DATED 28th January 2015

HUNTINGDONSHIRE DISTRICT COUNCIL (1)

--and-

CAMBRIDGESHIRE COUNTY COUNCIL (2)

-and-

FRESHWATER ESTATES (UK) LIMITED (3)

-and-

WHERRY HOUSING ASSOCIATION LTD(4)

-and-

NATIONAL WESTMINSTER BANK PLC (5)

Deed Of Variation and Supplemental Agreement
to a Section 106 Agreement dated 5 September 2005
(as amended by a Deed of Variation dated 25 July 2007)
in relation to Land off Ullswater and Handcrofts Lane Huntingdon

Huntingdonshire District Council
Pathfinder House
St Mary's Street
Huntingdon
PE29 3TN

L.JMcC/PO/413

THIS DEED is made the 28th day of January 2015

BETWEEN:

(1) **HUNTINGDONSHIRE DISTRICT COUNCIL** of Pathfinder House, St Mary's Street, Huntingdon in the County of Cambridgeshire **("the Council")**

(2) **CAMBRIDGE COUNTY COUNCIL of Shire Hall, Castle Hill, Cambridge, CB3 0AP ("the County Council")**

(3) **FRESHWATER ESTATES (UK) LIMITED** (company registration number 3087994) whose registered office is situated at ~~36 Jubilee Terrace Ely Cambridgeshire CB7 4BJ~~ Abbotsgate House, Holland Road Bury St Edmunds IP32 7FA **("the First Owner")**

(4) **WHERRY HOUSING ASSOCIATION LTD** (a Registered Society under the Cooperative and Community Benefit Society Act 2014 reg. no LH3866) of Circle Anglia House 1-3 Highbury Station Road Islington London N1 1SE **("the Second Owner")**

(5) **NATIONAL WESTMINSTER BANK Plc** (company registration number 929027) of Conqueror House, Vision Park, Chivers Way, Histon,Cambridge CB24 9NL. ("**the Mortgagee**")

NOW IT IS AGREED as follows:

1 **Definitions and interpretation**

1.1 In this deed the following words and expressions have the following meanings:

"the Act"	means the Town and Country Planning Act 1990 (as amended)
"Existing Agreement"	means the agreement dated 5 September 2005 under Section 106 of the Act between the Council (1) the County Council (2) Huntingdon Two Limited (3) and HSBC Bank PLC (4) relating to development at Ullswater and Handcrofts Lane Huntingdon as amended by a Deed of Variation dated 25 July 2007
"Head of Development"	means the Head of Development for the time being of the Council or such other Officer as the Council may

	specify
"Joint Administrators"	means **NIGEL MILLAR** and **STEVEN LAW** as joint administrators of the First Owner both of Baker Tilly Restructuring and Recovery LLP of Abbotsgate House, Hollow Road Bury St Edmunds, Suffolk, IP32 7FA
"New Works"	means the planning obligations set out in the First Schedule
"Party" and "Parties"	means the Council, the County Council, the First Owner; the Administrator; the Second Owner; and the Mortgagee as appropriate
"the Schedule"	means the Schedule to the Existing Agreement

1.2 In this deed the words and expressions in the Existing Agreement shall have the same meanings ascribed to them therein unless otherwise stated or the context so admits

1.3 **In this deed:**

1.3.1 the headings are for convenience only and do not affect its construction or interpretation and references to a clause are references (unless otherwise stated) to a clause in this deed

1.3.2 words of one gender include all other genders and any reference to a person includes a reference to a company authority board department or other body

1.3.3 if an obligation is owed to or by more than one person that obligation is owed to or by those persons separately jointly or in any combination

1.3.4 any obligation on a Party to do any act or thing includes an obligation to procure that it is done and any obligation not to do any act or thing includes an obligation not to permit the doing of the act or thing

1.3.5 any consent approval authorisation or notice required or given under this deed will only take effect if given in writing

1.3.6 unless expressly stated to the contrary any reference to a specific statute includes any statutory extension or modification amendment or re-enactment of that statute and any regulations or orders made under it

1.3.7 unless otherwise stated or the context otherwise requires references to a Party shall be deemed to include the successors in title to that Party (including where appropriate any successor to the relevant statutory functions of such Party) and any person deriving title through or under that Party

2 **Recitals**

2.1 The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Land is located and by whom the planning obligations set out in the Existing Agreement and herein are enforceable

2.2 The County Council is the local education authority and also a local planning authority for the purposes of the Act and whom, along with the Council has the benefit of the planning obligations set out in the Existing Agreement. The County Council are party to this Deed only to give their consent to the release of the planning obligations in favour of the Council as set out in the First Schedule to this Deed.

