

DATED

1 October 2020

**AGREEMENT RELATING TO WORKS ON CRICK ROAD AND B4245
PORTSKEWETT**

Section 278 highways agreement

between

MONMOUTHSHIRE COUNTY COUNCIL

and

MELIN HOMES

and

THE WELSH MINISTERS

Monmouthshire County Council
County Hall
The Rhadyr
Usk
NP15 1GA

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THIS AGREEMENT is dated

day of

2020

PARTIES

- (1) MONMOUTHSHIRE COUNTY COUNCIL of County Hall The Rhadyr Usk Monmouthshire NP15 1GA (**Council**).
- (2) MELIN HOMES (company Number IP27421R) whose registered office is Ty'r Efail, Lower Mill Field, Pontypool, NP4 0XJ (**Developer**).
- (3) THE WELSH MINISTERS whose registered office is at Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (**Surety**).

BACKGROUND

- (A) The Council is the local highway authority for the purposes of the Highways Act 1980 for the Highway Land.
- (B) The Developer is the owner of the Development Land on which the Developer proposes to undertake the Development in accordance with the Planning Permission.
- (C) The Planning Permission is accompanied by the Section 106 Agreement which contains an obligation requiring the Developer not to implement or permit or procure the implementation of the Development until it has entered into an agreement under section 278 of the Highways Act 1980 in respect of the Highway Works and this agreement is entered into in satisfaction of that obligation.
- (D) The Developer agrees to meet the cost of the Highway Works.
- (E) The Council is satisfied that the Highway Works are of benefit to the public.
- (F) The Surety has agreed to enter into this agreement to guarantee the performance of the Developer's obligations.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Additional Design Check Fee: the reasonable costs incurred by the Council in approving any alterations to the Highway Works.

Additional Inspection Fee: the reasonable costs incurred by the Council in inspecting the construction of the Highway Works (including any Statutory Undertakers' diversions, alterations and other works) to ensure that the Highway Works comply with the Drawings, the detailed design for the Highway Works, the

Specification and the Method Statement to the extent that any such costs are not covered by the Estimated Inspection Fee.

Advance Warning Signs: public information signs that give advance notice to highway users of the commencement of the Highway Works (or any part) or that communicates other relevant information.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (*SI 2015/51*).

Certificate of Practical Completion: the certificate issued by the Proper Officer on Practical Completion of the Highway Works.

Client: the client as defined by the CDM Regulations.

Construction Contract: any contract for the construction of the Highway Works or any relevant parts let by the Developer to the Contractor in accordance with the terms of this agreement.

Contractor: the contractor appointed by the Developer as the principal contractor under the CDM Regulations to carry out the Highway Works.

CRC: the Carbon Reduction Commitment Energy Efficiency Scheme as defined in article 2(1) of the CRC Energy Efficiency Scheme Order 2010 (*SI 2010/768*).

CRC Costs: any costs, charges, fees, penalties or any other liability attributable to the participation by the Developer in the CRC and relating to the energy consumption of the Street Furniture.

Default Cost: both the:

(a) cost of carrying out the Default Work; and

(b) usual establishment charges of the Council.

Default Event: any event specified in clause 20.

Default Work: work required to be carried out by or on behalf of the Surety following a Default Event to secure the performance of the Developer's covenants, obligations and liabilities contained in this agreement.

Development: the development permitted by the Planning Permission.

Development Land: means the land at Crick Road and B4245, Porskewett registered at HM Land Registry with absolute title under title number CYM799285 **Drawings:** the Drawings attached to this agreement and signed by or on behalf of the parties and such other drawings as may be approved from time to time by the Council acting reasonably either as amendments to the Drawings or as part of the detailed design for the Highway Works.

Engineering Contract: the NEC3 with such amendments as the Council and the Developer acting reasonably shall agree.

Estimated Cost of Works: FOUR HUNDRED AND FOURTEEN THOUSAND POUNDS (£414,000.00) the sum that in the reasonable opinion of the Developer is

the estimated cost of carrying out and maintaining the Highway Works in accordance with the terms of this agreement.

Inspection Fee: THIRTY EIGHT THOUSAND ONE HUNDRED AND TWENTY POUNDS (£38,120.00) to be used by the Council to pay for the reasonable and proper costs incurred in inspecting the construction of the Highway Works and any works to Statutory Undertakers' plant or equipment to ensure that the Highway Works comply with the Drawings, the detailed design for the Highway Works, the Specification and the Method Statement.

Final Certificate: the certificate issued by the Council following the expiry of the Maintenance Period.

