that part of the Site coloured green on Plan 2.

“**Index Linked**” means linked to the appropriate index in accordance with the provisions of Clause 9.

“**Library Contribution**” means the sum of One hundred and fifty thousand pounds (£150,000) to be applied towards the Council’s library service.

“**Maintenance Period**” means a period of not less than twelve months.

“Management Company” means the incorporated entity with responsibility for the maintenance of such areas for which sums are to be made available by the Developer for such maintenance.

“New Pedestrian Bridge” means a new pedestrian bridge marked New Pedestrian Bridge and to be constructed between points marked indicatively A and B on Plan 3.

“North Bank Public Footpath Improvements Contribution” means the sum of Two hundred and twenty five thousand pounds (£225,000) to be paid by the Developer and spent by the Council on improving the North Bank river edge public footpath and associated works including a cycle ramp off the Destructor Bridge.

“Occupation” means the physical use of land or buildings within the Development but not including any such use of such land or buildings for the purposes of construction or fitting out or occupation for marketing or display in connection with the sale or letting of any part of the Development or occupation in relation to security operations or temporary car parking and **“Occupy”** **“Occupants”** **“Occupying”** and **“Occupied”** shall be construed accordingly.

“Oldfield Park Station Improvements Contribution” means the sum of One hundred thousand pounds (£100,000) to be applied towards the refurbishment of Oldfield Park Station.

“OPA1 Application” means the application references 06/01733/EOUT for a new residential quarter including up to 2,281 residential homes and apartments (Class C3); up to 675 student bedrooms and associated communal areas (Class C3) (or alternatively up to 345 student bedrooms) (Class C3) and a primary school (Class D1); local shops, restaurants, and other community services and facilities (within Classes A1, A2, A3, A4, A5, D1); construction of new bridges, roads, footways and

cycleways; associated infrastructure and facilities; accommodation works and landscaping.

"Open Space" means those parts of the Site comprising 2.70 hectares as shown for illustrative purposes only coloured green and red on Plan 4 which are to be laid out and maintained as free publicly accessible open space.

"Open Space Maintenance Payment" means the sum of one million and thirty seven thousand pounds (£1.037m) to be made available for the maintenance of those parts of the Open Space that are to be maintained by the Council or the Management Company.

"Orange Land" means that part of the Site coloured orange on Plan 2.

"Owner's Land" means that part of the Site shown coloured blue on Plan 2 and which forms part of the title in respect of which the Owner is registered at the Land Registry with freehold title absolute under title number ST256218.

"Pedestrian/Cycle Route Contribution" means the sum of Eighty nine thousand pounds (£89,000) to be applied towards the provision of new and/or enhancement of existing pedestrian routes and/or cycle routes in the vicinity of the Development.

"Phase 1 Development" means the development to take place on part of the Yellow Land which is either the development carried out permitted pursuant to the DPA1 Application or the relevant equivalent part of the Planning Permission as the case may be.

"Plan 1" means the attached plan labelled OPA site boundary.

"Plan 2" means the attached plan labelled Land Parcels.

"**Plan 3**" means the attached plan labelled Indicative Bridges.

"**Plan 4**" means the attached plan labelled Indicative Open Space.

"**Plan 5**" means the attached plan labelled Throughroute.

"**Planning Permission**" means planning permission granted by the Council in respect of the OPA1 Application.

"**Police Contribution**" means the sum of Forty seven thousand pounds (£47,000) to be applied towards additional officers and other associated staff, accommodation and equipment.

"**Practical Completion**" means the date of issue of a certificate of practical completion pursuant to a building contract or contracts in respect of the relevant part of the Development and "**Practically Complete**" and "**Practically Completed**" shall be construed accordingly.

"**Purple Land**" means that part of the Site coloured purple on Plan 2.

"**Reasonable Endeavours**" means that the party under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this Agreement such party will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including the importance to the other parties of the fulfilment of the relevant obligation) may be reasonable to expect:

- (a) in the case of the Developer and the Council (in their capacity as landowners) of a competent commercial developer or landowner in the context of the Development; and
- (b) in the case of the Council of a competent local authority acting reasonably in the context of its statutory functions.

“**Red Land**” means that part of the Site coloured red on Plan 2.

“**Reserved Matters**” means those matters of the Development reserved for later approval by the Council and “**Reserved Matters Application**” shall be construed accordingly.

“**Reserved Matters Area**” means an area of the Site relating to a particular Reserved Matters Application.

“**River Wall Maintenance Investment**” means an investment in the maintenance of the south river walls of the River Avon for the length of the Development to the value of Two hundred and fifty thousand pounds (£250,000).

“**RPIX**” means the All Items Retail Prices Index excluding mortgage interest payments.

“**SDRP**” means the sustainable development review panel constituted in accordance with the SDRP Constitution for the purposes of reviewing and monitoring the Second Sustainable Energy Strategy and being comprised of:

- (a) one representative from the Council (be they officers or elected members);
- (b) one representative from the Developer; and

(c) two suitably qualified and experienced experts in the field of environmental sustainability and energy efficiency (one each nominated by the Council and the Developer); and

(d) one resident of the Development

or in each case their nominees in the event that one or more cannot attend a meeting.

"SDRP Constitution" means the constitution of the SDRP describing the SDRP's composition objects and terms of reference.

"SDRP Contribution" means an investment to the value of Two hundred and fifty thousand pounds (£250,000) to be made towards the costs of setting up and running the SDRP.

"Second Sustainable Energy Strategy" means a written strategy to achieve the most environmentally sustainable and energy efficient development that is reasonably and practically possible at the relevant time in relation to those Stages of the Development to take place on the Unsecured Land.

"Secretary of State" means the Secretary of State for Communities and Local Government or such other Minister of Her Majesty's Government for the time being having or discharging the functions of the Secretary of State for the purposes of the 1990 Act.

"Site" means the site of the Development as shown edged red on Plan 1.

"Social Services Contribution" means the sum of Fifty thousand pounds (£50,000) to be applied towards costs of disability adaptations for new residents at the Development.

"Stage" means the relevant stage of the Development being the development on the Yellow Land, Blue Land and Orange Land (together "**Stage 1**") or the Green Land or the Red Land or the Purple Land as the case may be.

"Street Cleaning Contribution" means the sum of Two hundred and eighty eight thousand pounds (£288,000) by way of a commuted sum towards street cleaning of those parts of the Development adopted by the Council as highway maintainable at the public expense or transferred to the Management Company for maintenance by it.

"Street Furniture Contribution" means the sum of Forty one thousand pounds (£41,000) by way of a commuted sum towards the maintenance of street furniture that is transferred to the Council.

"Sustainability Assessment" means an assessment of the performance of the Stage 1 Development against relevant and appropriate criteria (to be agreed between the Developer and the Council) which shall include a comparison of actual percentage savings achieved during the Stage 1 Development as against the percentage savings set out in the table titled "Phase 1-3 Emissions Summary" on page 7 of the First Sustainable Energy Strategy

"Sustainability Co-ordinator" means a person employed to provide advice on sustainability issues within the Development.

"Thoroughroute" means the land shown coloured yellow on Plan 5 within which vehicular, pedestrian and cycleway highway and including any on street parking will be arranged which for the avoidance of doubt will have a minimum 6.2m width for the passage of vehicles.

“Traffic Regulation Orders Contribution” means the sum of Fifty thousand pounds (£50,000) to be applied towards orders promoted pursuant to the Road Traffic Regulation Act 1984 or other statutory regime in order to mitigate actual or anticipated road traffic impacts from the Development.

“Training and Employment Management Plan” means the Training and Employment Management Plan attached at Schedule 5 (Training and Employment Management Plan).

“Travel Plan” means the travel plan for the relevant Stage of the Development (with specific attention paid to the Primary School for the relevant Stage of the Development within which the Primary School is constructed) to encourage use of modes of transport other than by private car for residents and staff of and visitors to the Development through the use inter alia of transport related initiatives including where appropriate (but not limited to) cycle/travel vouchers city car club and public transport packs.

“Travel Plan Co-ordinator” means a travel plan co-ordinator who will monitor and review compliance with the Travel Plan and shall collate and disseminate information pertaining to the Travel Plan and its operation.

“Travel Strategy Elements” means:

- (a) the provision to each resident of public transport information packs; details of car clubs operating in the area, local train stations and pedestrian/cycle routes;
- (b) a strategy for the promotion of a car club facility within the Development;
- (c) the Travel Plan;

(d) objectives, service provided and triggers for that provision.

"Unsecured Land" means the Green Land, the Red Land and the Purple Land.

"VAT" means valued added tax as defined in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it).

"Victoria Bridge" means the bridge marked Victoria Bridge between points marked A and B on plan 3.

"Victoria Bridge Contribution" means the sum of Four hundred and eighty thousand pounds (£480,000) for the purposes of the Council carrying out the Victoria Bridge Refurbishment Works.

"Victoria Bridge Refurbishment Works" means those works of non-structural refurbishment to Victoria Bridge which may include the improvement of the access road to the Upper Bristol Road as approved as part of the Planning Permission or as the Council may reasonably vary such works having first consulted with the Developer on those variations provided the works shall remain works of non-structural refurbishment.

"Weston Road Traffic Calming Contribution" means the sum of One hundred thousand pounds (£100,000) to be applied towards traffic calming and other speed control and/or driving behaviour measures on Weston Road.

"Working Day" means any day apart from Saturday Sunday Christmas Day Good Friday and any statutory bank holiday on which clearing Banks in England are open for the transaction of ordinary business.

"Workplace Coordinator" means a person whose tasks will include ensuring compliance with and delivery of the Training and Employment Management Plan

throughout the construction of the Development, and in particular the collation and maintenance of a register of all local persons employed on the Development.

"Yellow Land" means that part of the Site coloured yellow on Plan 2.

"1972 Act" means the Local Government Act 1972.

"1980 Act" means the Highways Act 1980.

"1990 Act" means the Town and Country Planning Act 1990.

- 1.2 Where in this Agreement reference is made to a clause, paragraph, Schedule, Plan or Appendix, such reference (unless the context otherwise requires) is a reference to a clause, paragraph or Schedule in this Agreement or to a Plan or Appendix attached to this Agreement.
- 1.3 Where in any Schedule or part of a Schedule reference is made to a paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that Schedule or (if relevant) part of a Schedule.
- 1.4 References in this Agreement to the Developer or Owner shall include reference to their respective successors in title and assigns and to persons claiming through or under them an interest in relation to any part of the Developer's Land and the Owner's Land respectively.
- 1.5 References to the Council in its capacity as a particular statutory authority (including without limitation the local planning authority and the local highway authority) shall include reference to any successor body exercising any of the relevant statutory powers currently vested in the Council in their said capacity as that relevant authority.