2.3 The First Owner is the freehold owner of part of the Land with absolute freehold title registered under title number CB 327553 subject to the Legal Charges in favour of the Mortgagee

2.4 The First Owner is a company in administration and the Administrators were appointed administrators of the First Owner under paragraph 14(1) of Schedule B1 to the Insolvency Act 1986

2.5 The Second Owner is the freehold owner of part of the Land with absolute freehold title registered under title number CB 341543 and are party to this Deed in order to be released from the planning obligations contained in the Schedule of the Existing Agreement but only insofar as the obligations are varied by this Deed as set out in clause 4 hereof

2.6 The planning obligations contained within paragraphs 1 2 and 3 of Part I, paragraphs 1 2 and 3 of Part II, paragraph 1 of Part III and paragraphs 1 2 3 and 4 of Part IV of the Schedule of the Existing Agreement have been satisfied but certain financial contributions remain outstanding and in the light of changed viability of the Owner since the Existing Agreement was entered into the Administrators have submitted a

request on behalf of the First Owner to the Council to vary the terms of the Existing Agreement

2.7 The Parties agree that the Existing Agreement shall be varied as set out in Clause 4 of this deed

3 Operative Provisions

3.1 The Existing Agreement remains valid and in force subject to the variations in this deed and this deed is supplemental and collateral to the Existing Agreement

3.2 This deed which is a planning obligation for the purposes of the Act is made pursuant to Section 106 and section 106A of the Act and to Section 111 of the Local Government Act 1972 with the intent that covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in Section 106 and Section 111 aforesaid or otherwise against the First Owner and all persons deriving title therefrom

3.3 Nothing contained or implied in this deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local planning authority and its rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be as fully and effectively exercised as if the Council was not a party to this deed.

3.4 If any provisions of this deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not be in any way deemed thereby to be affected or impaired.

3.5 The Parties confirm that the covenants and conditions contained in the Existing Agreement except as varied by this deed are to continue in full force and effect

3.6 The First Owner and Administrators shall pay to the Council the legal costs of £1500 incurred in drafting and completing this Agreement

4 Variation of the Existing Agreement

4.1 The Parties agree that the Existing Agreement shall be varied from the date hereof as follows:

4.1.1 **Deletion of existing obligations**:

4.1.2 Paragraphs 4 to 7 inclusive of Part II of the Schedule of the Existing Agreement shall be deleted in their entirety

4.2 **Addition of new obligations**:

4.2.1 The following shall be added to the Existing Agreement as a new Part V of the Schedule:

" Part V – New Works

1. The First Owner covenant with the Council as follows:-

1.1 to undertake the New Works in accordance with the details specified in the First Schedule to the reasonable satisfaction of the Head of Development by no later than 31st October 2014; and

1.2 to set up and transfer warranties for the New Works to the Council by no later than 30th November 2014; and

1.3 to transfer the Public Open Space and Flood Alleviation Land to the Council at nil cost by no later than 31st January 2015"

5 **Registration**

This deed shall be registered as a Local Land Charge in the Register of Local Land Charges maintained by the Council

THE FIRST SCHEDULE

PART 1 – GROUND IMPROVEMENT WORKS

1. The ground improvement works as specified in the quotation by Pro-Scape attached as Annex 1 to this deed.

PART 2 – STREET LIGHTING WORKS

2. The installation of street lighting as specified in drawing number Planning/NS/PRL/PO01 dated August 2013 and the quotation by K and M lighting Services dated 20th November 2013 attached as Annex 2 to this deed.

PART 3 – DRAINAGE IMPROVEMENT WORKS

3. The drainage improvement works as specified in the quotation by J Breheney Contractors dated 20th November 2013 attached as Annex 3 to this deed.

PART 4 – FOOTWAY IMPROVEMENT WORKS

4. The completion of the footway wearing course on the section of footway approximating the footway between Proposed Column 3 and Proposed Column 5 on drawing Planning/NS/PRL/PO01 dated August 2013 attached as Annex 2 to this deed.