Health and Safety File: the file or other permanent record containing the information required by the CDM Regulations.

Health and Safety Plan: the plan that contains the pre-construction information and the construction phase plan both as defined in the CDM Regulations.

Highway Land: that part of the local highway network maintainable at the public expense on which the Highway Works are proposed to be carried out including all footpaths, Street Furniture, verges, service strips, service margins, vehicular crossings and road surface water drainage systems (if any).

Highway Works: the highway improvement works described generally in Schedule 1 and shown in principle on Drawing Numbers 7564-278-01; 7564-278-02A; 7564-278-03A; 7564-278-04A; 7564-278-05A; 7564-278-06A; 7564-278-07A; 7564-278-08; 7564-278-09; 7564-278-10; 7564-278-11; GC3561-CAP-79-XX-DR-E-1301 P01; GC3561-CAP-79-XX-DR-E-1302 P01 and any detailed design subsequently approved by the Council in accordance with this agreement.

Interest: Bank of England Base Rate plus 3.6%

Maintenance Period: a period of 12 months from the date of issue of the Certificate of Practical Completion or, if construction vehicles continue to travel along the Highway Land, such longer period as the Proper Officer may reasonably determine unless at the end of that period the Proper Officer forms the view that the Final Certificate cannot be issued on the basis that the remedial works have not been completed in accordance with this agreement in which case the Maintenance Period shall include such further period as shall elapse until issue of the Final Certificate.

Method Statement: a written statement detailing the individual construction processes to be employed to carry out the Highway Works and a signing strategy that adequately demonstrates that the safety of all highway users will be ensured at all times.

Occupation: the physical use of the Development Land (or any buildings on it) for the purposes permitted by the Planning Permission but not including occupation for the purposes of construction, fitting out or security and **Occupied** shall be construed accordingly.

Planning Permission: the planning permission issued by Monmouthshire County Council on with reference number DM/2018/00696 as may be varied from time to time

Practical Completion: completion of the Highway Works, including any works required to be carried out as a result of the Stage 3 Safety Audit Report, that enables the Highway Works to be used for the purpose for which they were designed, save for any minor defects and **Practically Complete** shall be construed accordingly.

Programme: the programme(s) prepared by the Developer and agreed from time to time in writing by the Council for the carrying out of the Highway Works showing the sequence in which the Highway Works are to be carried out with an estimate of time that will be spent in carrying out each stage of the Highway Works.

Proper Officer: any suitably qualified Council officer for the time being appointed for the purposes of this agreement or of any provisions contained in this agreement.

Road Safety Audits: safety audits of the Highway Works to be carried out in accordance with the Department for Transport Road Traffic Audit Standard HD 19/15.

Road Safety Audit Report: the report to be prepared by the Safety Auditor following the carrying out of the Road Safety Audits.

Safety Auditor: an independent and suitably qualified highway or traffic engineer appointed by the Developer at the Developer's expense to carry out the Road Safety Audits such appointment having been previously approved in writing by the Proper Officer.

Section 106 Agreement: the agreement entered into pursuant to section 106 of the Town and Country Planning Act 1990 on 29th March 2019 between the Council and Melin Homes Ltd.

Sewer Adoption Agreement: an agreement made under section 104 of the Water Industry Act 1991.

Specification: Manual of Contract Documents for Highway Works, Volume 1 Specification for Highway Works

Stage 2 Safety Audit Report: the Road Safety Audit Report relating to the detailed design of the Highway Works to be carried out prior to commencement of the Highway Works.

Stage 3 Safety Audit Report: the Road Safety Audit Report relating to the completed Highway Works to be carried out prior to issue of the Certificate of Practical Completion.

Stage 4 Safety Audit Report: the Road Safety Audit Report relating to the completed Highway Works to be carried out 11 months following the issue of the Certificate of Practical Completion.

Statutory Undertaker: any person, company, corporation, board or authority whose apparatus, at the date of this agreement, is already installed in, under, over or on the

Highway Land pursuant to a statutory right or to a licence granted under section 50 of the New Roads and Street Works Act 1991.

Street Furniture: the street lighting, traffic lights and illuminated traffic signs installed or to be installed as part of the Highway Works on the Highway Land.

Surety's Counter Notice: written notice of the Surety's intention to carry out the Default Work.

Traffic Management Plan: a plan which identifies temporary traffic management arrangements and controls to be implemented at the Developer's expense during the construction of the Highway Works taking into account the relevant provisions of the Traffic Management Act 2004 including time restrictions, routes for heavy goods vehicles, parking and temporary pedestrian routes, details of any Traffic Regulation Order and the temporary diversions required to ensure that the best possible traffic flows are maintained on the Highway Land during the construction of the Highway Works.