- 1.6 Words including the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.7 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies and other corporate bodies and also firms and all such words shall be construed interchangeably in that manner.
- 1.8 Words denoting an obligation on a party to do an act matter or thing include an obligation to procure that it be done and words placing a party under a restriction (including for the avoidance of doubt any obligation preventing or restricting Occupation) include an obligation not to cause permit suffer or allow infringement of the restriction.
- 1.9 Any reference to a statute or a provision thereof a statutory instrument or a provision thereof or such specification code of practice or general direction or policy or guidance as is issued under statutory authority shall include any modification extension or re-enactment thereof for the time being in force (including for the avoidance of doubt any modification extension or re-enactment made prior to the date of this Agreement) and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 1.10 Any reference to management plans or strategies or schemes shall include any amendments or variations to the same as may be agreed by the Council.
- 1.11 The word "including" shall mean including (without limitation or prejudice to the generality) any description defining term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

1.12 The Clause and paragraph headings in the body of this Agreement and in the Schedules hereto do not form part of this Agreement and shall not be taken into account in its construction or interpretation

1.13 Any reference to "Occupation" or its derivatives shall mean both occupation of the Development pursuant to the Planning Permission and the Stage 1 Development as permitted under the planning permission issued pursuant to the DPA1 Application and so if both developments have been commenced it shall mean the aggregate number of Dwellings or Commercial Units as the case may be.

1.14 If payments are made in respect of Financial Contributions under the DPA1 Agreement in relation to the Phase 1 Development then this Agreement shall not require payment of the equivalent proportion of the relevant Financial Contribution already paid.

2 STATUTORY PROVISIONS AND INTERESTS BOUND

2.1 This Agreement is made by deed pursuant to section 106 of the 1990 Act section 111 of the 1972 Act and sections 38 and 278 of the 1980 Act and all other powers so enabling the parties hereto to the intent that subject to Clause 8 the obligations herein shall bind the Developer and the Owner in relation to their respective interests in the Developer's Land and the Owner's Land and shall also bind their successors in title and assigns and persons claiming under or through them an interest or estate in the Developer's Land and the Owner's Land as if that person had been an original covenanting party in respect of such interest for the time being held by it (except where the contrary is expressly provided including without prejudice to the generality of the foregoing in Clause 10.2).

2.2 The obligations on the part of the Developer contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are

enforceable by the Council pursuant to the said section 106 or are otherwise covenants or undertakings for the purposes of sections 38 and 278 of the 1980 Act or are entered into pursuant to section 111 of the 1972 Act.

- 2.3 The obligations covenants and undertakings in this Agreement on the part of the Developer shall also be taken to be obligations covenants and undertakings on the part of the Owner in relation to its interest in the Owner's Land as if the Owner was expressly referred to in the obligation covenant or undertaking in question and all such obligations covenants and undertakings shall be enforceable accordingly by the Council.
- 2.4 The Developer and the Owner on behalf of themselves and their successors in title to the Developer's Land and the Owner's Land respectively covenant with the Council to comply with the obligations imposed upon them in this Agreement.
- 2.5 In the event that Condition 10 attached to the Planning Permission (the Overall Phasing of Development) is found to be unenforceable and is excised from the Planning Permission or is varied, replaced or is otherwise removed from the Planning Permission then the parties agree to consult in good faith with a view to ensuring this agreement achieves the intention of the parties when they entered it.
- 2.6 The Council covenants with the Developer and the Owner and with their successors in title to the Developer's Land and the Owner's Land respectively to observe and perform the obligations imposed upon it in this Agreement.
- 2.7 Simultaneously with completion of any transfer by the Council of any legal interest in the Council's Land:

- (a) to any other party to this Agreement such party will enter into a Confirmatory Deed to bind their interests into the planning obligations in this Agreement;
- (b) to any third party the Council will procure that such third party enters into a Confirmatory Deed to bind their interests into the planning obligations in this Agreement;

2.8 The Developer and the Owner each covenant with the Council that if they acquire any interest within the Site which is not as at the date of this Agreement owned by them they will as soon as possible following the completion of such acquisition enter into a Confirmatory Deed in respect of such interest so that their interests are bound into the planning obligations in this Agreement.

2.9 Without prejudice to Clause 1.14 the Developer and the Owner each covenant with the Council that if the Stage 1 Development is begun under the Planning Permission pursuant to the DPA1 Application then the equivalent part of the Stage 1 Development shall never be begun under the Planning Permission and vice versa.

2.10 The Developer hereby irrevocably and unconditionally indemnifies and keeps indemnified the Owner in full in respect of

- (a) all liabilities, payments, covenants and obligations arising under this Agreement, and
- (b) any losses, costs, expenses, demands, actions, proceedings and liabilities incurred by the Owner under this Agreement arising out of any breach or the failure of the Developer to pay any contributions or payments within the Agreement.

Provided that this indemnity shall not apply in circumstances where any act or omission by or on behalf of the Owner triggers an obligation contained in this Agreement or causes any breach of an obligation contained in this Agreement provided further that the Owner covenants with the Developer not to Commence the Development on the Owner's Land or otherwise to carry out thereon any action which either triggers an obligation under this Agreement or causes any breach of this Agreement.

3 **CONDITIONAL AGREEMENT**

The obligations on the part of the Developer contained in Schedule 1 of this Agreement shall take effect on the Commencement Date save for paragraph 3 of Schedule 1 which shall have immediate effect.

4 **QUASHING OR REVOCATION OF PLANNING PERMISSION**

If the Planning Permission is quashed or revoked or if it expires without the Development having been Commenced this Agreement shall cease to have effect.

5 **DEVELOPER'S OBLIGATIONS**

The Developer shall observe perform and comply with the obligations contained in Schedule 1 (Obligations of the Developer).

6 **COUNCIL'S OBLIGATIONS**

The Council shall observe perform and comply with the obligations contained in Schedule 1 paragraphs 1.1.1, 1.1.3 and 5.4.3 and in Schedule 2 (*Obligations of the Council*).

7 **MISCELLANEOUS PROVISIONS**

7.1 Nothing in this Agreement will prejudice or affect the rights powers duties and obligations of the Council in the exercise by it of its statutory functions save as may be permitted by law.

7.2 Without prejudice to the terms of this Agreement and the obligations imposed herein on the Developer and subject to clause 2.9 nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State on appeal or reference to her after the date of this Agreement.

7.3 All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and at any time VAT is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement and to the extent that VAT had not been previously charged in respect of that supply the person making the supply shall issue a VAT notice to the person to whom the supply was made and the VAT shall be paid accordingly provided that the parties shall consider and discuss how VAT impacts might be mitigated where permissible as a matter of law.

7.4 If any provision of this Agreement is declared by any court to be void, voidable, illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall if required amend that provision in accordance with or to give effect to the decision of the court.

- 7.5 Where this Agreement:
- (a) requires any matter to be agreed, approved, certified, consented to or determined by any party or any person on behalf of any party hereto under this Agreement such agreement, approval, certification, consent or determination shall not be unreasonably withheld or delayed and shall be given in writing and/or
 - (b) requires any report review strategy study or other document to be prepared and/or submitted to another party such report review strategy study or other document shall be prepared and submitted in writing.
- 7.6 The parties agree with one another to act reasonably and in good faith in the fulfilment of the objectives of this Agreement.
- 7.7 The Developer covenants with the Council that it will not encumber or otherwise deal with its interest in the Site or any part or parts thereof in any manner whatsoever whereby the obligations imposed by this Agreement may be prevented from being carried out.
- 7.8 No waiver (whether express or implied) by the Council of any breach of this Agreement shall constitute a continuing waiver or prevent the Council from enforcing any of the obligations contained in this Agreement or from acting upon any subsequent breach or default in respect thereof by any party hereto his successors in title or assigns or any person claiming through or under him an interest in the Developer's Land and/or the Owner's Land.
- 7.9 All interest earned on sums paid to the Council under this agreement shall be taken to form part of the principal sum and may be expended by the Council accordingly.

- 7.10 Where in this Agreement the Developer is under an obligation to use Reasonable Endeavours to achieve a stated outcome and the Developer is seeking to assert that it has used Reasonable Endeavours without having achieved the stated outcome then within ten Working Days of receipt of a written request made by the Council (which requests the Council shall not repeat unreasonably frequently) the Developer will provide to the Council written evidence of all steps taken by the Developer (as the case may be) to achieve such outcome.
- 7.11 Where in this Agreement the Council is under an obligation to use all Reasonable Endeavours to achieve a stated outcome then the provisions of Clause 7.10 shall apply as if references to the Council were references to the Developer and vice versa.
- 7.12 The Developer and the Owner shall permit the Council with or without agents surveyors and others to enter upon the Developer's Land and the Owner's Land respectively and any buildings erected thereon pursuant to the Development at any reasonable hour (but upon giving at least two Working Days prior written notice) for the purpose of ascertaining whether the obligations contained in this Agreement are being complied with and provided that the Council shall remain on the Developer's Land and the Owner's Land respectively and any buildings aforesaid only for such period as may be reasonably necessary in order to ascertain whether the provisions of this Agreement are being complied with.
- 7.13 Where a sum is due to be paid under this Agreement and is not paid on the due date then interest shall be paid to the Council on the sum by the payer at 2% above the base rate of the National Westminster Bank prevailing from time to time between the due date and the date of actual payment.
- 7.14 To the extent that the implementation of the Development renders incapable or unnecessary the compliance or further compliance with the planning obligations

contained in the previous planning agreements listed at Schedule 7 then the relevant planning obligations in such planning agreements shall no longer be of any effect in relation to the Developer's Land and/or the Owner's Land and on receipt of a written request from the Developer in relation to an identified planning obligation the Council shall provide confirmation of the same.

8 **DISPUTES**

8.1 In the event of any dispute arising between the parties to which this Clause 8 applies ("**Dispute**") the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least one representative from each party.

8.2 If the parties are unable to resolve the Dispute amicably pursuant to Clause 8.1 above then one party may by serving notice on all the other parties (the "**Notice**") refer the dispute to an Expert for determination.

8.3 The Notice must specify:

- (a) the nature basis and brief description of the Dispute;
- (b) the Clause or paragraph of this Agreement pursuant to which the Dispute has arisen; and
- (c) the proposed Expert.

8.4 In the event that the parties are unable to agree who should be appointed as the Expert within ten Working Days after the date of the Notice then either party may request the President of the Law Society to nominate the Expert at their joint expense.

8.5 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and the costs of the Dispute shall be at his discretion or in the event that he makes no determination such costs will be borne by the parties to the Dispute in equal shares.

8.6 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of his appointment to act.

8.7 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within ten Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.

9 **INDEXATION**

9.1 The relevant Financial Contribution shall be Index Linked so that such sum shall be increased or decreased (as the case may be) in accordance with the change in the relevant index from 7 July 2010 until the date of payment such change to be calculated by reference to the most recently published figures for the relevant index immediately prior to 7 July 2010 and immediately prior to the date of payment.