Executed as a DEED by the Parties on the date and year first before written

THE COMMON SEAL of **HUNTINGDONSHIRE**)

DISTRICT COUNCIL was affixed to this Deed in the)

presence of :-)

Authorised signatory [redacted]



SIGNED as a Deed on behalf
Of FRESHWATER ESTATES
(UK) LIMITED In Administration
By Nigel Millar and Steven Law, its Joint Administrators
Pursuant to powers conferred under
The Insolvency Act 1986 in the presence
of:-

[redacted]

Signature of Witness:

[redacted] .....

Name (in block capitals)

[redacted] .....

Address:

[redacted]

Signed and Delivered as a deed by [redacted] as its duly appointed attorney for National Westminster Bank plc:

[redacted] .....

Signature of attorney for National Westminster Bank plc

In the presence of

Signature of Witness

[redacted]

Name:

[redacted] .....

Address:

[redacted]

[redacted] .....

.....

The Common Seal of Wherry Housing Association Limited was affixed to this Deed in the presence of:

Authorised signatory ..... [redacted]

[redacted]

'1531

THE COMMON SEAL of CAMBRIDGESHIRE COUNTY COUNCIL was hereunto affixed in the presence Of:-



2015

[redacted] (Solicitor)

Authorised signatory

Annex 1

Quotation by Pro-Scape

QUOTATION

PRO-SCAPE
Setting The Scene

Location: - Ullswater, Huntingdon

Item	Qty	Description	Unit	@	Rate	Total
	1	Prelims - Welfare facilities	item	@	400.00	400.00
1	12988	Flail Vegetation in preperation for spraying	m2	@	0.04	519.52
2	12988	Remove and dispose off site arisings	m2	@	0.08	1,039.04
3	12988	Herbicide treatment to existing vegetation	m2	@	0.03	389.64
4	12988	Seed preperation - Stone buried	m2			
	12988	Seed preperation - Stone picked	m2			
	12988	Seed preperation - Final Cultivation	m2			
	12988	Seed preperation - Level	m2			
	12988	Seed @ 35g per m2	m2	@	0.45	5,844.60
8	3	make up levels around raised man holes	no.	@	73.33	219.99
9	5	Electrical contractor to check/disconnect lamp posts	no.	@	84.48	422.40
10	5	Remove and dispose off site lamp posts, reinstate area	no.	@	231.40	1,157.00
11	358	Supply and install post and 3 rail fence (Rammed earth rather than concrete)	l/m	@	22.95	8,216.10
	80	Clear new fence line of vegetation/shrubs/trees, remove arisings	l/m	@	6.87	549.60
12	80	2 4m palasade finish (galvanised finish)	l/m	@	96.00	7,680.00
						26,437.89
	12988	Maintenance - Grass cut to seeded area(per cut)	item	@	0.02	259.76
	1	Maintenance - Herbicide spray spring if required	no.	@	0.03	389.64
extra over	80	Palasade fencing powder coated green per metre			11.25	900.00

Annex 2

Drawing number Planning/NS/PRL/PO01 dated August 2013 and Quotation by K and M lighting Services dated 20th November 2013

K & M LIGHTING SERVICES
Tel / Fax:- 01480 395806
e-mail: enquiries@kandmlightingservices.co.uk

6 Arran Way
St. Ives
Huntingdon
Cambs
PE27 3DT

Huntingdonshire District Council
Pathfinder House
St Mary's Street
Huntingdon
Cambs
PE29 3TN

20th November 2013

Our Ref:- 1113007

F.A.O. Pete Lummis

Dear Pete,

Re: Street Lighting Works at Percy Green, Huntingdon.

Further to your enquiry regarding the above location, please find our quotation as follows.

