

Dated

11th March

1987

WE HEREBY CERTIFY THAT THIS IS A TRUE
AND CORRECT COPY OF THE ORIGINAL.
DATED THIS 14th March 1987
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MAGGE & CO.
SOLICITORS,
BIRMINGHAM. 2

MAXIM HOMES LIMITED (1)

NORWICH UNION FIRE INSURANCE
SOCIETY LIMITED (2)

THAMESDOWN BOROUGH COUNCIL (3)

Duplicate/

AGREEMENT

under Section 18
Public Health Act 1936
relating to land at
Marlborough Road
Swindon Wilts

THIS AGREEMENT is made the

Eleventh

day of

March

One thousand nine hundred and eighty ~~one~~ ^{seven}

BETWEEN MAXIM HOMES LIMITED of Delta 703/704 Delta Business Park Great Western Way Swindon (hereinafter called "the Developer") of the first

part and NORWICH UNION FIRE INSURANCE SOCIETY LIMITED of

14 Surrey Street Norwich (hereinafter called "the Surety") of the

second part and THE COUNCIL OF THE BOROUGH OF THAMESDOWN of Civic

Offices Swindon Wilts (who with its successors is hereinafter referred

to as 'the Council') acting on behalf of the THAMES WATER AUTHORITY

whose address is New River Head Rosebery Avenue London EC1R 4TR

(hereinafter called "the Authority") of the third part

W H E R E A S

(1) The Council in pursuance of arrangements made under Section 15 of the Water Act 1973 with the Authority is exercising the powers and discharging the functions of the Authority under Section 18 of the Public Health Act 1936 within the Borough of Thamesdown

(2) The Developer is registered as proprietor free from incumbrances under Title Number WT55280 with an Absolute Title to certain land situate at Marlborough Road (Jefferies Mews) in the Borough of Thamesdown

(3) The Developer has submitted to the Council for inspection such plans drawings and other design or working documents relating to the carrying out of the Works (as hereinafter defined) or any part or parts thereof as were required by the Council (and which plans sections and other documents are numbered 86/1/6/A and 86/1/7 and are hereinafter collectively referred to as "the Drawings" copies whereof are annexed hereto) and proposes in connection with the development of the land to construct sewers (as defined in clause 20(3) of this Agreement) for public use and which sewers he proposes should become public sewers vested in the Authority and maintainable at public expense

(4) The Developer has in the Site (which shall comprise the said land and other land and places (if any) on under in or through which the

Works are proposed to be executed) sufficient rights to enable the Works to be carried out therein and to permit the use repair maintenance and discharge from the same prior to the declaration referred to in clause 12(1) hereof and to enable a valid and effectual declaration to be made under clause 12(1) hereof as aforesaid and which rights are capable of transfer to the Authority without any payment therefor

(5) The Surety has agreed at the request of the Developer to be party hereto in manner hereinafter appearing

IN PURSUANCE of Section 18 of the Public Health Act 1936 and all other powers the parties hereto enabling THIS AGREEMENT which (re-construction or amalgamation of the Developer excepted) is personal to the parties WITNESSETH as follows:-

1. IF the Developer shall construct the said sewers (as defined within clause 20(3) hereof) and other works (if any) (which sewers and other works (if any) are collectively referred to as "the Works") it will at its own expense properly construct and complete the same in accordance with the Drawings hereto annexed and the Specification (hereinafter referred to as "the Specification") issued by the National Water Council in December 1981 as Part 3 of its guide "Sewers for Adoption" (which Drawings and Specification shall be deemed to be part of this Agreement) or as varied by virtue of the powers contained in clause 2 hereof and the statutory provisions for the time being relating to new sewers and to the reasonable satisfaction of the Engineer in the positions and to the extent shown within the Drawings and thereon indicated by red lines and symbols as to foul sewers and dark blue lines and symbols as to surface water sewers

2. WITHOUT prejudice to clause 1 hereof the Engineer may at the request of the Developer at his own discretion give permission (which permission shall not be unreasonably withheld) to the Developer to

construct the Works or some part or parts of the same otherwise than in strict conformity with the Drawings and Specification but subject to the following conditions:-