9.2 The relevant index for the BRTS Contribution, the Council Highway Works Payment, the North Bank Public Footpath Improvements Contribution, the Pedestrian/Cycle Path Contribution, the Weston Road Traffic Calming Contribution shall be Baxter.

9.3 The relevant index for the Cultural Building Contribution, the Oldfield Park Station Improvements Contribution, the River Wall Maintenance Investment, the Victoria Bridge Contribution shall be BCIS.

9.4 The relevant index for the Allotment Payment, the Bridge Maintenance Contribution, the Bus Contribution, the CPZ Contribution, the Economic Development Investment, the Library Contribution, the Open Space Maintenance Payment, the Police Contribution, the SDRP Contribution, the Social Services Contribution, the Street Cleaning Contribution, the Street Furniture Contribution, the Traffic Regulation Orders Contribution shall be RPIX.

10 **LIABILITY**

10.1 No party or person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement:

(a) to the extent that such breach relates to any part of the Site in which that party or person has no interest or control; and/or

(b) which occurs after a person or party has parted with its interest in the Site or if it be part only that part in respect of which such breach occurs,

save in each case in respect of any or subsisting prior breach for which it shall continue to be liable.

10.2 The obligations in this Agreement shall not be enforceable:

(a) (save where the obligation restricts or prohibits Occupation or limits the use of the unit in question to particular purposes) against individual lessees or purchasers Occupying or entitled to Occupy the Dwellings; and/or

- (b) (save where the obligation restricts or prohibits Occupation or limits the use of the unit or floorspace in question to particular purposes) against individual lessees or purchasers Occupying or entitled to Occupy the individual Commercial Units save in relation to lessees of Commercial Units holding under a lease of 99 years or more and the grant of such a lease shall comprise a parting with an interest in the Site for the purposes of a release of liability under Clause 10.1(b);

PROVIDED THAT and for the avoidance of doubt this provision shall not prevent or impede in any way the Council's ability to enforce relevant obligations and provisions against the Management Company in relation to obligations regarding the maintenance of open space or street cleaning.

10.3 The Mortgagee and CNBWL hereby acknowledge as follows:-

- (a) CNBWL acknowledges that this Agreement binds the Owner's Land and declares that its interest in the Owner's Land shall be bound by the terms of this Agreement as if the Agreement had been executed and registered as a local land charge prior to it acquiring such interest;
- (b) The Mortgagee agrees and consents to its interests being bound by and taking subject to and to the Developer entering into the agreements, planning obligations and covenants herein contained with the Council but it is hereby agreed that the Mortgagee or any other mortgagee or chargee shall not incur any liability hereunder unless and until it shall have entered into possession of the Developer's Land in which case it shall be liable under the Agreement as if it were deriving title from the Developer and, for the avoidance of doubt, the Mortgagee shall have no liability for any part of the Developer's Land of which it does not take occupation.

11 **NOTICES**

11.1 Any notice or other written communication to be served upon or given by one party to any other party under the terms of this agreement shall be deemed to have been validly served or given in the following circumstances:

- (a) if transmitted by facsimile (and confirmed by facsimile confirmation slip) when dispatched;
- (b) if delivered by hand upon delivery at the address of the relevant party; or
- (c) if sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given within two Working Days after the date of posting,

provided that if in accordance with the above provision any notice or other written communication would otherwise be deemed to be served or given after 17:00 hours such notice or other written communication shall be deemed to be served or given at 09:00 hours on the next Working Day.

11.2 The address for any notice or other written communication shall only be within the United Kingdom and is:

- (a) for the Council marked for the attention of the Divisional Director for Planning and Transport Development, Planning Services, P O Box 5006, Bath BA1 1JG with a copy to the Solicitor to the Council Planning, Legal and Democratic Services, Riverside, Temple Street, Bristol BS31 1LA;

- (b) for the Developer marked for the attention of the Company Secretary at the Developer's registered office with a copy to Messrs Hogan Lovells International LLP at Atlantic House, Holborn Viaduct, London EC1A 2FG (ref V1201/00014CM1MG);
- (c) for the Owner marked for the attention of the Company Secretary at the Owner's registered office;
- (d) for the Mortgagee or CNBWL marked for the relevant Company Secretary at the relevant address at the head of this Agreement,

or such other address as any party may notify to the others as its address of service from time to time or failing that the registered office or principal place of business marked for the attention of the Company Secretary.

11.3 In the event that a party decides that the recipients of any notice or other written communication should change from the individuals referred to in Clause 11.2 above such party shall notify the other parties in writing giving details of the replacement individual(s).

11.4 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

11.5 Any payments due to the Council under the terms of this Agreement shall be sent to the Council marked for the attention of the Divisional Director for Planning and Transport Development, Planning Services, P O Box 5006, Bath BA1 1JG with a copy to the Solicitor to the Council Planning, Legal and Democratic Services, Riverside, Temple Street, Bristol BS31 1LA.

12 **LOCAL LAND CHARGE**

This Agreement is a local land charge and shall be registered as such.

13 **CANCELLATION OF ENTRIES**

If it is satisfied that the obligation or obligations in question has/have been performed or otherwise discharged the Council shall upon the written request of the Developer (or such other party as may be responsible for performance of the obligations in question) at any time after such obligation or obligations upon the Developer or (as the case may be) such other party has/have been performed or otherwise discharged issue written confirmation thereof and thereafter forthwith place a note on the local land charges register stating that fact.

14 **MISCELLANEOUS COVENANTS**

14.1 The Developer will notify the Council of the Commencement Date in relation to each Reserved Matters Area and in relation to the Phase 1 Development and will submit a report to the Council every twelve months commencing on the Commencement Date in relation to such Reserved Matters Area and in relation to the Phase 1 Development as to the numbers of Dwellings (including a breakdown as between open market units and affordable housing units within that Reserved Matters Area or Phase 1 as the case may be) under construction and Practically Completed and subject to a lease or an agreement for lease or otherwise disposed of or subject to an agreement relating to their disposal or Occupied and will in addition notify the Council when numbers of Dwellings are Occupied so as to reach a trigger threshold stated in the obligation in this Agreement.

14.2 The Developer covenants with the Council that it will give the Council written notice of any change in ownership or creation/disposal of an interest in respect of which

this Agreement may be enforced as soon as reasonably practicable in respect of any of its interests in the Site (excluding disposals of individual Dwellings or Commercial Units to their occupiers) which may occur before all the obligations under this Agreement have been performed or discharged such notice to be accompanied by details of the transferee or other person taking the interest in question including their full name and registered office (if a company or usual address if not) together with the part of the Site purchased by reference to a plan.

- 14.3 The Developer will pay the Council's reasonable legal costs and expenses in connection with the completion of this Agreement.
- 14.4 If after the date of this Agreement the community infrastructure levy (as introduced by the Planning Act 2008) ("**CIL**") is implemented and the terms of CIL mean that any payment to HM Government would duplicate add to or overlap with any obligation of a party under this Agreement the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) if possible as the parties agree is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Agreement to all parties as at the date that they are entered into.
- 14.5 The parties acknowledge and declare that as part of the Development there is to be constructed a primary school and to the extent that the primary school (or the land on which it is to be constructed) is to be disposed to the Council or its nominee then the said disposal shall:
- 14.5.1 be at a consideration of £1 (or rent of one peppercorn as the case may be);
 - 14.5.2 be with full title guarantee;
 - 14.5.3 include all rights including rights for services necessary to enjoy the land and/or buildings for their intended purposes;

14.5.4 have as restrictions or encumbrances that would prevent or unreasonably impede for which the land and/or buildings are intended to be put.

14.5.5 notwithstanding Clause 14.5.4 be subject to any rights, restrictions or encumbrances which exist at the date of this Agreement.

15 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Save where stated otherwise any person who is not a party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms

16 **ACKNOWLEDGEMENT AS TO THE BATH WESTERN RIVERSIDE SPD AREA**

The parties acknowledge that through the obligations on its part contained in this Agreement and having regard to those parts of the Bath Western Riverside supplementary planning document adopted in March 2008 which seek comprehensive development of Bath Western Riverside the Developer is providing funding and infrastructure which will be of benefit to other development sites within the Bath Western Riverside SDP Area. Without prejudice or fetter to the Council's discretion as local planning authority, the Council will where appropriate seek planning obligations from the developers of those development sites which recognise the said benefits which they are respectively deriving from the Developer's said provision of funding and infrastructure.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Schedule 1

Obligations of the Developer (and of the Council in respect of paragraphs 1.1.1, 1.1.3 and 5.4.3)

1 TRANSPORT

1.1 Council Highway Works

1.1.1 The Council shall decide which of the Council Highway Works it will carry out having regard to the need to prioritise those works that are required to be provided as a result of the Development on the Yellow Land and shall be under no obligation to carry out any particular items of the Council Highway Works SAVE THAT once it has commenced an item of Council Highway Works then it shall complete that item as soon as reasonably practicable following commencement.

1.1.2 The Developer shall not Occupy more than the relevant number of Dwellings as identified in the Council Highway Works Payment Trigger until the relevant portion of the Council Highway Works Payment has been made.

1.1.3 The Council may elect to use any part of the Council Highway Works Payment to carry out highway works other than the Council Highway Works if:

- (a) those other highway works directly mitigate the effects of the Development by increasing junction and/or route capacity and/or catering for increased demand for pedestrian crossing facilities,
- (b) the Council has first notified in writing to the Developer the scope of the other highway works it intends to carry out, and

- (c) the Developer has first agreed in writing the scope of those other highway works.

1.2 The Developer shall not Occupy:

1.2.1 more than 400 Dwellings until the sum of £1,000,000, being part of the BRTS Contribution, has been paid to the Council.

1.2.2 more than 750 Dwellings until the sum of £988,900, being the balance of the BRTS Contribution, has been paid to the Council.

1.3 **Use of Throughroute**

The Throughroute shall not be used or developed for any use otherwise than as a highway for vehicles pedestrians and other forms of road traffic.

1.4 **CPZ Contribution**

1.4.1 The Developer shall not Occupy more than 750 Dwellings until it has paid £50,000 to the Council being part of the CPZ Contribution.

1.4.2 The Developer shall not Occupy more than 1,250 Dwellings until it has paid £61,000 to the Council being the balance of the CPZ Contribution.

1.5 **Pedestrian/Cycle Route Contribution**

The Developer shall not Occupy any Dwellings on the Green Land or the Red Land until it has paid to the Council the Pedestrian/Cycle Route Contribution.

1.6 Weston Road Traffic Calming Contribution

The Developer shall not Occupy more than 1,000 Dwellings until it has paid to the Council the Western Road Traffic Calming Contribution.

1.7 Oldfield Park Station Improvement Contribution

The Developer shall not Occupy any Dwellings on the Green Land or the Red Land until it has paid to the Council the Oldfield Park Station Improvements Contribution.

1.8 North Bank Public Footpath Improvements Contribution

The Developer shall not Occupy more than 750 Dwellings until it has paid to the Council the North Bank Public Footpath Improvements Contribution.

