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Title Number HE23964

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DATED 23 March 2015

KATHLEEN MURIEL JENKINS

and

DWR CYMRU CYFYNGEDIG

AGREEMENT

under Section 104 of the
Water Industry Act 1991
relating to sewers at
WHITE HOUSE STAUNTON ON WYE

Hugh James
Hodge House
114-116 St Mary Street
Cardiff
CF10 1DY
Ref: DWR/9/1062

LATERAL

AGREEMENT UNDER SECTION 104
OF THE WATER INDUSTRY ACT 1991
(Lateral Drains only to be used
with the Standard Terms and Conditions)

THIS AGREEMENT made the 23rd day of March 2015

BETWEEN:-

(1) **KATHLEEN MURIEL JENKINS of White House Staunton On Wye Herefordshire HR4 7LR** ("the Developer");

(2) **OWNER (Company No)** whose address or registered office is at **OWNER'S ADDRESS** ("the Owner");

(3) **DWR CYMRU CYFYNGEDIG (Company No 2366777)** whose registered office is at **Pentwyn Road, Nelson, Treharris CF46 6LY** ("the Undertaker")

WITNESSES as follows:-

1. Definitions and Interpretation

1.1 This Agreement is entered into under section 104 of the Water Industry Act 1991 ("the Act) to meet the requirements of section 106B of the Act.

1.2 This Agreement relates to Lateral Drains only and comprises and incorporates:

1.2.1	Schedule 1 (attached): Programmed Completion Date and Security Amount
1.2.2	Layout Plan (attached): Plan no.
1.2.3	Schedule 2 (attached): Documents
1.2.4	the Standard Terms and Conditions annexed hereto and which are incorporated herein
1.2.5	Schedule 3 (attached to the Standard Terms and Conditions): Provisions to be included in Transfers, Easements & Grants;
1.2.6	Schedule 4 (attached): Fees.

1.3 For the purposes of this Agreement:

1.3.1 the "Security Amount" shall be the amount specified in the column of the table in Schedule 1 being **FIVE HUNDRED POUNDS (£500.00)**;

1.3.2 the "Green Land" means the land edged green on the Layout Plan in the ownership of the Developer and/or Owner comprised in title number[s] **HE23964 and HE23965**

1.3.3 the "Red Land" (if any) means the land edged red on the Layout Plan comprised in title number[s] **TITLE NUMBER**.

1.3.4 the "Defects Period" means the period commencing with the issue of the Vesting Certificate and ending on the later of the issue of the Final Certificate and the date which is **THREE** months after the date of issue of the Vesting Certificate;

1.4.1 The Developer and/or the Owner consent to the registration of this Agreement at the Land Registry or as a local land charge, whether by way of unilateral notice, agreed notice or any such other appropriate notice and will give all reasonable and proper assistance (at their own cost) to the Undertaker to assist with the registration of any such notice; and

1.4.2 Neither the Developer nor the Owner shall make any application (whether to the Land Registry or otherwise) to remove or vary any unilateral notice, agreed notice or other notice registered in respect of this Agreement.

EXECUTED by the parties hereto as a Deed but not delivered until the day and year first before written

EXECUTED AS A DEED by
KATHLEEN MURIEL JENKINS K M Jenkins
In the presence of:

Witness Signature L.A. Watkins

Witness Name Lesley Watkins

Witness Address 44 Underhill Road
Hereford
HR1 1SZ

EXECUTED AS A DEED by
affixing the **COMMON SEAL** of
DWR CYMRU CYFYNGEDIG
in the presence of:

Authorised Signatory:

15/207062

LATERAL

K. M Jenkins

12/01/2015

PSA0001591

Scale: 1:500

The developer must self-vet and certify that the design criteria, material standards and workmanship specifications for the proposed adoptable sewers are in accordance with those set out in "Sewers for Adoption" 7th Edition, The Welsh Ministers Standards and the requirements of us (DCWW) as the Statutory Sewerage Undertaker

Proposed lateral drain 150mm Ultra Rib

Plastic 450mm diameter manholes

DWR CYMRU
CYFYNGEDIG
AUTHORISED SIGNATORY
15/2070/62

SCHEDULE 1

(List of Lateral Drains, Programmed Completion Date and Security Amount)

Lateral Drains:

Drawing Number and Revision	Connection point – manhole no.	Purpose F/S/P	Size mm	Programmed completion date (DD/MM/YYYY)	Security Amount
PSA0001591	Existing Manhole	F	150	14/04/2015	£500.00

*Notes
Purpose: F = Foul gravity pipeline.
S = Surface Water gravity pipeline.
P = Pumped or vacuum system.

