

DATED ..... 1 October ..... 2020

**MONMOUTHSHIRE COUNTY COUNCIL**

**-AND-**

**MELIN HOMES**

**-AND-**

**THE WELSH MINISTERS**

**AGREEMENT**

under Section 38 of the Highways Act 1980  
and Section 33 of the Local Government (Miscellaneous  
Provisions) Act 1982 in connection with  
Land at Crick Road, Portskewett  
in the administrative County of Monmouthshire

Monmouthshire County Council,  
County Hall,  
The Rhadyr, Usk,  
NP15 1GA



**DEED OF AGREEMENT** made on the date **BETWEEN** the Council of the first part the Developer of the second part and the Surety of the third part

## **INTERPRETATION**

In this Agreement where the context so admits

- (1) the "date" means
- (2) the "Council" means **MONMOUTHSHIRE COUNTY COUNCIL** of County Hall, The Rhadyr, Usk NP15 1GA.
- (3) the "Developer" means **MELIN HOMES** whose registered office is situate at Ty'r Efail, Lower Mill Field, Pontypool, NP4 0XJ
- (4) the "Surety" means **THE WELSH MINISTERS** whose registered office is situate at Crown Buildings, Cathays Park, Cardiff, CF10 3NQ
- (5) the "Site" means land at Crick Road, Porskewett in the administrative County of Monmouthshire shown for the purpose of identification only by red edging on the Drawings
- (6) the "Drawings" means the drawing numbers 7564-38B; 7564-T-03D; 7564-T-04D; 7564-T-05C; 7564-T-06A; 7564-T-07; 7564-T-08; 7564-T-09E; 7564-T-17B annexed hereto and signed by and on behalf of the parties hereto and any amended such Drawing signed by or on behalf of the Proper Officer
- (7) the "Estimated Cost" is the sum of ONE MILLION NINE HUNDRED THOUSAND POUNDS (£1,900,000.00) being the amount which is in the opinion of the Proper Officer the cost of carrying out the Works within the period specified in Clause 1 hereof
- (8) the "Inspection Fee" is the sum of ONE HUNDRED AND FIFTY TWO THOUSAND POUNDS (£152,000.00)
- (9) the "Final Certificate" means the certificate to be issued upon the satisfactory completion of Works in accordance with Clause 10 hereof
- (10) the "Maintenance Period" means the period specified in clause 8 hereof
- (11) the "Part 1 Certificate" means the certificate to be issued upon the satisfactory completion of the Part 1 Works in accordance with Clause 6 hereof
- (12) the "Part 1 Works" means the works referred to in Part 1 of the Schedule hereto

- (13) the "Part 2 Certificate" means the certificate to be issued upon the satisfactory completion of the Part 2 Works in accordance with Clause 8 hereto
- (14) the "Part 2 Works" means the works referred to in Part 2 of the Schedule hereto
- (15) the "Proper Officer" means the officer of the Council for the time being appointed for the purposes of this Agreement or of any provision contained herein
- (16) the "Road" means
- (i) the carriageway coloured brown and
  - (ii) the footway coloured blue and
  - (iii) the on and off site road surface water drainage hatched blue and
  - (iv) the vehicle crossover areas hatched coloured grey
  - (vi) the street lighting shown on the Drawings annexed hereto
- (17) the "Specification" means the edition of the Welsh Office publication entitled Specification for Highway Works (dated August 1986) as may be amended from time to time
- (18) the "Statutory Undertaker" means:
- (i) a statutory undertaker as defined in Section 329(1) of the Highways Act 1980;
  - (ii) public gas suppliers and public gas transporters as defined in the Gas Act 1986;
  - (iii) water undertakers and sewerage undertakers as defined in the Water Act 1989;
  - (iv) holders of licences under section 6 of the Electricity Act 1989 who are entitled to exercise any power conferred by Schedule 4 of that Act; and
  - (v) British Telecommunications PLC or such other telecommunications operator as may be authorised to operate a telecommunications system under the Telecommunications Act 1984