1.9 Traffic Regulation Orders Contribution

1.9.1 The Developer shall not Occupy more than 750 Dwellings until it has paid to the Council the sum of £25,000 being part of the Traffic Regulation Orders Contribution.

1.9.2 The Developer shall not Occupy any Dwellings on the Green Land or the Red Land until it has paid the Council the sum of £25,000 being the balance of the Traffic Regulation Orders Contribution.

1.10 Street Furniture and Street Cleaning

1.10.1 On the dates that each road and/or footway within the Development is formally adopted as highway maintainable at the public expense or the responsibility for such maintenance is formally transferred to the Management Company in a legally enforceable transfer the Developer shall pay to the Council or the Management

Company, as appropriate, a pro rated amount of the Street Cleaning Contribution calculated as a percentage of the area of the relevant roads and/or footways as a proportion of the overall area of the roads and/or footways within the Development.

- 1.10.2 The Developer shall pay to the Council on the date 12 months after first Occupation of the 250th Dwelling, the 750th Dwelling, the 1,250th Dwelling and the 1,750th Dwelling on each occasion a sum equal to one quarter of the Street Furniture Contribution.

2 **GREEN TRAVEL**

2.1 **Travel Plan Investment**

- 2.1.1 The Developer shall invest annually the sum of £10,000 in a Travel Plan Co-ordinator for a period of at least three years up to a total investment of £30,000 from the date of Occupation of the First Dwelling.

2.2 **Green Travel Strategy**

- 2.2.1 The Developer shall not Occupy any Dwellings or Commercial Units within any Stage of the Development until it has submitted to the Council and the Council has approved a strategy for the relevant Stage to encourage occupiers of the Dwellings and/or Commercial Units, (as the case may be) in that Stage to travel by means other than private car incorporating, as a minimum, the Travel Strategy Elements.
- 2.2.2 The Developer shall implement fully the strategy referred to in paragraph 2.2.1 from the date of Occupation of the first Dwelling within the relevant Stage to the date of Occupation of the last Dwelling in such Stage.

2.2.3 The Developer shall commit at least the total sum of £171,000 to the implementation of the strategies in accordance with this paragraph 2.2.

2.3 **Bus Service**

2.3.1 The Developer shall pay the Bus Contribution in five instalments as follows:

2.3.2 The Developer shall not Occupy more than 50 Dwellings until it has paid to the Council £100,000 being the first instalment of the Bus Contribution.

2.3.3 The Developer shall not Occupy more than 500 Dwellings until it has paid to the Council £100,000 being the second instalment of the Bus Contribution.

2.3.4 The Developer shall not Occupy the earlier of more than 1,000 Dwellings or any Dwellings on the Green Land and the Red Land until it has paid to the Council £100,000 being the third instalment of the Bus Contribution.

2.3.5 The Developer shall not Occupy the later of more than 1,000 Dwellings or any Dwellings on the Green Land or the Red Land until it has paid to the Council £100,000 being the fourth instalment of the Bus Contribution.

2.3.6 The Developer shall not Occupy more than 1,650 Dwellings until it has paid to the Council £175,800 being the fifth instalment of the Bus Contribution.

2.4 **Open Space Maintenance Payment**

2.4.1 On the date that each tranche of Open Space is formally adopted for maintenance by the Council or formally transferred to the Management Company for maintenance by it under a legally enforceable transfer the Developer shall pay to the Council or the Management Company, as appropriate, a pro rated amount of

the Open Space Maintenance Payment at a rate of £38.33 per m² (or other figure as calculated in accordance with paragraph 2.4.2).

2.4.2 On the Occupation of the final Dwelling in each Stage the parties shall recalculate the rate referred to in paragraph 2.4.1 with reference to the balance of the Open Space Maintenance Payment and the balance of the Open Space for the remaining Stages.

2.5 **Victoria Bridge**

2.5.1 If on the date 18 months after the Commencement of Development the Developer has not commenced the Victoria Bridge Refurbishment Works then the Developer shall immediately pay the Victoria Bridge Contribution to the Council.

2.5.2 If on the date 30 months after the Commencement of Development the Developer has commenced but not completed the Victoria Bridge Refurbishment Works then the Developer shall immediately pay to the Council such sum as the Developer and the Council agree represents the proper cost of the balance of the Victoria Bridge Refurbishment Works remaining to be completed or in the absence of agreement such cost as is properly certified by a jointly instructed independent surveyor provided that such payment shall not exceed the Victoria Bridge Contribution.

2.5.3 To the extent that the Victoria Bridge Refurbishment Works have not been commenced as provided for in paragraph 2.5.1 and to the extent that any statutory consents are required for the carrying out of the Victoria Bridge Refurbishment Works the Developer shall pay up to a total of £20,000 (twenty thousand pounds) for the Council's fees and costs in respect of seeking those statutory consents within 28 days of written requests from the Council and upon production to the Developer of invoices properly evidencing that such fees and costs have been incurred by the Council.

2.5.4 In the event that the Council is paid the Victoria Bridge Contribution the Developer shall also make available to the Council at no cost all its plans and technical drawings relating to the Victoria Bridge for the purposes of pursuing any applications for statutory consents or otherwise designing the Victoria Bridge Refurbishment Works.

2.6 **River Wall Maintenance**

2.6.1 The Developer shall ensure that the Management Company shall not be made responsible for the maintenance of the river walls east of the destructor bridge to the south of the River Avon within the area adjacent to the Development until the Developer has put the Management Company in funds of £125,000 out of the River Wall Maintenance Investment.

2.6.2 The Developer shall ensure that the Management Company shall not be made responsible for the maintenance of the river walls west of the destructor bridge to the south of the River Avon within the area adjacent to the Development until the Developer has put the Management Company in funds of £125,000 out of the River Wall Maintenance Investment.

2.6.3 For the avoidance of doubt the requirements of paragraphs 2.6.1 and 2.6.2 are in addition to and not in replacement of any requirements as part of the Planning Permission to carry out remediation works to the river walls as part of the Development.

2.7 **Bridge Maintenance**

2.7.1 On the Practical Completion of the Destructor Bridge or if later the date of formal adoption of the Destructor Bridge by the Council the Developer shall pay the Council £125,000 being part of the Bridge Maintenance Contribution.

2.7.2 On the Practical Completion of the New Pedestrian Bridge or if later the date of formal adoption of the New Pedestrian Bridge by the Council the Developer shall pay the Council the sum of £54,000 being the balance of the Bridge Maintenance Contribution.

3 **ECONOMIC DEVELOPMENT**

The parties recognise the requirements of employment law, and the fact that Local Persons cannot be compelled to participate in the Developer's compliance with the Local Training and Employment Scheme and within that context it is agreed that prior to Commencement of the Development the Developer shall implement and thereafter comply with the Training and Employment Management Plan as part of which the Developer shall make the Economic Development Investment.

4 **SUSTAINABILITY**

4.1 **Energy Strategies**

4.1.1 The Developer shall implement and comply with the measures and commitments set out in section 4 of the First Sustainable Energy Strategy in respect of the development carried out during the Stage 1 Development provided that the indicative plant sizing in relation to the natural gas-fired CHP and the biomass boiler for such Stage 1 Development shall be as follows:

(a) 210kW natural gas-fired CHP

(b) 550kW biomass boiler.

4.1.2 The Developer shall not Commence development on the Unsecured Land of the Development until it has submitted to the Council and obtained the Council's

approval of the Second Sustainable Energy Strategy in respect of the Unsecured Land.

4.1.3 The Developer shall implement and comply with the approved Second Sustainable Energy Strategy in respect of the development carried out on the Unsecured Land.

4.1.4 The Second Sustainable Energy Strategy for the Unsecured Land shall be properly informed by the manner in which the First Sustainable Energy Strategy has operated in respect of the Yellow Land and in particular the achievement of the objectives set out in the First Sustainable Energy Strategy.

4.1.5 The Developer shall, following Occupation of the 750th Dwelling within the Stage 1 Development, commission an independent consultant to carry out the Sustainability Assessment and such independent assessment shall inform the content of the Second Sustainable Energy Strategy.

4.2 **Sustainable Development Review Panel**

4.2.1 The SDRP shall be formally constituted at least 4 months prior to the submission of the first Reserved Matters Application in respect of the Unsecured Land and prior to the SDRP having been formally constituted the Developer shall have submitted to and obtained the Council's approval of the SDRP Constitution.

4.2.2 The Developer shall arrange the meetings of the SDRP which shall be hosted by the Council and shall take place every six months.

4.2.3 The Developer shall co-operate with the SDRP and provide it and the Council with any information either may reasonably require in order to consider the performance of the Developer in achieving the goals and objectives of the Second Sustainable Energy Strategy.

4.2.4 Each year the SDRP will review in accordance with its terms of reference the Second Sustainable Energy Strategy to ensure that it still operates to achieve the most environmentally sustainable and energy efficient development that is reasonably and practically possible at the relevant time and the SDRP will publish a report to the Council and the Developer of their findings.

4.2.5 The Developer shall make the SDRP Contribution by way of investment towards the costs of setting up and running the SDRP in the following amounts:

(a) £75,000 to be made available by way of investment value upon the formal constitution of the SDRP;

(b) £50,000 to be made available by way of investment value following the Occupation of 1,000 Dwellings;

(c) £50,000 to be made available by way of investment value following the Occupation of 1,300 Dwellings;

(d) £75,000 to be made available by way of investment value following the Occupation of 1,700 Dwellings.

4.2.6 The obligations of the Developer in relation to the SDRP shall cease upon the date of Occupation of the last Dwelling in the final Stage of the Development.

4.3 **Construction Standards**

4.3.1 The Developer shall use its reasonable endeavours to access sources of public funding in order to assist it in its aspiration to achieve Level 4 of the Code for Sustainable Homes (as defined at the date of this Agreement).

- 4.3.2 The Developer shall construct all Dwellings to Level 4 of the Code for Sustainable Homes (as defined at the date of this Agreement) if either:
- (a) funding is received pursuant to paragraph 4.3.1, and it is viable to do so;
or
 - (b) the law requires it.
- 4.3.3 All Dwellings shall be constructed to at least Level 3 of the Code for Sustainable Homes (or successor or replacement standard) (such standard to be construed by reference to the applicable standard of the date of this Agreement in respect of the Stage 1 Development and the date of the first Reserved Matters approval for the relevant Stage after the Stage 1 Development).
- 4.3.4 The Developer shall use its Reasonable Endeavours in respect of all Commercial Units in a Stage to construct them so as to achieve BREEAM "excellent" standard and where it is not possible to achieve "excellent" then the Commercial Unit must achieve "Very Good" (such standards to be construed by reference to the applicable standards at the date of this Agreement in respect of the Stage 1 Development and the date of the first Reserved Matters approval for the relevant Stage after the Stage 1 Development).
- 4.3.5 The Development will incorporate on-site renewable energy solutions to deliver a reduction in carbon emissions in accordance with the First Sustainable Energy Strategy.
- 4.3.6 As part of the Development the Developer shall deliver at least one zero carbon building but there shall be no requirement on the Developer to deliver it in the Yellow Land.