Traffic Regulation Order: any temporary or permanent order required to commence and carry out the construction of the Highway Works pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Wales

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** excludes fax and e-mail.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. STATUTORY PROVISIONS

This agreement is made under section 278 of the Highways Act 1980, section 111 of the Local Government Act 1972 and any other enabling powers.

3. DEVELOPER'S OBLIGATIONS

- 3.1 The Developer covenants with the Council to design, construct and complete the Highway Works in accordance with the terms of this agreement.
- 3.2 The Developer shall not interfere with the free flow of traffic on the existing highway or in any way obstruct the Highway Land without the express written permission of the Proper Officer and the bringing into force of any necessary Traffic Regulation Order.
- 3.3 The Developer shall pay the Council's reasonable and proper legal costs and disbursements in connection with the preparation, completion and registration of this agreement on the date of this agreement or within ten Working Days of written demand.

3.4 The Developer covenants with the Council that, unless otherwise stated, if any sums payable under this agreement are unpaid on the due date then the Developer shall pay Interest on the sum outstanding from the due date until the actual date of payment.

4. COUNCIL'S OBLIGATIONS

4.1 The Council covenants with the Developer that it will comply with its obligations contained in this agreement.

4.2 The Council appoints the Developer to act as its agent in relation to the Highway Works and gives the Developer and all those authorised by the Developer licence to enter the Highway Land with or without workmen, plant and machinery to enable the Developer to comply with its obligations in this agreement. The Council agrees that the Developer is permitted to break open the surface of the Highway Land to the extent reasonably necessary for the carrying out of the Highway Works (subject to making good any damage).

4.3 The Council shall, as soon as practicable, use its powers to obtain any Traffic Regulation Orders at the request and cost of the Developer.

4.4 The Council shall disregard this agreement when considering any objections to any Traffic Regulation Order. If any objections are made, the Council shall have no duty or obligation to the Developer by reason of this agreement or otherwise to make the Traffic Regulation Order other than the duty it would have to all persons interested in the Traffic Regulation Order in its capacity as local highway authority. The Council shall use reasonable endeavours to resolve such objections as soon as reasonably possible.

4.5 If there are no objections to any Traffic Regulation Order and the Council resolves to make one or all of the Traffic Regulation Orders, any Traffic Regulation Order shall be made and the statutory formalities completed as soon as reasonably practicable.

5. RESTRICTIONS ON COMMENCEMENT OF THE HIGHWAY WORKS

5.1 The Developer shall not commence the Highway Works:

- (a) before obtaining all necessary consents and approvals; and
- (b) until the Proper Officer has issued the pre-commencement certificate.

5.2 In order to obtain the pre-commencement certificate the Developer shall:

(a) obtain approval in writing from the Proper Officer for:

- (i) the detailed design for the Highway Works, the Specification, the Programme and the Method Statement;
- (ii) the Estimated Cost of Works;
- (iii) the Traffic Management Plan;
- (iv) the name of the Contractor;
- (v) the draft Construction Contract;
- (vi) the Stage 2 Safety Audit Report;
- (vii) the Health and Safety Plan;
- (viii) details of any diversion or alteration works required to be carried out to Statutory Undertakers' mains, services, plant or equipment necessitated by the Highway Works;
- (ix) the certificate of insurance cover;
- (x) the location of car parking for site and construction personnel during the carrying out of the Highway Works;
- (xi) any other information that the Proper Officer shall [reasonably] require including any variation (whether by way of alteration, addition or omission) to the Highway Works;

(b) pay to the Council:

- (i) the Design Check Fee;
- (ii) the Inspection Fee;
- (iii) the Commuted Sum (if applicable);

all reasonable and proper legal, administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new Traffic Regulation Orders arising as a consequence of the Highway Works;

(c) install the Advance Warning Signs in such locations as the Proper Officer advises and to the Proper Officer's reasonable satisfaction;

(d) submit to the Council noise readings, supporting information, calculations and any other information or data that the Council may request for the purposes of ascertaining whether any properties are eligible for an offer of insulation works or a grant to cover the cost of such works pursuant to the Noise Insulation Regulations 1975 (*SI 1975/1763*);

- (e) consult with, place orders with and pay any costs to Statutory Undertakers in relation to any works to their mains, services, plant or equipment necessitated by the Highway Works including any works required by the Statutory Undertakers to divert the services to the satisfaction of the Proper Officer;
- (f) provide to the Proper Officer the contact details of a representative for the duration of the construction of the Highway Works and the Maintenance Period and a telephone number of such representative.
- (g) ensure that the Highway Works are properly notified to the Health and Safety Executive in accordance with the CDM Regulations and give to the Council a copy of the notification and any acknowledgement from the Health and Safety Executive; and
- (h) secure any necessary Traffic Regulation Orders which may be required in order for the Highway Works to commence.