- (19) the "Works" means the works specified in the Schedule hereto for the making up of the Road
- (20) the "Default Notice" means the notice defined in Clause 17 hereof
- (21) the "Default Work" means the work defined in Clause 17 hereof
- (22) the "Default Cost" means an estimate by the Proper Officer of the cost of carrying out the Default Work and the cost of maintaining the works during the Maintenance Period and the usual establishment charges of the Council which cost:-
  - (1) shall not exceed the Estimated Cost before the issue of the Part 1 Certificate
  - (2) shall not exceed the sum of NINE HUNDRED AND FIFTY THOUSAND POUNDS (£950,000) on and after the issue of the Part 1 Certificate
  - (3) shall not exceed the sum of THREE HUNDRED AND EIGHTY THOUSAND POUNDS (£380,000) after the issue of the Part 2 Certificate

and words imparting the singular include the plural and vice versa

**WHEREAS:**

- (1) The Council is the Local Highway Authority for the purposes of the Highways Act 1980
- (2) The Developer is the estate owner in fee simple absolute in possession of the site which includes the site of the proposed Road and all other land required for the Works hereinafter referred to and is desirous of making up the Road so that the same shall become a highway maintainable at the public expense
- (3) The Developer has requested that when the Works hereinafter referred to for the making up of the Road have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the Road as a highway maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing

**NOW** in pursuance of Section 38 of the Highways Act and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 **IT IS HEREBY AGREED AND DECLARED BY DEED** by and between the parties hereto as follows:

**1. DEVELOPERS LIABILITY:**

- (a) The Developer shall carry out and complete the Works at the Developers expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Specification and the Drawings to the satisfaction of the Proper Officer within 24 calendar months from the date hereof
- (b) The Part 1 Works shall be completed within 18 calendar months from the date hereof and the Part 2 Works shall be completed within 6 calendar months of the date of issue of the Part 1 Certificate

**2. DECLARATION:**

The Developer hereby declares and warrants to the Council that he has and will throughout the duration of this Agreement maintain full right liberty and consent to carry out such works as may be necessary to connect the Road to a vehicular highway

**3. STATUTORY UNDERTAKERS CONNECTION TO EXISTING SERVICES:**

The Developer shall before connecting the Road with any highway maintainable at the public expense give notice to each Statutory Undertaker for the time being of any service or device laid in upon or under such highway of the proposal to make connection as if the connection were a work to be executed for road purposes and were mentioned in Section 84(1) of the New Roads and Street Works Act 1991 and shall indemnify the Council in respect of the cost of any work or measure considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection

**4. INDEMNITY:**

The Developer hereby indemnifies the Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works other than those arising out of or in consequence of any act neglect default or liability of the Council

**5. ACCESS TO THE SITE:**

The Developer shall during the carrying out of the Works give to the Proper Officer and any other officer of the Council access to every part of the Works and sites thereof for the purpose of inspecting the Works and all materials used or intended to be used therein

**6. PART 1 CERTIFICATE:**

On completion of the Part 1 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue his Part 1 Certificate to the Developer

**7. OCCUPATION OF BUILDINGS:**

No dwelling erected by the Developer or on his behalf fronting adjoining or abutting on to the Road shall be occupied until:

- (a) the Proper Officer has issued his Part 1 Certificate in respect of the Road or such part of the Road as will provide the occupier with access to a vehicular highway and where applicable a base course pedestrian access to such highway has been provided

and

- (b) the Road or such part of the Road has columns erected ready for lighting in accordance with the Specification and the Drawings and the Developer has arranged with the appropriate Statutory Undertaker for an electricity supply thereto by giving at least six weeks prior notice in writing or as maybe otherwise agreed in writing by the Proper Officer

**8. PART 2 CERTIFICATE:**

On completion of the Part 2 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall if any sewer constructed under the Road under an agreement under Section 104 of the Water Industry Act 1991 has been certified as being or having been on maintenance issue his Part 2 Certificate to the Developer and from the date thereof:

- (a) the Maintenance Period of twelve calendar months shall commence to run
- (b) the Road shall become a highway and remain forever open for use by the public at large
- (c) the Developer shall remain the street manager for the purposes of Section 49(4) of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Road shall become a highway maintainable at the public expense

**9. OBLIGATIONS DURING THE MAINTENANCE PERIOD:**

During the maintenance period:

- (a) the Developer at his own expense shall maintain the Works including all grassed and planted areas and carry out such routine maintenance as may be necessary (including periodic cleansing of channels and gullies and winter maintenance if applicable) to facilitate use by vehicles and pedestrians
- (b) the Council at its own expense shall undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs

**10. FINAL CERTIFICATE:**

Prior to the expiration of the Maintenance Period the Developer shall forthwith at his own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the Maintenance Period (including any defect in or damage to the Roads surface water system) of which he has been notified in writing by the Proper Officer so that the Works comply with the Specification