4.4 **Sustainability Co-ordinator**

The Developer shall pay prior to Occupation of the 750th Dwelling on the Green Land and/or Red Land a sum of £90,000 to the Council for the employment of a Sustainability Co-ordinator, who shall be located within the Council's offices during the initial occupation of the Development but who shall be located at the sustainable living centre following its completion.

5 **MISCELLANEOUS**

5.1 **Social Services contribution**

The Developer shall not Occupy any Dwelling in either the Red Land or the Green Land until it has paid the Social Services Contribution to the Council.

5.2 **Library contribution**

The Developer shall not Occupy more than 1300 Dwellings in the Development until it has paid the Library Contribution to the Council.

5.3 **Police contribution**

The Developer shall not Occupy more than 1300 Dwellings in the Development until it has paid the Police Contribution to the Council.

5.4 **Cultural building contribution**

5.4.1 Subject to the provisions of this paragraph 5.4 the Developer shall pay the Cultural Building Contribution to the Council prior to the Occupation of 1750 Dwellings

5.4.2 The obligation to make the payment under paragraph 5.4.1 shall be contingent upon the Council having first served the Cultural Building Notice on the Developer

5.4.3 For the avoidance of doubt the Council will not serve the Cultural Building Notice after 1750 Dwellings have been Occupied

5.5 **Allotment contribution**

The Developer shall not Occupy any Dwellings on the Green Land or the Red Land until it has paid the Allotment Contribution to the Council.

Schedule 2

Obligations of the Council

1 APPLICATIONS UNDER PLANNING PERMISSION

Upon receipt of any Reserved Matters Application or any other application pursuant to Conditions subject to the Developer complying with all necessary procedures applying to such application in a timely fashion and acting in accordance with best practice the Council will deal expeditiously with such application.

2 FINANCIAL CONTRIBUTIONS

2.1 The Council will:

- (a) use the payments (including any interest accrued thereon) received pursuant to Schedule 1 solely for the purpose or purposes for which such monies are allocated and intended in accordance with the terms of this Agreement;
- (b) pay such monies into an interest bearing account as soon as practicable following receipt; and
- (c) maintain a record of expenditure which shall be made available to the Developer upon reasonable request.

2.2 In the event that any sum paid to the Council in accordance with Schedule 1 remains unspent upon the expiry of the relevant period calculated in accordance with this paragraph 2 then the Council shall repay such sum together with interest earned thereon to the Developer (or such other party as shall have made the

payment) such repayment to be made within 20 Working Days of the end of the said relevant period.

2.3 For the purposes of paragraph 2.2 above the relevant period for the sums paid pursuant to paragraphs 1.7, 1.9, 2.3, 4.2.5, 5.1 - 5.4 (inclusive) of Schedule 1 to this Agreement shall be 5 years starting with the date of receipt of each payment.

2.4 For the purposes of paragraph 2.2 above the relevant period for the sums paid pursuant to paragraphs 1.1.2, 1.2, 1.5, 1.6, 1.8 and 2.5.1 of Schedule 1 to this Agreement shall be 10 years starting with the date of receipt of each payment.

2.5 For the avoidance of doubt the Bridge Maintenance Contribution, the Open Space Maintenance Contribution, the Street Cleaning Contribution and the Street Furniture Contribution shall never be repaid.

2.6 The Council will maintain such of the Open Space, the Streets and the Street Furniture as it is responsible for maintaining in an appropriate state and condition

3 **HIGHWAY WORKS**

Subject to Clause 5 and the payment of the Council's reasonable and proper costs without prejudice to its statutory responsibilities and discretion under the relevant legislation or common law the Council agrees to assist the Developer in obtaining any traffic regulation orders, traffic management orders or other consents, orders and approvals under the Road Traffic Regulation Act or the 1980 Act or other legislation as may be necessary to provide cycle lanes, changes to vehicular traffic movements or other works forming part of the Highway Works to enable the same to be carried out in a timely manner in accordance with the Developer's programme for the execution of such works or as may be required or reasonably requested by the Developer.

Schedule 3

Council Highway Works Payment Trigger

The Council Highway Works Payment shall be paid in accordance with the following timings:

1. First payment of £150,000 payable prior to Occupation of 100 Dwellings
2. Second payment of £100,000 payable prior to Occupation of 700 Dwellings
3. Third payment of £44,000 payable prior to Occupation of 1,000 Dwellings
4. Fourth payment of £100,000 payable prior to Occupation of 1,400 Dwellings
5. Fifth payment of £148,300 payable prior to Occupation of 1,700 Dwellings

Schedule 4

Council Highway Works

- 1 Works on Locksbrook Road/Upper Bristol Road Junction and BRT crossing.
- 2 Works on Windsor Bridge Road/Upper Bristol Road Junction.
- 3 Park Lane/Upper Bristol Road Junction.
- 4 Lower Bristol Road/Brougham Hayes Junction.
- 5 Improvements to Marlborough Lane/Upper Bristol Road Junction.
- 6 Works to Lower Bristol Road in vicinity of Dorset Close.

Schedule 5

Training and Employment Management Plan

<p>1.</p>	<p>This document is the Training and Employment Management Plan ("the Plan") referred to in:</p> <p>(a) Paragraph 3 of Schedule 1 to the Section 106 Agreement dated [***] made between Bath and North East Somerset Council (1) Crest Nicholson Operations Limited (2) Crest Nicholson (Bath Western) Limited (3) Wessex Water Services Limited (4) Enic Group Limited, P Z Kemsley and V D Goldstein (5) relating to the planning application and development known as OPA1, and</p> <p>(b) Paragraph 3 of Schedule 1 to the Section 106 Agreement dated [***] made between Bath and North East Somerset Council (1) Crest Nicholson Operations Limited (2) Enic Group Limited, P Z Kemsley and V D Goldstein (3) relating to the planning application and development known as DPA1</p>
<p>2.</p>	<p>The Plan contains details of the objectives and mechanisms for the promotion, as part of the redevelopment of Bath Western Riverside, of the skills and training of the local labour market in respect of the construction phase of the 299 dwelling units permitted under DPA1. It provides (in Section 20) for a review of initiatives at the end of that stage of the development.</p>
<p>3.</p>	<p>All of the objectives and the commitments set out in this Plan are on the basis of being permissible under employment law both in the UK and European Union.</p> <p>The objectives of this plan are to :</p> <ul style="list-style-type: none"> ▪ Provide opportunities for local residents to access jobs created during the

	<p>construction phase of the development.</p> <ul style="list-style-type: none"> ▪ Support the development of skills within the local community
4.	<p>EMPLOYMENT MANAGEMENT PLAN</p> <p>The objectives of the Employment Management Plan are to :</p> <ul style="list-style-type: none"> ▪ Provide opportunities for local persons to access jobs created during the construction phase of the development. ▪ Demonstrate the use of local labour from within the Developer’s company and project team, as well as all appointed contractors and sub-contractors
5.	<p>The Meaning of Local Persons</p> <p>In the first instance a Local Person shall refer to a resident of the Bath and North East Somerset area, incorporating the urban area of Bath, Midsomer Norton & Radstock and Keynsham, and the surrounding and outlying rural districts and residing within one of the postcodes sub sets in Appendix 1.</p>
6.	<p>In the second instance this shall be extended to also include the areas covered by the neighbouring unitary authorities of the West of England sub-region. This incorporates the City of Bristol and the South Gloucestershire and North Somerset unitary authority areas.</p>
7.	<p>In the third instance Local Persons may be considered to include any resident outside of the Bath & North East Somerset district or West of England sub-region but within a 25 mile radius of the development site/City of Bath as illustrated by the map and outlined by the post code sub sector list in Appendix 1.</p>
8.	<p>The opportunities for recruitment and training will fall into four distinct categories:</p>

	<ul style="list-style-type: none"> • The Developer's staff • The consultant team • Contractors & Sub-contractors • Suppliers
9.	<p>During the construction phase the Developer will endeavour to ensure 20% of the staff employed on the site under the above categories fall within the definition of "local persons" as set out above within the order of priority set out above in Sections 5, 6 and 7 to seek to achieve the overall 20% figure, where commercially viable.</p>
10.	<p>TRAINING PLAN</p> <p>The aim of the Training Plan is to provide opportunities for local persons to not only access additional job opportunities through, for example, apprenticeships, but to use this large development to enable those working on it to improve their skills and to increase their qualifications. It is in accordance with the objectives of the Council's Economic Strategy and the West of England Employability & Skills Plan. Appendix 1 sets out the justification for this requirement and the Plan therefore includes ways in which training can be promoted and made accessible and available to people on site, when they have finished work.</p>
11.	<p>The objectives of the Training Plan are:</p> <ol style="list-style-type: none"> 1. To provide and support local training opportunities 2. To improve the skills of local people 3. To develop the basic skills of those employed on the site 4. To increase the number of apprenticeships in the B&NES area 5. To work with the Bath and North East Somerset Learning and Skills Partnership to deliver the above objectives effectively and efficiently.

<p>12.</p>	<p>The opportunities arising under this Training Plan fall into the following categories:</p> <ol style="list-style-type: none"> 1. The provision of employment for unemployed local persons 2. The provision of apprenticeships for local persons 3. The promotion and provision of basic skills training and development for those employed on site 4. The up-skilling of those employed on site through the promotion of government funded training initiatives 5. The provision of on-site visits for local education and learning providers, through engaging with schools, Further Education Colleges and Universities.
<p>13.</p>	<p>This Training Plan is to be delivered in collaboration with Bath and North East Somerset Learning and Skills Partnership, the local body which brings together learning and training providers, Connexions and information, advice and guidance services, the local authority, the West of England Skills and Competitiveness Board and Jobcentre Plus.</p>
<p>14.</p>	<p>In order to deliver this Training Plan, the following will be provided by the Developer from the Commencement of development (as defined in the Section 106 Agreement):</p> <ol style="list-style-type: none"> 1. An onsite training centre which can be used by training providers for training delivery, for information, advice and guidance purposes and for apprenticeship and NVQ assessment support. This centre will need to be visible and accessible to workers e.g. adjacent to the on-site canteen, and available between the hours of 8.00 a.m. to 8.00 p.m. (for workers to use to access information and undertake training when they have finished a shift). It will need a minimum of two rooms i.e. assessment space (to complete NVQ portfolios) and training space (e.g. to deliver basic skills training) and will need web access (to undertake on-line tests, to use web-based learning resources). All use falling