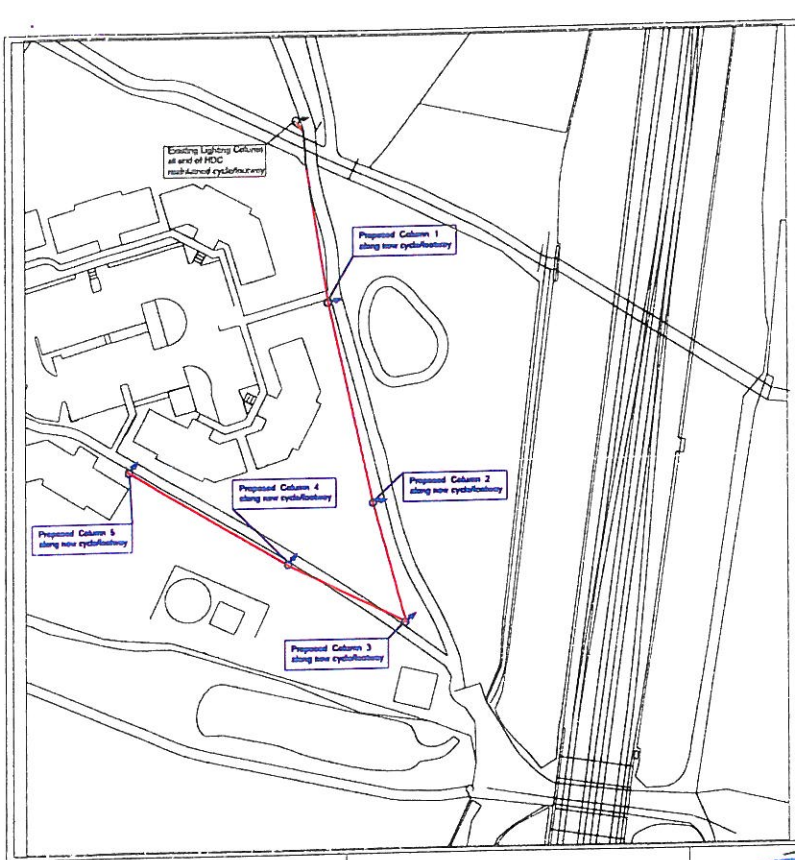
To supply and install 5no 6 metre mid hinged raise and lower columns, Urbis ZXU1 50 watt lanterns with electronic control gear with 1 part photo electric cells.
To trench from existing last column fed from feeder pillar in Haweswater, in verge 194 metres and 3 metres in tarmac footway, supply and lay duct across footway, backfill and reinstate. lay 6mm² 3 core XLPE/SWA, and clip approximately 7 metres on side of bridge and terminate cables in columns.

For the Sum of ***£13643.87.***

Terms and Conditions of Quotation

Statutory Service Works
Please note no allowance has been made for any statutory service works. The procurement of a quotation in any subsequent works associated with this shall remain the responsibility of the customer.

No allowance has been made for the following:
Temporary Lighting, Traffic Management or working outside our normal working hours (08:00-17:00hrs Mon – Fri), in the event that any of these are necessary they will be charged as extra.



Specification
Column - 6m hinged, galvanised

Electrical equipment in column base - Isolator and 6 amp cutout in each column

Cable size 6mm swa, 3 core (one core used as earth with SWA)- Ducted between columns and looped in and out of each column. Earth spike at end of cable run
Tie into existing cable run at existing HDC lighting column by brook. Cable to cross bridge by clipping to outside of concrete bridge beam

Lantern - Urbis, ZXU1 dished polycarbonate protector , electronic control gear and 50w Son T+ lamp reference ZXU1-Dished Poly_1543_SON-T+_50_130/-20_990194TT. Urbis Contact Simon Perkins Mobile 07970046616 simonp@urbislighting.com

The works for the District Council existing section of cycle/footway lighting were carried out by a local Specialist Street Lighting Contractor -
K&M Lighting, 6 Arran Close, St Ives, Cambs PE27 3DT
Contact Maurice Buck Mobile 0753059529
email enquiries@kandmlightingservices.co.uk

JOB
Cycle/footway Lighting Percy Green Huntingdon

TITLE
Layout and Specification

Huntingdonshire District Council
Pathfinder House, St Mary's Street
Huntingdon, Cambs PE29 3TN
Telephone 01480 388388

Chris Allen, B.Sc.,CEng,DIP.RSA
Project and Assets Manager
Environmental Management Division

SCALE	DATE
NTS	August 2013
DRAWN BY	Pete Lummis
DRG No	Planning/NS/PRL/PG01

Annex 3

Quotation by J Breheney Contractors dated 20th November 2013

J. BREHENY CONTRACTORS
CHANCELLOR CLOSE, STUKELEY MEADOWS IND. EST.,
HUNTINGDON, CAMBS PE29 6EN
TEL. 01480 459341 FAX 01480 414952

Site :	**Percy Green Place, Huntingdon**
Client :	**Huntingdonshire District Council**
Contract :	**Minor Works Framework**
Ref:	JC / 4663 / 032

Provide all necessary labour, plant and materials to:

Break out and rebench manhole, replace existing cover with D400 cover and frame. Including making good on completion 948.48

Tender Total: £948.48

Notes

- All rates are exclusive of VAT
- Prices are fixed until 30th January 2014

20/11/2013