**AND THEN PROVIDED THAT**

- (a) the Developer has paid to the Council all amounts due to the Council under this Agreement and
- (b) any necessary reinstatement or other works including remedial works required by Clause 12 have been completed to the satisfaction in all respects of the Proper Officer and
- (c) the Developer has delivered to the Proper Officer drawings showing the Works as constructed
- (d) the maintenance period has expired

the Proper Officer shall issue his Final Certificate to the Developer and shall release the Surety from all liability hereunder

**11. GRANTS OF RIGHTS OF DRAINAGE AND VISIBILITY SPLAYS:**

Before the issue of his Final Certificate by the Proper Officer the Developer shall without cost to the Council execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure the Council

- (a) any Visibility Splay
- (b) full drainage rights in respect of such parts of the surface water drainage system of the Road as are situated outside the limits of the Road and the Council shall not be liable for the payment



of compensation or legal or any other costs or fees arising on account of the execution of any such deeds

**12. PROCEDURE FOR INSPECTION AND ISSUE OF CERTIFICATES:**

Within fifty-six days of receipt of written application from the Developer for the issue of Part 1 Certificate or Final Certificate pursuant to this Agreement and within twenty-eight days of written application from the Developer for the issue of a Part 2 Certificate pursuant to this Agreement the Proper Officer shall inspect the works and where necessary provide the Developer with a definitive list in writing of any remedial works required to be carried out before the issue of that certificate and any such remedial works shall be subject to the same inspection procedure detailed herein until such time as they shall be completed to the reasonable satisfaction of the Proper Officer who within ninety days thereafter shall issue the relevant Certificate

**13. ADOPTION:**

Upon the issue of the Final Certificate the Road shall become a highway maintainable at the public expense

**14. INSPECTION FEE:**

- (a) On the execution of this Agreement the Developer shall pay the Council the Inspection Fee in respect of the costs incurred by the Council in inspecting the Works
- (b) Receipt by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Works by the Council

**15. DETERMINATION BY THE COUNCIL:**

If the Developer fails to perform or observe any of the conditions stipulations or obligations on his part contained herein or if a receiving order in bankruptcy is made against him or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 16, 17 and 18 hereof) by notice in writing signed by the

Proper Officer and delivered to the Developer or sent by post to the address stated in this Agreement

**16. POWER TO EXECUTE WORKS IN DEFAULT:**

Without prejudice to Clauses 1 and 15 hereof if the Developer fails to execute or complete the Works in accordance with the Developers obligations hereunder the Council shall after not less than twenty-eight days notice in writing to the Developer be entitled to execute or complete the Works in default by its own employees or by contractor otherwise and to recover the cost as certified by the Proper Officer from the Developer

**17. SURETYS OBLIGATION:**

- (a) If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on his part contained in this Agreement or if a receiving order in bankruptcy is made in respect of the Developers estate or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation) the Proper Officer may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement send to the Surety notice in writing (hereinafter referred to as the "Default Notice")-
  - (i) specifying the work (hereinafter referred to as the "Default Work") to be carried out in order that the Works may be carried out or completed as the case may be in accordance with this Agreement:  
  
and
  - (ii) specifying the Default Cost
- (b) Within twenty-eight days after the Surety has received the Default Notice the Surety shall-
  - (i) pay the Default Cost to the Council; or
  - (ii) send to the Council notice in writing (hereinafter referred to as the "Suretys Counter Notice") of the intention of the Surety to carry out the Default Work
- (c) If the Surety having sent the Suretys Counter Notice to the Council fails to start the Default Work within fifty-six days after the Surety received the Default Notice the Surety shall forthwith pay the Default Cost to the Council with simple interest thereon at the minimum lending rate for the time being of Lloyds Bank

TSB PLC plus 3 per cent per annum calculated from the date on which the Surety received the Default Notice

- (d) If the Surety having sent the Suretys Counter Notice to the Council starts the Default Work and the said work is not completed within four months after the Suretys Counter Notice was received by the Council or within such further period as may be agreed by the Council the Surety shall subject to sub-clause(e) forthwith on demand by the Proper Officer pay to the Council such sum as the Proper Officer may determine as being the cost of carrying out any Default Work not carried out by the Surety and the cost of maintaining or completing the maintenance of the Works for the Maintenance Period and also pay to the Council the amount determined by the Proper Officer as being the amount of the appropriate usual establishment charges of the Council
- (e) The sum payable under sub-clause (d) shall not exceed the Default Cost and the covenant in sub-clause (c) shall apply with respect to such sum and on the issue of the Final Certificate the Surety shall be released from all liabilities hereunder