	<p>outside normal site operating hours should be non-intrusive and low noise impact.</p> <p>2. Investment to facilitate the employment of a Training Co-ordinator whose role will be to work with employers and employees to promote training opportunities, to organise upskilling opportunities and sessions on information, advice and guidance on learning and training and to manage the on-site training centre.</p>
<p>15.</p>	<p>The Developer will be eligible to register costs in relation to the setting-up of the training centre, (assumed to be a portacabin), the costs of rental if applicable and the costs of heating and electricity for the centre against the relevant Economic Development Investment amount under DPA1 and OPA1 as appropriate. Any costs the Developer wishes to claim with regard to the training centre will need to be agreed in advance with the Bath and North East Somerset Learning and Skills Partnership and will not exceed an overall sum of £15,000.</p>
<p>16.</p>	<p>The Training Co-ordinator will be provided by the Bath and North East Somerset Learning and Skills Partnership and will be employed through one of the member organisations. This will ensure that all the local learning and skills services are able to support the achievement of the objectives of this role. The Developer will meet the employment costs of the Training Co-ordinator who will work to a role and job specification agreed by the Bath and North East Somerset Learning and Skills Partnership, the Council and the Developer. The costs of the Training Co-ordinator will also include costs of employment termination at the end of the project. The Training Co-ordinator will be employed on the basis of a 0.4 Full Time Equivalent post, i.e. the equivalent of two days per week</p> <p>The costs of employing the Training Co-ordinator will be limited to £15,000 per annum and a maximum allowance of £5,000 will be identified to meet the costs of</p>

	employment termination if necessary.
17.	The Developer will provide a maximum of £10,000 to the B&NES Learning Partnership to support the development of training materials and the delivery of training courses to provide opportunities under the Training Plan in the categories identified in paragraph 12. The payment of £10,000 will be made on the Commencement of development (as defined in the Section 106 Agreement) and will be taken into account as part of the overall investment figure of £75,000.
18.	<p>The Developer undertakes to support the Training Co-ordinator to deliver the following outputs. The specific deliverables of this Training Plan are as follows:</p> <ol style="list-style-type: none"> 1. The employment, through sub-contractors of 10 skilled unemployed people. 2. The employment of 10 new apprentices who qualify as local persons. 3. The promotion and provision of Basic Skills training in Literacy, Language and Numeracy for those workers requiring this (It is expected that a minimum of 10% of the site's workforce could improve their basic skills). 4. The promotion and provision of up-skilling training, e.g. NVQs, funded through government funded schemes. (It is expected that a minimum of 10% of the sites workforce could upgrade their skills). 5. An agreed programme of school/college/university support opportunities to include e.g. teacher development and site visits for students.
19.	It is recognised that there needs to be flexibility regarding the numbers of skilled unemployed people and new apprentices employed on the site of Bath Western Riverside at any one time. There will be occasions when it is not appropriate for all of the 10 skilled unemployed people or all of the 10 new apprentices to be employed on the BWR site because there will not be absolute continuity of work for them on the site. During such periods those employing the relevant individuals will identify

	<p>work for the individuals on other projects. It is also recognised that the references to the employment of 10 skilled unemployed people and 10 new apprentices is a single commitment by the Developer and not a "year on year" commitment.</p>
20.	<p>Review</p> <p>Following completion of development under DPA1 the success of the Plan will be reviewed by the Developer and the Council (in collaboration with the B&NES Learning Partnership) and both parties will agree appropriate steps under the Plan for the next stage of the development.</p>
21.	<p>Monitoring and Evaluation</p> <p>The Training & Employment Management Plan will be monitored regularly through the Project Steering Group who:</p> <ul style="list-style-type: none"> • will meet every four months • will consist of senior representatives from the Developer, the site manager, the local authority and the Bath and North East Somerset Learning and Skills Partnership. <p>The Project Steering Group will evaluate the Plan annually and make appropriate amendments as and if required. The Training Co-ordinator will provide reports for the Project Steering Group.</p>
22.	<p>The Developer has committed make an investment to the value of £75,000 over the development period of DPA1 into the Local Employment and Training Plan and to make an investment to the value of £135,000 over the development period of OPA1 into the Local Employment and Training Plan. Proof of expenditure will be provided by the Developer and by the B&NES Learning Partnership and will be monitored by</p>

	the Project Steering Group.
23.	The investment will be made according to the above Training Plan, first priority being the provision of the on-site training centre and the employment of the Training Coordinator.
24.	The Developer and the B&NES Learning Partnership will provide an investment value forecast for the above activities at the beginning of the development, which will be agreed and reviewed in the Project Steering Group and updated on a regular basis.

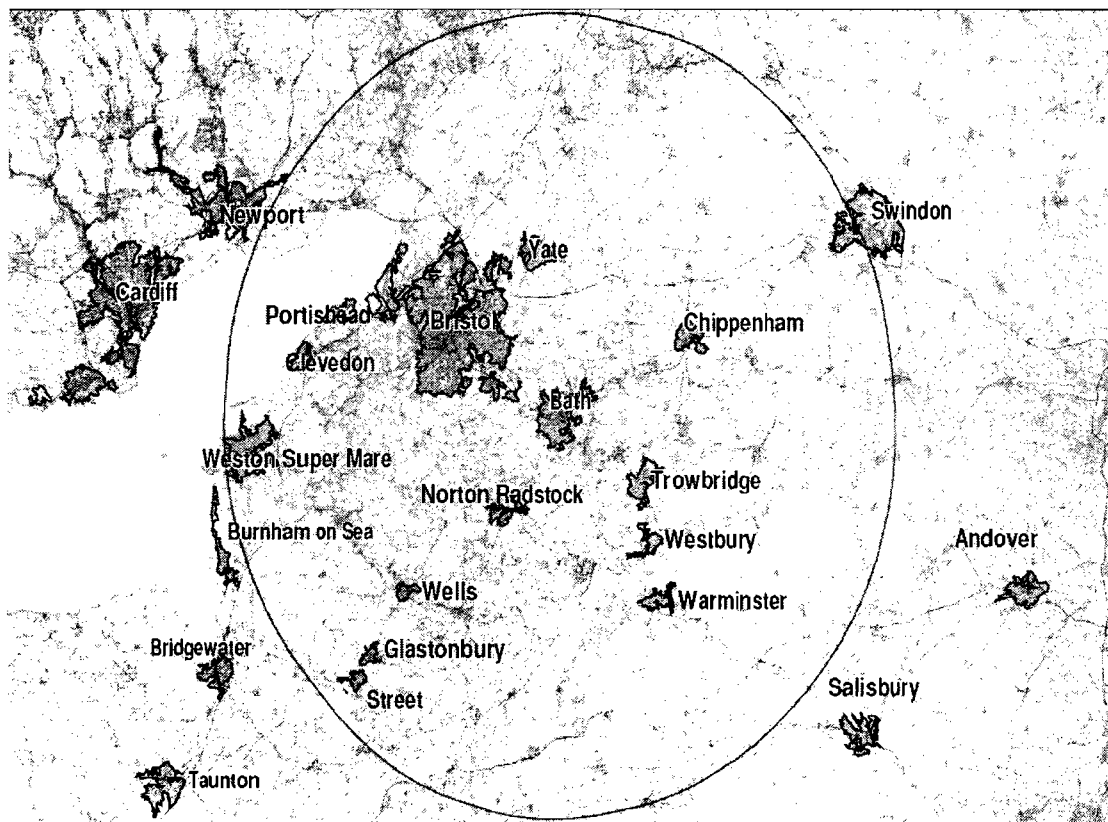
APPENDIX 1

The Meaning of Local Persons

In the first instance a Local Person shall refer to a resident of the Bath and North East Somerset area, incorporating the urban area of Bath, Midsomer Norton & Radstock and Keynsham, and the surrounding and outlying rural districts and residing within one of the postcodes sub sets below:

In the second instance this shall be extended to also include the areas covered by the neighbouring unitary authorities of the West of England sub-region. This incorporates the City of Bristol and the South Gloucestershire and North Somerset unitary areas.

In the third instance Local Persons may be considered to include any resident outside of the Bath & North East Somerset district or West of England sub-region but within a 25 mile radius of the development site/City of Bath as illustrated by the map and outlined by the post code sub sector list below:



Postcode Sub Sector List

BA1	BA15	BS13	BS31	GL2	SN1
BA2	BA16	BS14	BS32	GL5	SN4
BA3	BA22	BS15	BS34	GL6	SN5
BA4	BS1	BS16	BS35	GL7	SN6
BA5	BS2	BS20	BS36	GL8	SN8
BA6	BS3	BS21	BS37	GL9	SN9
BA7	BS4	BS22	BS39	GL10	SN10
BA8	BS5	BS24	BS40	GL11	SN11
BA9	BS6	BS25	BS41	GL12	SN12
BA10	BS7	BS26	BS48	GL13	SN13
BA11	BS8	BS27	BS49	GL15	SN14
BA12	BS9	BS28	SP3	NP16	SN15
BA13	BS10	BS29	SP7	NP26	SN16
BA14	BS11	BS30	SP8		
			TA11		

THE TRAINING PLAN: ACCESS TO INFORMATION, ADVICE, GUIDANCE & TRAINING OPPORTUNITIES

Access to information, advice and guidance is of key importance and a central aim of this Training Plan is to ensure that the Developer works in collaboration with the local authority and the Bath and North East Somerset Learning and Skills partnership to effectively promote and encourage a range of training opportunities particularly across apprenticeships, basic skills and occupationally relevant qualifications such as NVQs.

The provision of apprenticeships is a major element of the government's skills strategy and the Bath and North East Somerset Economic Development strategy. Apprenticeships provide new entrants to occupations with a balanced mix of on-site training and assessment, technical qualifications acquired through day release attendance at local training providers and the development of the key and functional skills of literacy, numeracy and information technology.

Evidence shows that there is a clear need for workers in the construction industry to develop and enhance levels of the basic skills of numeracy, literacy and language (particularly for migrant workers). The development and improvement of basic skills not only brings benefits to employers but also to the employee in terms of career development and employment opportunities.

Improving occupational skill levels is also an important part of the local Economic Development strategy and through engaging training providers government funding can be secured to enhance the skills and qualification base of the workforce, particularly in terms of NVQ level.