SCHEDULE 2

(Documents)

DRAWING NUMBER - PSA0001591

SCHEDULE 3

(Provisions to be Included in Transfers, Easements & Grants)
See Standard Terms and Conditions

SCHEDULE 4

(Fees)

SUPERVISION FEES - FIVE HUNDRED AND SEVENTY FOUR POUNDS (£574.00)

LATERAL

SECTION 104 AGREEMENT - LATERAL
STANDARD TERMS AND CONDITIONS
(FIRST EDITION)

1. Definitions and Interpretation

1.1 The following terms shall have the following meanings:

Act	Water Industry Act 1991;
Authority	Water Services Regulation Authority;
CDM	Construction (Design and Management) Regulations 2007;
Competent Authority	any person, body, tribunal or court with statutory powers exercisable over the Developer or Undertaker in relation to the construction, repair, maintenance or operation of the Lateral Drains;
Defects	includes defects in design, materials, workmanship, preparation of the Site or construction of the Lateral Drains and includes any defect in or damage to the Lateral Drains arising before the issue of the Final Certificate and "Defective" shall be construed accordingly;
Documents	the documents, drawings and plans (including the Layout Plan) listed in Schedule 2, subject to any variations made under clause 2.3;
Engineer	means the engineer appointed on behalf of the Undertaker and notified to the Developer from time to time in writing;
Final Certificate	a certificate issued under clause 3.4.1;
Lateral Drains and/or Public Lateral Drains	has the meaning contained in Section 219 and Section 106(1A)(b)(i) of the Act and for the purpose of this Agreement, "the Lateral Drains" means the Lateral Drains to be constructed by or for the Developer as described and shown in the Documents, subject to any variations made under clause 2.3;
Layout Plan	the plan or plans attached to this Agreement;
Occupation	in respect of any premises means any use of those premises after installation of a meter on the water supply service pipe serving those premises which results in a charge being made for the provision of sewerage services or any other circumstances which show evidence of occupation (as determined by the Undertaker) in relation to those premises, and "Occupy" and "Occupied" shall be construed accordingly;
Programme	the periods within which the construction of the Lateral Drains must be carried out and completed as specified in Schedule 1, subject to any variations made under clause 2.3;
Protected Strip	the strip of land shown coloured yellow (if any) on the Layout Plan and forming part of the Site and/or the Red Land (as the case may be) having a width of not less than six metres and (unless the contrary shall be stipulated on any drawings forming part of the Documents or on the Layout Plan) the Protected Strip shall lie one half to each side of the centreline of those parts of: (i) the Lateral Drains which are not being constructed within public highways; and (ii) any existing sewers and any diverted sewers or Public Lateral Drains as are shown on any drawings forming part of the Documents or on the Layout Plan; and includes any part or parts of the Protected Strip;
Public Sewerage Network	the existing public sewers shown on the Layout Plan, with the foul sewers the surface water sewers and the combined sewers shown coloured black and denoted with the appropriate symbols as set out in Sewers for Adoption;
Sewers for Adoption	the publication entitled "Sewers for Adoption (7th Edition)" as supplemented or varied from time to time;
Site	the site to be drained by the Lateral Drains comprising the whole of the Green Land and/or the Red Land (as the case may be);
Specification	the Specification in Sewers for Adoption;
Standards	the standards for sewerage works prescribed under section 106B of the Act;

Statutory Requirements	the requirements of all statutes and regulations, and the requirements of any Competent Authority relating to the construction, repair, maintenance and operation of the Lateral Drains;
Street Works Legislation	the New Roads and Street Works Act 1991, Traffic Management Act 2004 and any other Act governing the carrying out of Street Works in a Street and "Street Works" and "Street" shall be construed as defined therein);
Title	a freehold interest free from restrictions and encumbrances;
Undertaker	includes any agent or contractor appointed by the Undertaker to assist with the administration and enforcement of this Agreement;
Vesting Certificate	a certificate (in such form as is determined from time to time by the Undertaker) issued by the Undertaker vesting the Lateral Drains in itself in accordance with clause 3.3;

1.2 In this Agreement:-

(a) words and phrases not defined in this Agreement shall, where the context so permits, have the meanings attributed to them by the Act;

(b) references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification);

(c) any reference to a statute includes a reference to any regulations or orders made under or pursuant to it;

(d) if any statutory provision is repealed in whole or in part without re-enactment, extension or modification, that provision shall be deemed to continue in force insofar as that is necessary for the purposes of fulfilling a party's obligations under this Agreement and provided always that this shall not require any party to carry out any activity which might otherwise be deemed unlawful;

(e) words expressed in any gender shall, where the context so requires or permits, include any other gender;

(f) references to anything include a part thereof;

(g) words importing persons shall include bodies corporate, partnerships and other incorporated bodies;

(h) words expressed in the singular shall, where the context so requires or permits, include the plural, and vice versa;

(i) where any party is more than one person:

(i) that party's obligations shall take effect as joint and several obligations; and

(ii) anything in this Agreement which applies to that party shall apply to all of those persons collectively and to each of them separately; and

(iii) the benefits contained in this Agreement in favour of that party shall take effect as conferred in favour of all of those persons collectively and each of them separately;

(j) if there are separate parties defined as "the Developer" and "the Owner" then, in the event of default by the Developer, the obligations of the Developer shall also become the obligations of the Owner and, at the Undertaker's discretion, may be enforced against either the Developer or the Owner in respect of land in which they have a legal interest;

(k) Where in the commencement of this Agreement the details of "the Owner" are left blank all and any references in this Agreement to "the Owner" shall be construed as a reference to "the Developer";

(l) save as set out in clause 1.2(k), if there are no details shown against any one party, then this Agreement shall be interpreted as if there was no such party;

(m) where the context permits, every reference to any party to this Agreement shall include his successors in title and personal representatives by and against whom this Agreement shall be enforceable as if they had originally been named as parties;

(n) references in this Agreement to anything which any party is required to do or not to do shall include his acts, defaults and omissions whether:

(i) direct or indirect;

(ii) on his account;

(iii) for or through any other person; or

(iv) those which he permits or suffers to be done or not done by any other person;

(o) the effect of all obligations affecting the parties under this Agreement is cumulative and no obligation shall be limited or modified by any other of those obligations unless there is (in this Agreement) an express limitation or modification;
(p) in the event of a conflict between the Standards, this Agreement (including the Documents) and/or Sewers for Adoption (including the Specification)
(i) the Standards shall prevail over the Agreement and Sewers for Adoption; and
(ii) this Agreement shall prevail over Sewers for Adoption;
(q) "indemnify" means to indemnify the Undertaker against all actions, claims, charges, demands, proceedings, costs, claims, losses, expenses and liabilities incurred by or made against the Undertaker and "indemnified" and "indemnity" shall be construed accordingly.
(r) in any case where the Undertaker is not to unreasonably withhold or delay its consent under the terms of this Agreement, the Undertaker shall not be deemed to be unreasonably withholding or delaying such consent where in the opinion of the Undertaker (whose decision shall be final and conclusive) the integrity of the Lateral Drains or any other part of the Public Sewerage Network may be at risk or undermined;
(s) reference to clauses, sub-clauses, schedules and paragraphs unless otherwise specified mean the clauses and sub-clauses of or the schedules and paragraphs to this Agreement and headings to them are to be disregarded in interpreting this Agreement;
(t) this Agreement shall be governed by the law of England and Wales and the parties consent to the exclusive jurisdiction of the courts of England and Wales in all matters regarding it;

2. Developer's Obligations

Construction of Lateral Drains

2.1 Subject always to the provisions of this Agreement, the Developer shall at its own expense:
(a) construct the Lateral Drains in accordance with the Programme; and
(b) connect the Lateral Drains to the Public Sewerage Network and to the premises on the Site;
Subject always to the construction of such Lateral Drains being carried out:
(i) in accordance with the Documents, Standards and Specification; and
(ii) in compliance with all Statutory Requirements; and
(iii) in a proper and workmanlike manner; and
(iv) to the Undertaker's reasonable satisfaction;
and provided always that:
(c) the foul Lateral Drains shall be connected to those parts of the Public Sewerage Network designated for foul drainage;
(d) the surface water Lateral Drains shall be connected to those parts of the Public Sewerage Network designated for surface water drainage; and
(e) where any of the Lateral Drains have been completed to a provisional level (e.g. pending final surfacing of a street) then, notwithstanding the earlier completion of the Lateral Drains and, if appropriate, its adoption by the Undertaker, the further completion of the Lateral Drains to their final level.

Notice of Commencement

2.2 Subject to first complying with clauses 2.11.5, the Developer shall not start construction of the Lateral Drains until:
(a) it has given to the Undertaker at least five Working Days prior written notice of the date on which it will start the Lateral Drains; and
(b) it has supplied to the Undertaker evidence of the registration of the Site under the CDM, if required for the Site; and
(c) it has provided the Undertaker with relevant information concerning contamination and other details relating to the Site which would be required by the Undertaker before accessing the Site and exercising the Undertaker's Rights and Obligations under clause 3; and
(d) it has paid to the Undertaker a cash deposit equal to the Security Amount; and
without prejudice to clause 2.2(c), the Developer hereby warrants that the Site is free from contamination and if and to the extent any contamination is identified on the Site, the Developer hereby indemnifies and shall keep the Undertaker fully and effectually indemnified from and in respect thereof.

The Programme

2.3 The Developer shall not make any variation to the Lateral Drains, the Documents or the Programme without:

2.3.1 the prior written agreement of the Undertaker (such agreement not to be unreasonably withheld or delayed); and
2.3.2 prior to the Undertaker giving such written agreement paying to the Undertaker any additional fees which may arise out of such variation to the Lateral Drains, the Documents or the Programme; and
2.3.3 paying the Undertaker's legal fees in connection with documenting any such variation to the Lateral Drains, the Documents or the Programme and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect of such legal fees.
2.4 If the Developer fails to complete the Lateral Drains within the period for the completion of the Lateral Drains specified in the Programme, the Undertaker may by written notice require the Developer to complete the Lateral Drains to such standard or revised standard as may have been specified in any revised Standards, Specification and/or later edition of Sewers for Adoption, and within such further period as the Undertaker may specify in writing.

Effecting Communications

2.5 Before making any connection of the Lateral Drains to the Public Sewerage Network:
(a) the Developer shall give written notice to the Undertaker in accordance with section 106(3) and 108(1)(a) of the Act, and shall comply with section 108(1)(b) of the Act, so that the Undertaker may inspect the making of the connection; and
(b) the Developer shall send to the Undertaker 6 full sets of accurate preliminary drawings and sections of the Lateral Drains, coloured and marked with the symbols specified in the Specification and/or Sewers for Adoption, showing cover levels as provisional.

Occupation of Premises

2.6 The Developer agrees:
2.6.1 to give to the Undertaker's Engineer at least five Working Days prior written notice of:
(i) the date when any premises which are to be drained by the Lateral Drains will be Occupied; and
(ii) the names of the prospective occupants of the premises (if different from the Developer);
2.6.2 together with written notice in 2.6.1, to provide to the Undertaker as built information for the Lateral Drains (where such as built information has not already been provided).