(a) the request of the Developer (accompanied by such drawings as the Engineer may require) shall be made and the permission of the Engineer given (if at all) in writing provided however that if the Engineer shall consider it necessary to give an oral permission he shall confirm such permission in writing as soon as is reasonable in the circumstances

(b) without prejudice to the provisions of paragraph (a) above the Developer will not in the execution of the Works allow any variation from the Drawings and Specification without such written permission first having been obtained

(c) nothing contained within this clause shall permit or authorise any breach of the Specification

(d) where the context of this Agreement so requires the term "the Works" shall include any amended extra or substituted works as permitted by the Engineer by virtue of this clause and for the purposes of clauses 1 and 12 (1) of this Agreement any drawings submitted to the Engineer in pursuance of sub-clause (a) of this clause and upon which drawings the Engineer gives his permission by virtue of this clause shall be deemed to be included in the term "the Drawings" notwithstanding that the same shall not have been annexed hereto

(e) the granting of any permission by the Engineer by virtue of this clause shall not in any way prejudice any rights of the Council or the Authority against the Developer or the Surety in respect of any breach or non-observance of any part of this Agreement but the duties and obligations of the Surety shall apply in respect of the Works as varied as they apply to the Works as shown within the Drawings

3. THE Developer shall notify the Engineer in writing of the date on

which it intends to commence the Works or any part or parts thereof and shall submit to the Engineer for inspection such plans, drawings and other design or working documents not previously submitted to him and which relate to the carrying out of the Works as the Engineer may require

4. THE Developer shall construct and complete the Works within a period of eighteen months from the date hereof (unless the Engineer shall in writing agree to an extension of that period) but before any building or property draining into any part or parts of the Works is brought into occupation such part or parts of the Works necessary to drain that building or property including all outfalls and all connections to existing public sewers shall be completed and in working order

5. UNTIL such time as the Works shall have become vested in the Authority as hereinafter provided the Developer shall ensure that no building or structure is erected over any part of the Works or on or over land within three metres measured horizontally from the centreline of any sewer without the written consent of the Authority nor that access thereto on foot and with any necessary vehicles plant or equipment is obstructed and in particular shall include in any transfer conveyance lease or other disposition of the Site or any part thereof appropriate covenants in that respect binding upon the land the subject of such transfer conveyance lease or other disposition but this clause shall not prohibit the erection of plot boundary walls or fences if the same shall be shown on the Drawings (or agreed in writing by the Engineer as though the same were a minor variation of the Works as within the provisions of clause 2 of this Agreement) to lie across the Works or any part or parts thereof (manholes or ventilating shafts excepted)

6. THE Developer shall prior to the Works being vested in the Authority supply to the Engineer two full sets of plans at a scale of 1/500 and of sections showing at the scales used for those sections which form part of the Drawings the position level and type of construction of the Works as constructed

7. (1) WHEN the Developer is of opinion that the Works or any substantial part or parts thereof have been completed it shall serve a written notice upon the Engineer to that effect

(2) AFTER receiving such notice the Engineer shall satisfy himself as to whether or not the Works have been completed and if then satisfied that the same have been completed shall issue his written certificate (hereinafter called "the Provisional Certificate") on behalf of the Authority to that effect

(3) FOR the purpose of sub-clause (1) of this clause the Works shall be deemed to be completed when:-

(a) they shall have been substantially constructed in accordance with the preceding clauses of this Agreement and

(b) any premises intended to be served by such parts of the Works as shall be sewers have been occupied and

(c) all necessary connections or other things have been made or done whereby such premises may be effectually drained

(4) WITHOUT prejudice to sub-clause (2) of this clause the Engineer may (if so requested to the Developer by virtue of a notice under sub-clause (1) hereof and whether such notice relates to the whole or any substantial part or parts of the Works) if he so decides issue a Provisional Certificate as referred to in sub-clause (2) of this clause (which shall not be unreasonably withheld) in respect of any substantial part or parts of the Works which have been completed to his satisfaction and in such case reference in sub-clause (1) and (2) of this clause

shall after the issue of a Provisional Certificate as to part or parts of the Works as aforesaid be deemed to refer to the residue of the Works in respect of which no Provisional Certificate had previously been issued