Schedule 6

Form of Confirmatory Deed

DATED [•]

PARTIES

- (1) **BATH AND NORTH EAST SOMERSET COUNCIL** of Guildhall High Street Bath
BA1 5AW (the "**Council**"); [and]
- (2) [(the "**Covenantor**")]; and
- (3) [•] (the "**Mortgagee**")¹

BACKGROUND

- (A) The Council is inter alia the local planning authority for the purposes of the 1990 Act
- (B) The Covenantor is [the freehold owner]² of the Covenantor's Land as successor in title to [•]³ following the Relevant Disposal [subject to the [•]]⁴
- (C) The OPA1 Planning Agreement contains a provision at clauses 2.7 and 2.8 requiring the execution of a confirmatory deed in the event of a transfer of any legal interest to a third party

¹ or other chargeholder as the case may be - all new interests to be bound

² or other interest as the case may be

³ insert name of transferor/disponor

⁴ describe mortgagee's/other interested party's interest

- (D) In accordance with clause [2.7] [2.8]⁵ of the OPA1 Planning Agreement, the parties intend to enter into this Confirmatory Deed following the Relevant Disposal

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"1990 Act" means the Town and Country Planning Act 1990

"Covenantor's Land" means the land shown edged red on the plan attached to this Confirmatory Deed registered at HM Land Registry under title number [•]⁶

"OPA1 Planning Agreement" means the agreement made under section 106 of the 1990 Act between (1) the Council (2) Crest Nicholson Operations Limited (3) Wessex Water Services Limited (4) ENIC Group Limited, Paul Zeital Kemsley and Vincent Daniel Goldstein and (5) Crest Nicholson (Bath Western) Limited and dated [•]⁷ relating to planning permission 06/01733/EOUT

"Relevant Disposal" means the disposal of the Covenantor's Land to the Covenantor by way of [•]⁸ dated [•]⁹

- 1.2 Where in this Confirmatory Deed there are defined terms not included in clause 1.1 above then they shall carry the meaning in the OPA1 Planning Agreement and

⁵ delete as appropriate

⁶ insert title number

⁷ insert relevant date of agreement

⁸ describe relevant instrument e.g. "transfer of freehold title" or "grant of leasehold title"

⁹ insert date of instrument

clauses 1.2-1.12 of the OPA1 Planning Agreement shall apply to the interpretation of this Confirmatory Deed

2 **DECLARATION AND COVENANT**

2.1 The Covenantor [and the Mortgagee]¹⁰ declare[s] and covenant[s] with the Council that all its interests in the Covenantor's Land are now bound by and subject to the obligations of the [Developer] [and] [Owner]¹¹ in the OPA1 Planning Agreement as if they had been an original covenanting party to the OPA1 Planning Agreement in relation to the Covenantor's Land

2.2 The Covenantor [and the Mortgagee]¹² declare[s] and covenant[s] with the Council to comply with the obligations of the [Developer] [and] [Owner] contained in the OPA1 Planning Agreement in relation to the Covenantor's Land provided that the Covenantor [and the Mortgagee] shall have no liability in relation to any breaches of obligations committed by others in the OPA1 Planning Agreement occurring before the date of this Confirmatory Deed.

2.3 The parties to this Agreement declare and acknowledge that the OPA1 Planning Agreement continues in full force and effect notwithstanding the execution of this Confirmatory Deed

2.4 The obligations on the part of the Covenantor [and the Mortgagee] contained in clause 2 of this Confirmatory Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council pursuant to the

¹⁰ and other interested party

¹¹ as the case may be depending on the predecessor in title of the Covenantor

¹² and other interested party

said section 106 as local planning authority as against the covenantor [and the Mortgagee]¹³ and those deriving title from them.

3 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Save where stated otherwise any person who is not a party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms

This Confirmatory Deed has been entered into on the date stated at the beginning of this Confirmatory Deed

Executed as a deed by affixing the common seal of **BATH AND NORTH EAST SOMERSET COUNCIL** in the presence of:)
)
)

Authorised Signatory

Signed as a deed by [●]¹⁴ acting by:)

Director

Director/Secretary

[Signed as a deed by [●]¹⁵ acting by:)
)

Director

Director/Secretary]

¹³ and other interested party

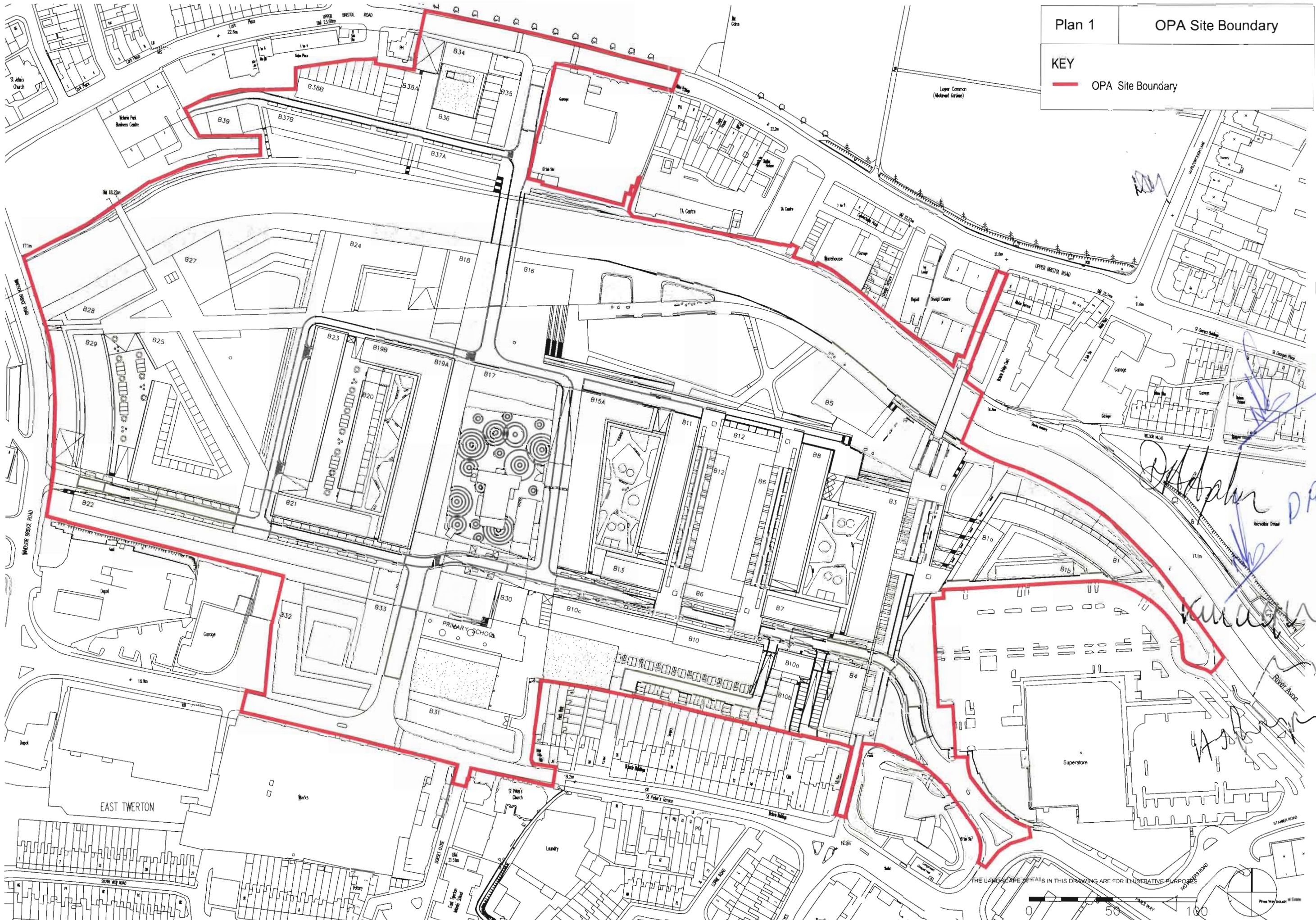
¹⁴ name of Covenantor

¹⁵ Name of mortgagee/interested party

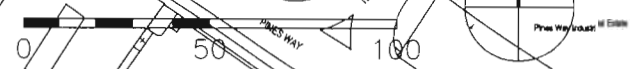
Schedule 7**Previous Planning Agreements**

Date	Description	Parties
19 May 1982	Section 52 Agreement	(1) The County Council of Avon (2) The Bath City Council (3) J Sainsbury Plc (4) The British Railways Board
24 May 1985	Section 52 Agreement	(1) The County Council of Avon (2) The Bath City Council (3) Homebase Limited (4) The British Railways Board
1 December 1997	Section 106 Agreement relating inter alia to highway works and not the agreement of the same date referenced FC/1088514.01	(1) Bath and North East Somerset District Council (2) J Sainsbury Plc (3) Homebase Limited
1 December 1997	Second Section 106 Agreement	(1) Bath and North East Somerset District Council (2) J Sainsbury Plc (3) Homebase Limited
23 March 1998	Deed of Variation	(1) Bath and North East Somerset District Council (2) J Sainsbury Plc (3) Homebase Limited
2 June 1999	Deed of Variation	(1) Bath and North East Somerset District Council (2) Sainsbury's Supermarket Limited (3) Homebase Limited

Plan 1	OPA Site Boundary
KEY	
— OPA Site Boundary	



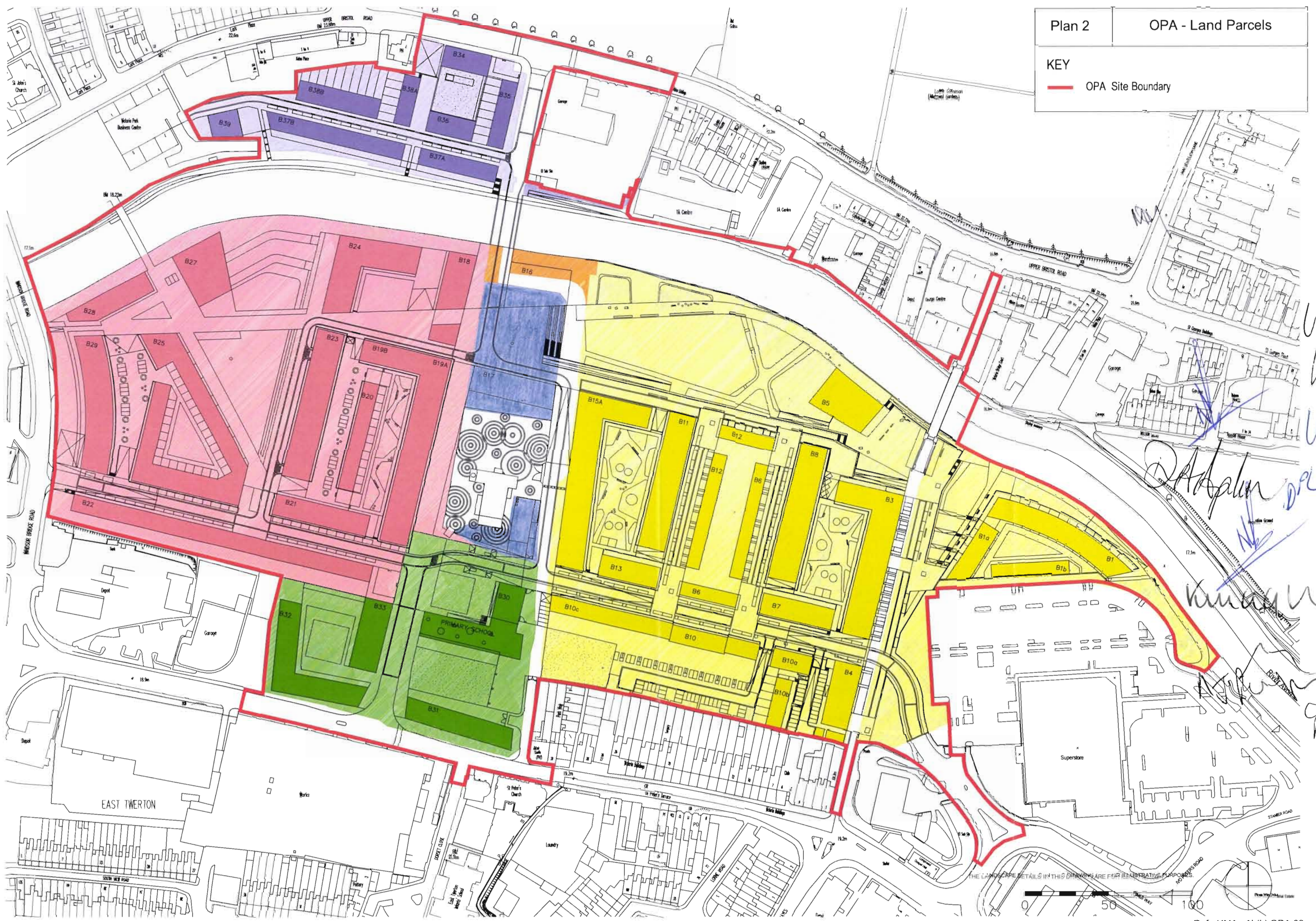
Handwritten notes and signatures:
 OPA
 PR
 [Signature]