Building Over

2.7 The Developer (in respect of the Green Land) and/or the Owner (in respect of the Red Land) so as to bind the Green Land and the Red Land respectively into whosoever hands the same may come and for the benefit of the Undertaker's statutory undertaking (being the undertaking of the Undertaker within its area as particularised in the Undertaker's "Instrument of Appointment" as a sewerage undertaker and taking effect under the Water Act 1989 and the properties and rights forming part thereof) shall not build, plant or place nor allow to be built, planted or placed anything on or within the Protected Strip, unless shown within the Protected Strip on the Layout Plan or other drawings forming part of the Documents and specifically approved in writing by the Undertaker.

Backfilling

2.8 The following provisions shall apply to the backfilling of the Lateral Drains:
2.8.1 The Developer shall give to the Undertaker five Working Days prior written notice before covering up any part of the Lateral Drains and shall provide to the Undertaker access and facilities for inspecting those Lateral Drains during that 5 Working Day period as well as photographs of the pipework and the bed and surround prior to the Lateral Drains being covered up.
2.8.2 If the Developer fails to give notice or allow the Undertaker to inspect the Lateral Drains, the Developer shall be liable for the full cost of reopening the Lateral Drains even if they are found to comply with this Agreement and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect thereof.
2.8.3 The Developer shall, if at any time requested in writing by the Undertaker to do so, open up the Lateral Drains for inspection. If the Developer fails to comply with such request, the Undertaker may open up the Lateral Drains. If any of the Lateral Drains are then found not to comply with this Agreement, the Developer shall repay to the Undertaker on demand all costs incurred by the Undertaker in opening up and re-covering the Lateral Drains and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect thereof. However, if all of the Lateral Drains are found to comply with this Agreement (save where the provisions of clause 2.8.2 apply), the costs of opening up the Lateral Drains shall be borne by the Undertaker.

2.8.4 Insofar as any part of the construction of the Lateral Drains involves work in a Street, then notwithstanding any other term of this Agreement, the Developer shall continue to be liable to execute any work which forms part of the temporary or permanent reinstatement for the duration of the Permanent Guarantee Period provided always that after any part of the Lateral Drains in respect of which any such reinstatement relates has become vested in the Undertaker the Developer shall not be entitled to access the Lateral Drains without the Undertaker's prior written consent and if and to the extent the Undertaker gives such consent, the Undertaker may by giving the Developer not less than five Working Days notice require the Developer to carry out any such work within such time as may be specified and if the Developer fails to carry out any such work within the time specified or if the circumstances constitute an emergency, the Undertaker shall be entitled to carry out such works at the cost of the Developer after giving reasonable notice (taking into account the urgency of the work) to the Developer and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect thereof. For the purposes of this clause 2.8.4 "Permanent Guarantee Period" shall have the meaning given in the "Specification for the Reinstatement of Openings in Highways approved in June 1992" under the Street Lateral Drains Legislation.

Access to Lateral Drains

2.9.1 Subject to clause 2.9.2, the Developer shall arrange for the Undertaker to have access to the Lateral Drains and the Site at all reasonable times, and shall at its own cost provide all plant, equipment (including safety equipment), signing, guarding, lighting and personnel while the Undertaker is on the Site necessary for carrying out inspections under this Agreement.

2.9.2 Any representative, contractor or agent of the Undertaker accessing either the Lateral Drains or the Site shall provide their own personal protective equipment, including (but not limited to) suitable safety footwear and headwear and ear and eye protection, and shall (unless otherwise agreed with the Developer) report first to the manager of the Site.

Defects

2.10 From the date on which the Developer commences the Lateral Drains to and including the expiry of the Defects Period:

(a) the Developer shall at its own expense repair or replace any part of the Lateral Drains which are found to be or become Defective as notified in a written notice given by the Undertaker to the Developer in accordance with the provisions of this Agreement so that the Lateral Drains comply with the Documents, Standards and Specification, and all other provisions of this Agreement;

(b) in an emergency, the Undertaker may by written notice require the Developer to carry out immediately any such repairs or replacements at the cost of the Developer and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect thereof;

provided always that if the Lateral Drains or any part or parts thereof have been vested in the Undertaker following the issue of a Vesting Certificate or otherwise vested in the Undertaker pursuant to clause 3.3, the Developer shall not be entitled to access the Lateral Drains without the Undertaker's prior written consent

(c) in the event that the proviso to clause 2.10(a) and/or 2.10(b) applies after the issue of the Vesting Certificate but prior to the issue of the Final Certificate and the Undertaker (in its absolute discretion) does not provide its written consent for the Developer to access the Lateral Drains, the Undertaker may carry out such repairs or replacements at the cost of the Developer and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect thereof.