(5) WHERE the Engineer has in pursuance of his power so to do in sub-clause (4) of this clause issued a Provisional Certificate for some part or parts of the Works the term "the Works" shall in clauses 8 and 12 of this Agreement where the circumstances and the context so require refer to parts of the Works

8. IF during a period of twelve months after the date of the issue of the Provisional Certificate (which period is hereinafter referred to as "the Maintenance Period") or thereafter until the Works shall be vested in the Authority any defect or damage shall appear or arise or occur in the Works or any blockage shall arise or occur in the Works the Developer shall at its own expense and within three months after such defect damage or blockage shall appear arise or occur (or forthwith if so required in writing by the Engineer) make the same good to the reasonable satisfaction of the Engineer and the Developer shall during the period prior to the Works becoming vested in the Authority maintain the Works to the satisfaction of the Engineer as aforesaid

9. THE Developer shall allow and arrange for the Engineer to have access to the Works and the Site at all reasonable times for the purpose of ensuring compliance with this Agreement

10. AT any time before the Works shall have become vested in the Authority the Developer shall on being so requested in writing by the Engineer open for inspection any part of the Works which may have been covered up but should the Developer fail to comply with any such request (and without prejudice to all other rights accruing to the Council or the Authority on a breach of any part of this Agreement by the

Developer) the Council may itself open up the Works or any part thereof and in the event of any part or parts of the Works being defective obstructed or otherwise failing to conform with the requirements of this Agreement the cost of such opening rectification and reinstatement shall (subject to the proviso hereinafter contained) be borne by the Developer but in any other case such cost shall be borne by the Council PROVIDED THAT in any case where the Engineer has not been given reasonable notice in accordance with this Agreement and facilities by the Developer to inspect any part of the Works and did not inspect the same the cost of the opening and reinstatement works and rectification works (if any) in relation to such part of the Works as shall have been opened up shall be borne in any event by the Developer whether or not such opening up reveals any defect obstruction or other failure to comply with the requirements of this Agreement

11. IF at any time before the Works shall have become vested in the Authority the Developer shall fail to construct complete make good and maintain the Works or any part thereof in accordance with the preceding clauses of this Agreement the Council shall (as agents of the Developer) be entitled at its entire discretion to construct complete make good and maintain such part or parts of the Works as may be necessary in the opinion of the Engineer to drain effectually and properly all of those properties situate upon the land which have been occupied and may do so either by its own employees or by contract or in such other manner as it thinks fit after first giving reasonable notice in writing to the Developer and the Surety of its intention in that behalf and the Developer shall upon demand pay to the Council the cost thereof including the necessary cost of the preparation and service of such notices and of necessary administration as certified by the Engineer

12. (1) THE Council acting on behalf of the Authority shall (subject

to the Developer complying with the terms of this Agreement and to the terms of the proviso immediately below) by declaration vest such parts of the Works as shall be sewers in the Authority in such manner that the Developer and all persons for the time having a legal interest in any premises draining into the Works shall be exonerated from any liability to maintain and repair the Works PROVIDED THAT the Council shall not be required to vest or to take over responsibility for the Works or any part or parts thereof until the Developer shall (if so requested in that behalf) have produced to the Council a good sufficient and marketable title to the land in which the Works are situate or (where any part of such land in which the Works are situate is outside the land delimited in the second recital to this Agreement) sufficient rights in such land to enable the making of a valid and effectual declaration and also until the Engineer shall have issued a Final Certificate in writing (such certificate not to be unreasonably withheld) that

(a) the Works have been constructed and completed in accordance with the Drawings and the Specification to his reasonable satisfaction have been maintained by the Developer during the Maintenance Period and any defects arising or work required in connection with the Works during that period and prior to the date of his said Final Certificate have been made good or carried out by the Developer to the reasonable satisfaction of the Engineer
AND THAT

(b) no building or structure has been erected over any part of the Works or on or over land within three metres measured horizontally from the centreline of any sewer without the written consent of the Authority nor access thereto on foot or with any necessary vehicles plant or equipment obstructed AND THAT