#### **18. COUNCILS COVENANTS:**

The Council **HEREBY COVENANTS** with the Developer and with the Surety for the benefit of all building plots fronting adjoining or abutting the Road and for each and every one of them:

- (a) to use its best endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the Council shall think fit
- (b) to apply all monies received from the Surety as hereinbefore mentioned towards the expenditure involved in executing or completing the Works and maintaining and making good all defects for a period of twelve months after completion and the amount so received shall be deducted from any sum which would otherwise be recoverable from the owners of premises fronting the road or roads under the provisions of the Highways Act 1980 or any other Act for the time being in force replacing or amending the same
- (c) in the event of the sum paid by the Surety to the Council exceeding the cost of executing or completing the Works and maintaining and making good all defects as aforesaid together with the amount of the Councils usual establishment charges to repay the Surety within twenty-eight days after the Road becomes maintainable at the public expense the amount of such excess with interest calculated at half-yearly rests on the

unexpended balance for the time being of the sum paid by the Surety to the Council at the rate of interest prevailing from time to time on monies held in a deposit account with the Councils bankers

The Council **HEREBY FURTHER COVENANTS** that the Final Certificate will be issued in accordance with this Agreement and that the Surety will be released from all liability under this Agreement in accordance with this Agreement

**19. PART OF PARTS**

**NOTWITHSTANDING** anything hereinbefore contained the Developer may from time to time during the currency of this Agreement apply to the Proper Officer for his Part 1 Certificate or his Part 2 Certificate in respect of any part of the Road (being the whole width of the Road between points to be defined in the application and being of aggregate length not less than 150 metres) and if the Proper Officer shall be satisfied that the part so defined is in all respects suitable to be treated as a separate road for the purposes of construction and adoption then he shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that part and thereafter the same proceedings maybe taken in respect of the said part of the Road as if the said part were the subject of a separate Agreement under which the terms of this Agreement applied to the said part separately from the remainder of the Road but without prejudice to the application of this Agreement to the remainder of the Road and the liability of the Surety shall be reduced as may be agreed by the Proper Officer with the Developer

**20. LEGAL COSTS:**

The Developer shall pay:

- (a) The Councils legal costs in connection with the preparation and completion of this Agreement and a counterpart thereof and the stamp duty thereon (if any);
- (b) The Councils legal costs and other expenses (including administration expenses) incidental to and in connection with the procurement of drainage rights and visibility splays referred to in Clause 11 hereof and the preparation service and enforcement of any notice given by the Council under this Agreement

**21. ARBITRATION**

In the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed by the President for the time

being of the Institution of Civil Engineers and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or modification thereof

**22. ASSIGNMENT**

This agreement may not be assigned by the Developer without the consent of the Council which consent shall not be unreasonably withheld

**23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

It is hereby agreed between the parties hereto that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no person other than the parties to this agreement (and any successors in title or function) shall have any rights under or be able to enforce the provisions of this agreement

## **THE SCHEDULE**

### **Part 1**

1. All highway drainage
2. All other drainage contained within the highway
3. All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps
4. The laying of ducts, cables, services etc
5. Carriageway sub-base roadbase and any supporting structures thereto
6. Carriageway base course surfacing where appropriate
7. Demarcation of sight lines and clearance of vision splays

### **Part 2**

8. All outstanding kerbing not completed in Part 1
9. Pedestrian Ways
10. Carriageway wearing course and/all outstanding carriageway base course not completed in Part 1

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11. Vision splays and verges
12. Street lighting and street furniture
13. Road markings
14. All other works described in the Specification and shown in the Drawings

**IN WITNESS** whereof the parties hereto have caused this agreement to be executed as a deed the day and year first before written:

**THE COMMON SEAL** of  
**MONMOUTHSHIRE COUNTY COUNCIL**  
was hereunto affixed  
in the presence of:

Member of the Council



Authorised Signatory



Executed as a Deed by

**MELIN HOMES LIMITED**

Acting by its attorneys:

Peter Hur

and

David Kin



In exercise of the powers conferred on them by a Power of Attorney

Dated 9<sup>th</sup> April 2020



**THE COMMON SEAL** of

Executed as a deed by applying the seal of the Welsh  
Ministers.

The application of the seal of the Welsh Ministers is  
AUTHENTICATED by

Jacquelyn Mary Rees  
Commercial Property Lawyer

who is duly authorised for that purpose by the Director of  
Legal Services by authority of the Welsh Ministers under  
Section 90(2) of the Government of Wales Act 2006.



