Title and Rights to Land

2.11 The following provisions apply to title and rights in land necessary for construction and/or maintenance of the Lateral Drains and their vesting in the Undertaker:

2.11.1 Subject to clauses 2.11.2 and 2.11.3, the Developer warrants that it has:

(a) obtained (or will have obtained prior to service of a notice of commencement under clause 2.2) any planning permissions and related authorisations required for the construction of the Lateral Drains;

(b) sufficient legal entitlement in the Site (without the need for consent from any third party):

(i) to construct, repair and/or replace the Lateral Drains in accordance with this Agreement; and

(ii) for the Lateral Drains to be vested in the Undertaker as public sewers and Public Lateral Drains; and

(iii) for the Undertaker to exercise its rights and powers in relation to the Lateral Drains under this Agreement and under the Act; and
(iv) for the Undertaker to have free and uninterrupted access to the Lateral Drains at all times and for all purposes;
(c) Title to those parts of the Site in respect of which transfers and/or grants of easements and/or other rights have to be made to the Undertaker under clause 2.11.5.
2.11.2 Where the Developer does not have sufficient legal entitlement in or Title to the Site for the purposes of clause 2.11.1 (b) and (c), the Owner in respect of the Red Land:
(a) irrevocably and unconditionally consents to:
(i) the Developer constructing, repairing and/or replacing the Lateral Drains in accordance with this Agreement; and
(ii) the Lateral Drains being vested in the Undertaker as public sewers and public lateral drains; and
(iii) the Undertaker exercising its rights and powers in relation to the Lateral Drains under this Agreement and under the Act; and
(b) agree to join in any transfers of land and/or grants easements and/or other rights to be made by the Developer and/or the Owner to the Undertaker under clause 2.11.5.
2.11.3 Insofar as any other person has a legal entitlement or other interest in the Site to allow the Developer to fulfil its obligations under clauses 2.11.5 the Developer warrants that such person is a party to this Agreement as the Owner, that his title has been examined, and that such person has such legal entitlement in the Site to the extent that the Developer does not and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect of any breach of the terms of this clause 2.11.3.
2.11.4 For the avoidance of doubt, it is confirmed that the Lateral Drains will belong to the Developer until a Vesting Certificate for the Lateral Drains has been issued by the Undertaker.
2.11.5 the Developer shall (before giving any notice of commencement of construction of the Lateral Drains under clause 2.2) execute, secure the execution or procure the assignment or the transfer of the benefit (at no cost to the Undertaker, whether by way of consideration costs or disbursements whether such costs or disbursements be incurred by the Undertaker or by any other party and in respect of which the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect thereof) of an easement or easements in fee simple in favour of the Undertaker in respect of the Protected Strip, such easement or easements to be in the form of a deed of grant or incorporated within a transfer (or such other document approved by the Undertaker), in each and every case, incorporating the provisions set out in Schedule 3.

Transfers and Grants

2.12.1 Any transfers and/or grants of easements and/or other rights by or on behalf of the Developer and/or the Owner to the Undertaker under clauses 2.11 shall be executed as a deed and incorporate the provisions set out in Schedule 3.
2.12.2 Any obligation on the part of the Developer or the Owner to the Undertaker under clauses 2.11, includes an obligation on the part of the Developer or the Owner to procure that any and every chargee or mortgagee with an interest in such land joins into such documents or otherwise consents to such transfers and/or grants of easements and/or other rights in such form as the Undertaker from time to time reasonably determines.

Sewerage Charges

2.13 Notwithstanding the Undertaker's right to collect sewerage charges from any person under the Act in respect of any premises connected (directly or indirectly) with the Public Sewerage Network, the Developer shall pay such charges in respect of any premises which have been connected (directly or indirectly) into the Lateral Drains (whether or not in breach of this Agreement prior to the date of issue of the Vesting Certificate) and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect thereof.

Indemnity

2.14 The Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and against:
2.14.1 all actions, costs, claims, losses, charges, demands, expenses, proceedings and liabilities suffered or incurred by the Undertaker in connection with the construction, non-construction, delay, completion use and maintenance of the Lateral Drains and/or any delay or failure to notify the Undertaker in accordance with the provisions of this Agreement; and

2.14.2 liability of every kind for breach of any act (including the Act), regulation, code of practice, byelaw, the Standards and/or the Developer's obligations under this Agreement; and
2.14.3 any acts performed by the Undertaker pursuant to clause 2.10(c) and/or clause 3.2.

Fees

2.15 The Developer shall:
2.15.1 pay to the Undertaker the fees for the items at the times set out in Schedule 4; and
2.15.2 without prejudice to the provisions of clause 2.15.1 on demand pay to the Undertaker any fees or additional fees arising from closed circuit television surveys or resurveys, sewer cleansing and chemical treatment and site visits to check and re-check work and/or substandard work; and
2.15.3 to the extent not already paid prior to the date of this Agreement, to pay to the Undertaker or as the Undertaker directs, on the execution of this Agreement the costs of the preparation and completion of this Agreement and a duplicate thereof; and
2.15.4 on demand to pay to the Undertaker or as the Undertaker directs, any fees and disbursements pursuant to clauses 2.11.5; and
2.15.5 pay to the Undertaker or as the Undertaker directs, Value Added Tax upon the payments referred to in this clause 2.15, if the same is properly payable thereon.

Interest

2.16 If any money payable under this Agreement is not paid within fifteen Working Days of the due date, the party in default shall pay interest on it (after as well as before any demand for payment or judgment) at the higher of:
(a) the rate from time to time set under the Late Payment of Commercial Debts (Interest) Act 1998; and
(b) the interest rate from time to time set by the Law Society.