(c) (1) where a sewer (whether for foul sewage or surface water)

is shown in the Drawings discharging to an existing public sewer maintainable at public expense that connection has been made (whether by the Developer or by or on behalf of the Authority) properly and directly thereto and in the manner shown in the Drawings

(ii) where a surface water sewer is shown in the Drawings discharging to a watercourse that it does discharge properly and directly to the watercourse in the manner shown in the Drawings AND THAT

(d) the Developer has made in full the payments required by clause 19 hereof and complied with all other requirements of the Authority or the Council in pursuance of that clause

(2) THE Engineer shall not be obliged to issue a Final Certificate while any dispute exists between the Developer and any third party concerning the right of the Developer to construct the Works or any part or parts of the same in the situation and the manner in which they have been constructed

(3) TO the intent that the Works shall so soon as practicable after the expiration of the Maintenance period receive the said Final Certificate:-

(a) the Developer shall by way of a written notice two months before the end of the Maintenance Period remind the Engineer of the date upon which the Maintenance Period expires:

(b) whether or not the Engineer shall have received a notice by virtue of paragraph (a) of this sub-clause any inspection which the Engineer may require to make of the works shall be made prior to the expiration of the Maintenance Period and he shall within fourteen days after such inspection advise the Developer in writing of any defects arising or work required in connection with

the Works and which he requires to be rectified or done before the issue of the said Final Certificate

13. NOTHING in this Agreement shall imply any obligation on the part of the Engineer the Council or the Authority to the Developer or to any other person to ensure that the Works or any part or parts of the same are properly constructed

14. THE Developer shall indemnify the Council and the Authority against all actions costs claims and demands which may be made against them or either of them in connection with the construction and completion of the Works and those matters referred to in recital (4) of this Agreement provided that the said actions costs claims or demands shall have arisen not later than the vesting of the Works in the Authority

15. IF the Developer shall fail to perform any of the conditions herein contained on its part to be performed or observed or shall be adjudicated bankrupt or shall go into liquidation voluntarily or otherwise or shall execute a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of re-construction or amalgamation) the Council may without prejudice to its other rights remedies and powers against the Developer for such non-performance or non-observance by notice in writing to the Developer and Surety determine this Agreement and upon such notice being served this Agreement shall forthwith determine but without prejudice however to the obligations of the Surety to the Council under clause 16 and of the Developer to the Council and the Authority under clauses 11 and 19 of this Agreement

16. (a) IF the Developer shall fail to observe or perform any of its obligations according to this Agreement the Surety will pay to the Council any expenditure which the Council may incur in accordance with

this Agreement by reason of the failure of the Developer aforesaid whether or not this Agreement has been determined as aforesaid but the Surety shall in no circumstances be liable to pay a greater sum than ONE THOUSAND AND TWENTY POUNDS (£1,020) for which sum the Surety hereby binds itself and its successors and assigns to the Council

(b) THE amount of any such expenditure shall be that certified by the Engineer whose certificate shall be final

(c) THE Surety shall be discharged or released from this bond when those parts of the Works as shall be sewers shall have become vested in the Authority and such parts of the Works as shall not be sewers but which the Authority require to be conveyed or transferred together with the rights referred to in clause 19(2) of this Agreement shall have been effectually conveyed or transferred to the Authority but it shall not be discharged or released from this bond by any arrangement between the Developer and the Council or by any alteration in the obligations of the Developer or by the execution of any amended extra or substituted works authorised by virtue of clause 2 hereof or by any forbearance whether as to payment performance time or otherwise whether made with or without the assent of the Surety

17. IN the event of any dispute or difference arising from the construction of the Works or application of this Agreement (clause 7(3) excepted) the same may be referred for determination to a person to be agreed between the parties hereto (or failing such agreement to be appointed by the President for the time being of the Institution of Civil Engineers) the decision of the person so agreed or appointed to be final binding and conclusive on all the parties hereto

18. ANY notice to be served on or document to be supplied or submitted to the Council shall be delivered or posted to the Borough Solicitor Civic Offices Swindon Wilts and any notices to be served on the