Plan 2

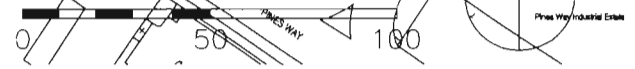
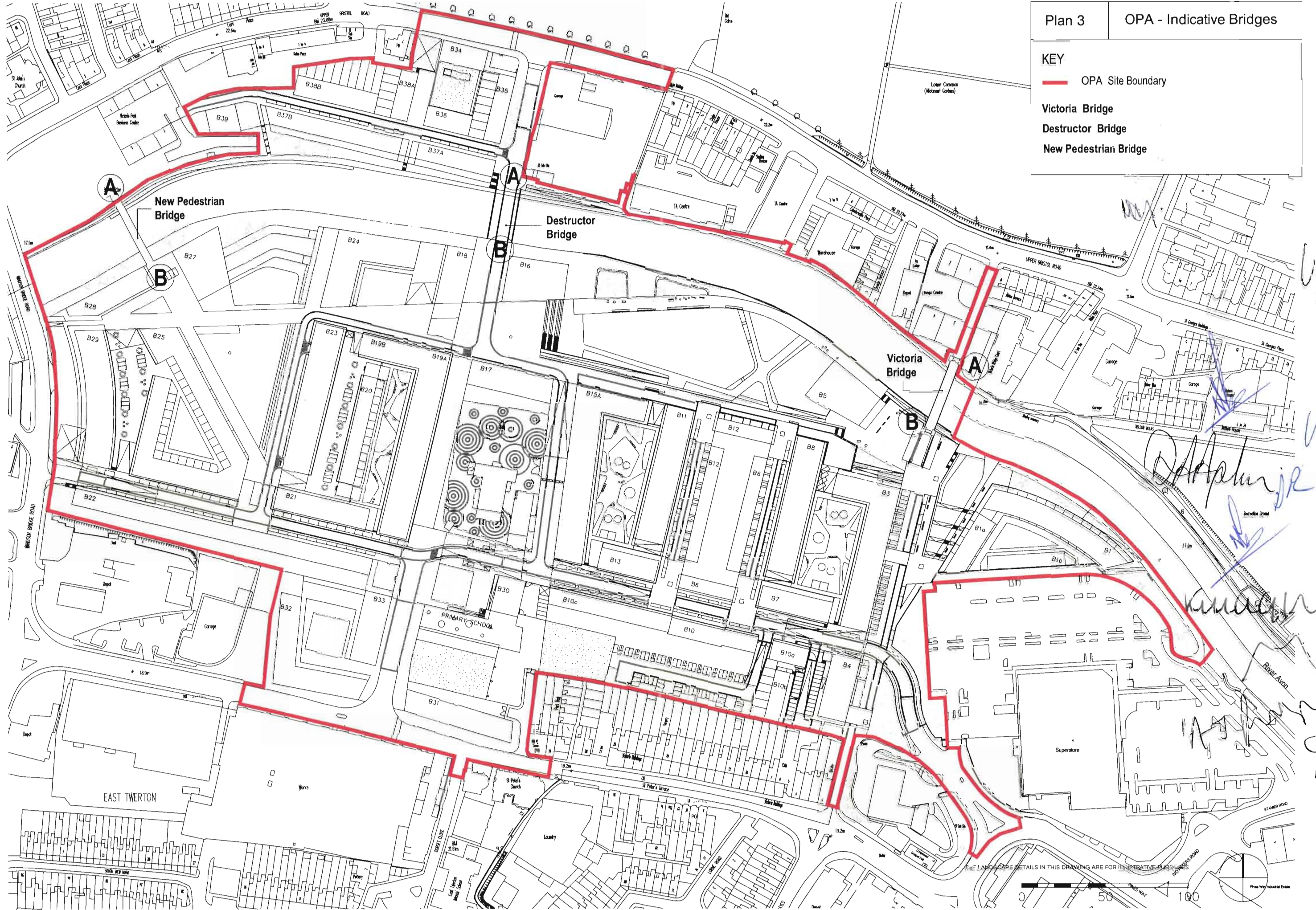
KEY

— OPA Site Boundary



Plan 3




Plan 3	OPA - Indicative Bridges
KEY	
	OPA Site Boundary
	Victoria Bridge
	Destructor Bridge
	New Pedestrian Bridge



Plan 4



Plan 4 OPA - Indicative Open Space

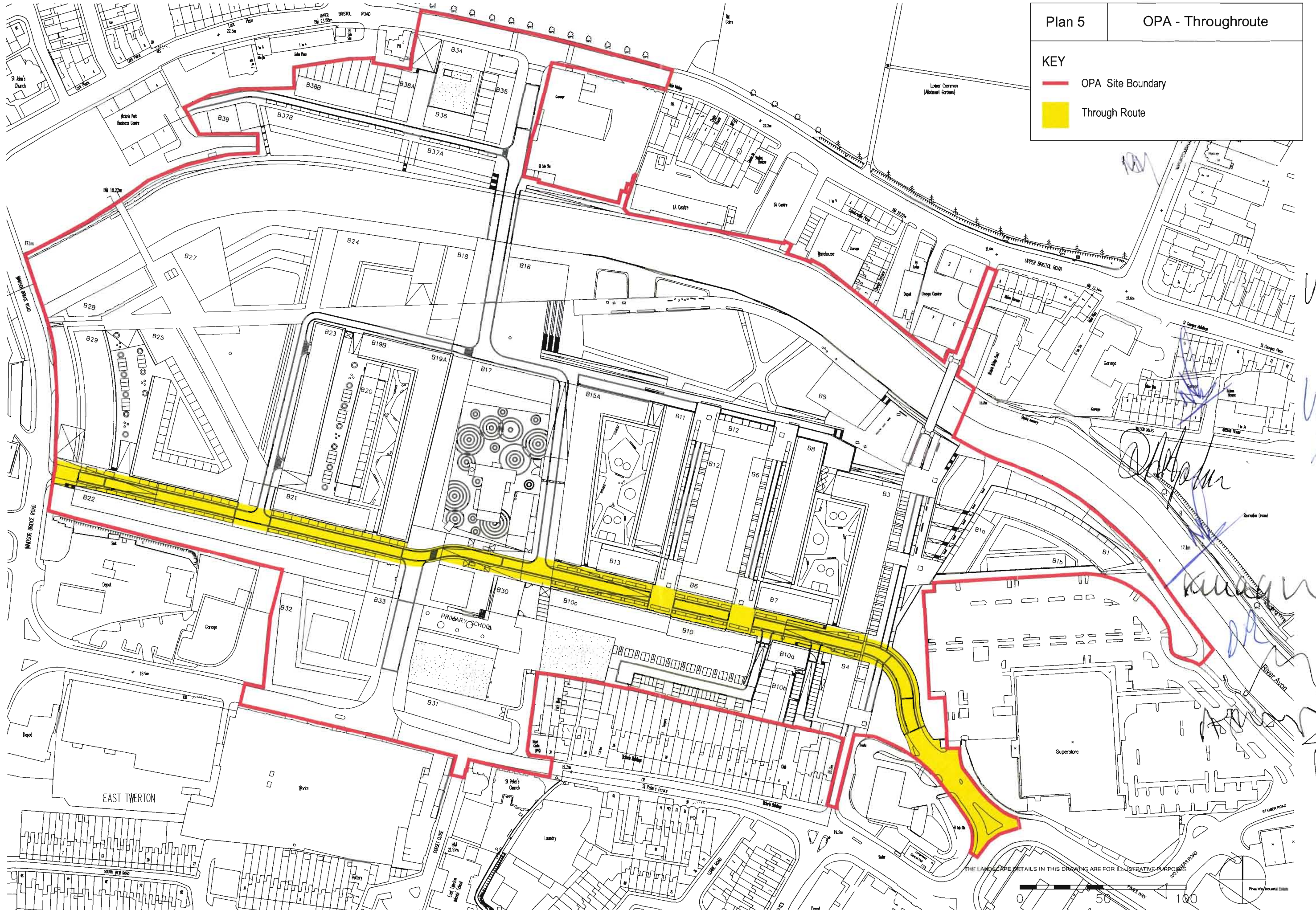
KEY

-  OPA Site Boundary
-  To be adopted
-  To be maintained by the Management Company



Plan 5

Plan 5	OPA - Throughroute
KEY	
	OPA Site Boundary
	Through Route



EXECUTION PAGE



Executed as a deed by affixing the common seal of **BATH AND NORTH EAST SOMERSET COUNCIL** in the presence of:)
)
)

Authorised Signatory

Signed as a deed by **CREST NICHOLSON OPERATIONS LIMITED** acting by:)
)

Director

Director/Secretary

Signed as a deed by **CREST NICHOLSON (BATH WESTERN) LIMITED** acting by:)
)

Director

Director/Secretary

Signed as a deed by **WESSEX WATER SERVICES LIMITED** acting by:)
)

Director

Director/Secretary

Signed as a deed by **ENIC GROUP LIMITED** acting by:

)
)

Director

Director/Secretary

Signed as a deed by **Paul ZEITAL KEMSLEY** in the presence of:

)
)

Witness' signature

Witness' address

10 COG
10 UPPER BANKS
E14 5JJ

acting by
his attorney
VINCENT DANIEL
GOLDSTEIN

Signed as a deed by **VINCENT DANIEL GOLDSTEIN** in the presence of:

)
)

Witness' signature

Witness' address

425 WATFORD WAY
LONDON NW4.