Copy Agreement

2.17 The Developer shall (if requested) supply to every purchaser of the Site a copy or summary of this Agreement.

3. Undertaker's Rights and Obligations

Maintenance

3.1 Subject always to the provisions of clause 2.10, from the date of issue of a Vesting Certificate for the Lateral Drains, the Undertaker shall be responsible for operating and maintaining the Lateral Drains.

Step-in Rights

3.2 The following provisions set out the Undertaker's rights in the event of default by the Developer:
3.2.1 At any time before a Final Certificate is issued for the Lateral Drains, if the Developer fails to construct, repair, complete and/or make good those Lateral Drains, in accordance with this Agreement:
(a) subject to first giving at least ten Working Days prior written notice to the Developer of such intention, the Undertaker may construct, repair, complete and/or make good the Lateral Drains as it considers necessary to secure compliance with this Agreement;
(b) except that where the Undertaker considers and notifies the Developer and Surety that any required construction, repair and/or making good is urgent, then the Undertaker may carry out such works immediately.
3.2.2 The Developer shall on demand pay to the Undertaker the Undertaker's costs and expenses incurred pursuant to this clause 3.2, including its costs of preparing and serving notices, professional fees, and other expenses reasonably and properly incurred and the Developer shall indemnify the Undertaker and keep the Undertaker fully and effectually indemnified from and in respect thereof.

Vesting Certificate

3.3 The following provisions relate to the issuing of the Vesting Certificate by the Undertaker:
3.3.1 When:
(a) the Developer completes the Lateral Drains (including all related connections) in accordance with this Agreement, the Documents, the Standards and the Specification; and
(b) the Developer has complied with clauses 2.11.5 of this Agreement; and
(c) the Lateral Drains communicate with the Public Sewerage Network; and
(d) all of the premises which are to be drained by the Lateral Drains have been Occupied; and
(e) no dispute between the Developer and any third parties affecting the Lateral Drains remains unresolved; and

(f) any defects arising or remedial works required in connection with the Lateral Drains have been made good by the Developer; and
(g) nothing has been built, planted or placed on the Protected Strip (save as permitted under clause 2.7); and
(h) (if requested by the Undertaker) the Developer has carried out (at the Developer's cost) and provided to the Undertaker a closed circuit television survey or re-survey to the recognised industry standard from time to time applicable;
then the Undertaker shall:
(a) in accordance with section 106B(3)(b) and (5) of the Act adopt the Lateral Drains by issuing a Vesting Certificate vesting those Lateral Drains in itself; and
(b) issue to the Developer a Vesting Certificate to that effect within ten Working Days.
3.3.2 Without prejudice to any other provision or provisions contained or referred to in this Agreement (save for the provisions contained in this clause 3.3.2), if and to the extent that this Agreement fails to procure that the Lateral Drains are vested in the Undertaker in accordance with the procedure and provisions set out in clause 3.3.1, then to the extent that the Lateral Drains:
(i) have been constructed in full; and
(ii) communicate with the Public Sewerage Network
then the Lateral Drains will be vested in the Undertaker (irrespective of the other terms of this Agreement (save for the provisions contained in this clause 3.3.2)) on the date 84 months after the date on which any premises served by the Lateral Drains is sold or leased for a period in excess of 7 years, such vesting being by way of the issue by the Undertaker of a Vesting Certificate in the same manner as set out in clause 3.3.1, provided always that any such vesting in accordance with the provisions of this clause 3.3.2 shall be entirely without prejudice to the Undertaker's rights and remedies against the Developer for any breach by the Developer of any of its obligations herein contained, howsoever arising.

Final Certificate

3.4 The following provisions relate to the issuing of the Final Certificate by the Undertaker:
3.4.1 At the end of the Defects Period in relation to the Lateral Drains, the Undertaker shall issue in respect of the Lateral Drains a Final Certificate within ten Working Days, provided always that:
(a) any defects arising or remedial works required in connection with the Lateral Drains during the Defects Period have been made good at the cost of the Developer; and
(b) nothing has been built, planted or placed on the Protected Strip (save as permitted under clause 2.7); and
(c) the Developer has fully complied with all its other obligations under this Agreement; and
(d) (if requested by the Undertaker) the Developer has carried out (at the Developer's cost) and provided to the Undertaker a closed circuit television survey or re-survey to the recognised industry standard from time to time applicable, at least 30 days prior to the expiry of the Defects Period, but not more than 60 days prior to the expiry of the Defects Period;
3.4.2 Prior to and in order to facilitate the issue of Final Certificates, the Undertaker shall prior to the expiry of the Defects Period inspect the Lateral Drains and (as soon as reasonably practicable thereafter) notify the Developer in writing of any remedial measures, openings-up, surveys or re-surveys which are necessary before the Final Certificate for the Lateral Drains can be issued.

Value Added Tax

3.5 In the event that the Developer or the Undertaker shall be properly liable to account to Her Majesty's Revenue and Customs for Value Added Tax by virtue of any part of the Lateral Drains being vested in the Undertaker which shall constitute a taxable supply to the Developer or the Undertaker (if and insofar as such vesting is a "supply" for VAT purposes), then the Developer or the Undertaker (as the case may be) shall be entitled to charge and forthwith be paid the amount of such tax upon production of a valid Value Added Tax only invoice addressed to the Developer or the Undertaker (as the case may be).