Developer may be delivered or posted to its last known address (or being a limited company to its registered office or to its last known registered or head office) or place of business or may be posted on the Site and any notice to be served on the Surety may be delivered at or posted to its registered or head office for the time being

19. (1) THE Developer shall on the execution of this Agreement pay to the Council the cost of the preparation and completion of and stamp duty upon this Agreement and a duplicate thereof and shall on demand immediately after the Engineer carries out a first inspection of the Works or of any part of the same pay the sum of TWO HUNDRED AND FIFTY FIVE POUNDS (£255) in respect of the costs of the Council for the supervision by the Engineer of the execution of the Works

(2) THE Developer shall prior to the declaration vesting such of the Works as shall be sewers in the Authority at the request of the Authority secure (at no cost to the Authority) the transfer or grant to it of such of the rights referred to in recital (4) of this Agreement as the Authority may require so that such rights will be effectually vested in the Authority

20. (1) THE Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament

(2) NOTHING in this Agreement shall in any way prejudice or exclude the exercise by the Council or the Authority of any of their statutory or common law rights and powers arising otherwise than by virtue of this Agreement

(3) IN this Agreement:-

"sewers" includes not only the sewer pipe but also manholes ventilating shafts pumps and other accessories thereto belonging

"the Council" means the aforesaid Borough Council acting on behalf of

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the Authority or at any time when no arrangements under Section 15 of the Water Act 1973 are in operation the Water Authority itself

"the Engineer" means such officer as may be designated by the Council or any time when no arrangements under the said Section 15 are in operation the Manager or Director of the appropriate Division of the Authority or the representative of such Council officer or Authority officer as aforesaid

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be affixed hereto the day and year first before written

THE COMMON SEAL of)
)
MAXIM HOMES LIMITED)
)
was hereunto affixed in the)
)
presence of:-)

Director

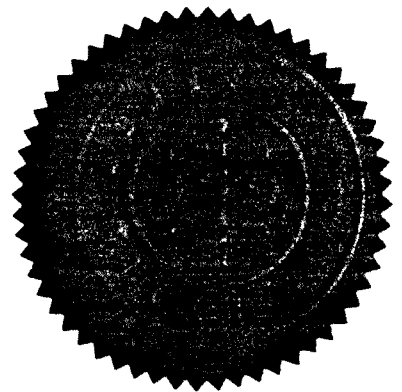
Secretary

THE COMMON SEAL of)
)
NORWICH UNION FIRE INSURANCE)
)
SOCIETY LIMITED was hereunto)
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affixed ~~in the presence of~~)
and to the original hereto of)
even date in the presence of: -)

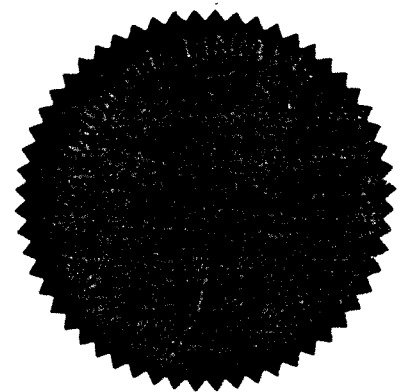
Authorised signatory

Assistant
Secretary

Please initial above



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THE COMMON SEAL OF THE COUNCIL)

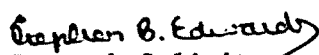
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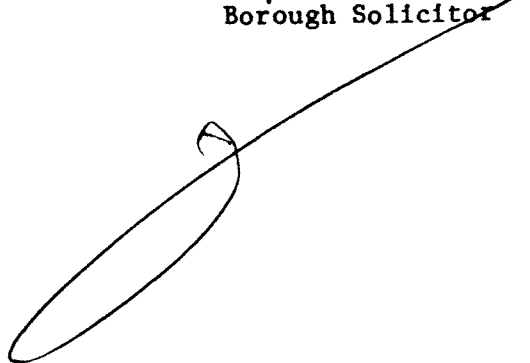
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Mayor

15807


Borough Solicitor



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