4. Cash Deposit

4.1 On entering into this Agreement, the Developer shall pay to the Undertaker a cash deposit equal to the Security Amount as security for any expenditure which the Undertaker may incur under this Agreement by reason of the failure of the Developer and/or the Owner to observe or perform in full its obligations under this Agreement, whether or not this Agreement has been determined or disclaimed.

4.2 The amount of any such expenditure shall be that certified by the Undertaker, whose decision shall be final and binding.
4.3 The cash deposit shall be repaid by the Undertaker to the Developer under this clause 4, in respect of the Lateral Drains upon the issue of a Final Certificate in respect of the Lateral Drains provided always that:
(i) there shall be deducted from each such amount any amount which may have been called upon by the Undertaker pursuant to the terms of this Agreement; and
(ii) there shall not be any such return of money unless and until clause 2.11 has been fully complied with.

5. Security – Proviso

5. Notwithstanding the use of the cash deposit or any part thereof by the Undertaker under clause 4.1, the Developer shall nevertheless remain liable to the Undertaker for all outstanding costs, expenses, losses, fees, claims, demands, proceedings, charges or liabilities on an indemnity basis insofar as they have not been recovered from the Surety or the cash deposit and shall be recoverable on the basis of the covenants, obligations and indemnities contained in this Agreement.

6. General

Qualifications

6.1 Without prejudice to section 104(5) of the Act, nothing in this Agreement is intended to confer on any third party any benefit or right to enforce any provision contained in this Agreement.
6.2 This Agreement shall be without prejudice to the statutory powers of the Undertaker.

Assignment

6.3 No party may assign, mortgage or otherwise transfer any or all of its rights or obligations under this Agreement without the prior written agreement of all the parties to this Agreement, except that this shall not prevent the Undertaker from assigning this Agreement to another person appointed as the sewerage undertaker for the area in question under the Act, which the Undertaker may do without the prior written agreement of any of the other parties to this Agreement.

Waiver

6.4 The failure by a party to enforce any of the provisions of this Agreement at any time or for any period will not release, exonerate or in any way affect the liability of the other parties, or be a waiver of:
(a) those provisions; or
(b) the right of that party at any time afterwards to enforce those provisions.

Entire Agreement

6.5 This Agreement embodies the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations, oral or written, express or implied, other than those contained in this Agreement.

Variations

6.6 Without prejudice to clause 2.3, no variation or amendment of this Agreement, or oral promise or commitment related to it, shall be valid unless committed to writing and signed by or on behalf of all parties.

Warranties

6.7 Nothing in this Agreement shall imply any obligation on the part of the Undertaker to the Developer or to any other person to ensure that the Lateral Drains or any part or parts of the same are properly constructed.

Void Provisions

6.8 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions hereof and the remainder of the affected provision. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

7. Disputes

7.1 All disputes, differences and questions which at any time arise between the parties touching or arising out of or in connection with this Agreement or its subject matter shall be referred in the first instance to a senior manager from each of the parties in dispute who shall attempt in good faith to resolve such dispute.

7.2 However, if any such dispute cannot be resolved within twenty Working Days of it arising, any party to the dispute may refer the dispute to the Authority in accordance with section 105(2) of the Act.

8. Notices

8.1 Any notice, document or other communication sent under this Agreement must be in writing and served by first class recorded delivery post;

8.2 A notice, document or other communication shall be taken to have been served if it was sent by post, two Working Days after it was posted;

SCHEDULE 3

(Provisions to be Included in Transfers, Easements & Grants)

The following shall be incorporated into a Deed of Grant or Transfer by the Developer or the Owner and any chargee or mortgagee of the Developer or the Owner (and executed as a Deed) in favour of the Undertaker (formatting to be amended to reflect the nature of the document in which the provisions appear):

DEFINITIONS AND INTERPRETATION:

"the Grantor" means [the Developer] or [the Owner] *as appropriate*

["the Chargee" means [*insert details as appropriate*]]

["the Chargee's Interest" means a charge dated [ ] made between the Grantor and the Chargee and referred to as entry numbers [ ] of the Charges Register of Title Number [ ]

"the Undertaker" means Dwr Cymru Cyfyngedig and its successors in title

"the Apparatus" means the foul and/or surface water Sewers, Lateral Drains and any accessories thereto as defined by Section 219 of the Water Industry Act 1991.

"the Protected Strip" means that strip of land shown on the plan annexed and thereon coloured yellow and being not less than six metres wide and, unless the contrary shall be stipulated or be clear from the plan the Protected Strip shall lie one half to each side of the centreline of the Apparatus.

"the Dominant Tenement" means the undertaking of the Undertaker within its area as particularised in the Undertaker's "Instrument of Appointment" as a Sewerage Undertaker and taking effect under the Water Act 1989 and the properties and rights forming part thereof.

"Section 104 Agreement" means an agreement made pursuant to Section 104 of the Water Industry Act 1991

WHEREAS:

(1) The Grantor is registered as Proprietor with absolute title under Title Number [ ] of the Protected Strip

(2) The Undertaker by virtue of an Appointment made pursuant to the Water Act 1989 is the sewerage undertaker and has entered into or proposes to enter into the Section 104 Agreement to adopt the Apparatus lying within the Protected Strip subject to the terms and conditions set out in the Section 104 Agreement

(3) The Chargee has consented to the grant of easement herein for the purposes of the Chargee's Interest

(4) The Grantor is entering into this Deed pursuant to obligations contained in the Section 104 Agreement

(5) The Grantor has agreed to grant to the Undertaker such perpetual easements rights powers and privileges in respect of the Protected Strip as are necessary for the Dominant Tenement and the Apparatus

NOW THIS DEED WITNESSES:

1. Rights

Subject to the Undertaker making good so far as is reasonably practicable and to the Undertaker indemnifying the Transferee from and against all rates taxes impositions and outgoings of an annual or recurring nature arising out of the exercise of the Rights the Grantor hereby grants with full title guarantee the following perpetual rights ("the Rights") to the Undertaker for the benefit of the Dominant Tenement and the Apparatus and each and every part thereof:

(a) The right of having retaining using inspecting the condition of reconstructing replacing relaying altering enlarging maintaining cleansing repairing conducting and managing the Apparatus in through under over or upon the Protected Strip (being the servient tenement)

(b) The right of having and enjoying the free flow and passage of water with or without other matter of any kind whatsoever in through under over or upon the Protected Strip and to discharge from the Apparatus into:
(i) any other Apparatus; and/or
(ii) (if and to the extent applicable) any canal pond lake or Watercourse (as defined in section 219(1) of the Water Industry Act 1991) within or adjacent to the Protected Strip and to increase or decrease such discharge and for such discharge to flow along and within the said canal pond lake or Watercourse and the right at any time to take samples of such discharge.
(c) The right at any time and at all times of the day or night with or without vehicles plant machinery servants contractors and others and all necessary materials to enter upon and pass and re-pass along the Protected Strip by a route within the same or by such (if any) other convenient route from a public highway as the Undertaker shall from time to time reasonably determine for all purposes connected with the exercise of the Rights
(d) The right of erecting on or near the Protected Strip and maintaining any necessary markers indicating the Protected Strip or the position of the Apparatus provided the same are not erected in such a position as to unreasonably affect the beneficial use of the Protected Strip
(e) The right in exercising the Rights to make all necessary excavations and to tip soil on land immediately adjoining such excavations as shall be necessary or desirable in relation to the exercise of the Rights
(f) The right of fencing or severing off such part of the Protected Strip from the adjoining and adjacent land of the Grantor as shall be necessary and for so long as may be necessary during the exercise of the Rights
(g) The right of support for the Apparatus from the subjacent and adjacent land and soil including minerals of the Grantor
(h) The right (without any liability to pay compensation) to remove all or any trees and shrubs growing in the Protected Strip and all walls hedges, fences and other structures on the Protected Strip
2. Covenants
The Grantor to the intent that the burden of this covenant may run with the Protected Strip and so as to bind (so far as practicable) the same into whosever hands the same may come and every part thereof and to benefit and protect the Apparatus and the Dominant Tenement and each and every part thereof capable of being so benefited or protected but not so as to render the Grantor personally liable for any breach of covenant committed after the Grantor has parted with all interest in the land in respect of which such breach shall occur hereby covenants with the Undertaker to observe and perform the following covenants:
2.1 Not to use or permit or knowingly suffer to be used the Protected Strip or any adjoining or adjacent land of the Grantor for any purpose that may:
2.1.1 endanger injure or damage the Apparatus or render access thereto more difficult or expensive
2.1.2 adversely affect the quality of water or other matter therein or the free flow and passage thereof or means of communication along or though the same
2.2 Without prejudice to the generality of the foregoing:
2.2.1 not to erect construct or place any building wall or other structure or erection or any work of any kind whether permanent or temporary PROVIDED ALWAYS that this covenant shall not be deemed to prevent the erection of boundary or other fences which are of an easily removable character
2.2.2 not to withdraw support from the Apparatus or from the Protected Strip
2.2.3 not to undertake or cause or permit to be undertaken any piling or percussive works within the Protected Strip
2.2.4 not to alter the ground levels within the Protected Strip
2.2.5 not to plant or cause or permit to be planted any trees, hedges or shrubs in the Protected Strip
2.2.6 not to cover any manhole cover or chamber or other accessory which relates to the Apparatus
2.2.7 not to construct or lay or cause or permit construction or laying of any street road pipe duct or cable across the Apparatus at an angle of less than forty-five degrees formed by the Apparatus and the street road pipe duct or cable PROVIDED that this prohibition shall not apply to an existing street road pipe duct or cable

2.2.8 Subject to the foregoing provisions of this clause 2, not to use the Protected Strip except for agricultural, residential garden purposes or as open space or for roads and services
2.2.9 To advise any tenant for the time being of the Protected Strip of the existence of the Apparatus and of this Deed and its contents insofar as the same relate to the tenant's occupancy and enjoyment of the Protected Strip

IT IS HEREBY AGREED AND DECLARED:

[3. The Chargee as proprietor of the Chargee's Interest confirms the grant by the Grantor of the Rights contained in clause 1 and the covenants imposed in clause 2]

[4. The Undertaker shall have the benefit of the right to enforce these Rights and Covenants pursuant to The Contracts (Rights of Third Parties) Act 1999]

5. The Grantor [the Chargee] and the Undertaker do now apply to the Registrar to enter registered notice of the Rights hereby granted and covenants hereby imposed in the Charges Register in respect of the Protected Strip

IN WITNESS of which the parties hereby have executed this Deed the day and year first above written

LATERAL

LATERAL