5.3 At any time after receipt of the pre-commencement certificate the Developer shall give to the Council not less than 28 Working Days written notice of the proposed date of commencement of the Highway Works.

6. CONSTRUCTION OF THE HIGHWAY WORKS

- 6.1 The Developer shall, at its own cost, carry out and complete the Highway Works:
- (a) in a good and workmanlike manner;
 - (b) using only good quality materials approved by the Proper Officer;
 - (c) in accordance with the details approved by the Council pursuant to clause 5.2(a) or as otherwise agreed in writing with the Council; and
 - (d) in compliance with all relevant British Standards, codes of practice and good building practice.
- 6.2 The Highway Works shall only be carried out between the times as agreed in writing by the Council.

- 6.3 The Developer shall provide the Council with not less than 20-Working Days notice (or such lesser period as may be agreed by the Council) of the commencement of any works to Statutory Undertakers' mains or services, plant or equipment necessitated by the Highway Works and shall at no cost to the Council carry out or procure the carrying out of such works in accordance with the details approved by the Council, the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004.
- 6.4 The Developer shall, as far as is practicable, lay under the Highway Land at no cost to the Council:
- (a) any new drains, sewers, gas mains, water mains, pipes, electric cables and telecommunication cables together with all necessary connections from them to the boundary of the Highway Land (where appropriate in ducting) before the foundations of the Highway Works are laid;
 - (b) any connections from the electric cables to the street lamps before the paving of any footways comprised in the Highway Works is carried out.
- 6.5 During the carrying out of the Highway Works the Developer shall comply with the:
- (a) Traffic Management Plan;
 - (b) provisions of Chapter Eight of the Traffic Signs Manual (published by the Department for Transport) as amended;
 - (c) directions of the police and the Proper Officer in respect of lighting and signing of the Highway Works and any diversion routes.
- 6.6 During the carrying out of any part of the Highway Works, if requested by the Proper Officer, the Developer shall remove any existing Street Furniture and relocate or deliver them for local storage.
- 6.7 Before applying for the Certificate of Practical Completion the Developer shall commission the preparation and completion of a Stage 3 Safety Audit Report and carry out and complete at its own expense any additional works, alterations or amendments to the Highway Works reasonably required by the Proper Officer within such reasonable period as the Proper Officer shall allow.

6.8 The Highway Works shall be Practically Complete prior to the Occupation of the first dwelling on the Development Land.

7. CERTIFICATE OF PRACTICAL COMPLETION

7.1 Following completion of the Highway Works, the Developer shall apply to the Proper Officer in writing for a Certificate of Practical Completion.

7.2 Within 10 Working Days following receipt of a written application for the issue of a Certificate of Practical Completion the Proper Officer shall:

- (a) inspect the Highway Works to which the application relates; and
- (b) provide the Developer (where necessary) with a definitive written list of any further works required to be carried out in order to achieve Practical Completion of the Highway Works and any remedial works required as a result of the Stage 3 Safety Audit Report (Additional Works).

7.3 The Developer must carry out any Additional Works without delay and at its own cost.

7.4 The Additional Works shall be subject to the same inspection procedure set out in clause 7.2(a) until such time as the Highway Works are Practically Complete to the satisfaction of the Proper Officer and safe and fit for the type of traffic expected to use the Highway Works.

7.5 Within 20 Working Days of a satisfactory inspection, the Certificate of Practical Completion shall be issued to the Developer provided that the maintenance period of any sewer constructed on or under the Highway Land in accordance with a Sewer Adoption Agreement is currently running or has expired.

7.6 From and including the date of issue of the Certificate of Practical Completion the Highways Land together with the Highways Works shall be available for use by vehicles and pedestrians.

8. THE MAINTENANCE PERIOD

8.1 During the Maintenance Period the Developer shall, at its own cost and to the satisfaction of the Proper Officer:

- (a) maintain the Highway Works including all grassed and planted areas; and
- (b) remedy and make good any damage or defect in the Highway Works.

8.2 During the Maintenance Period the Developer shall, at its own cost:

- (a) carry out routine maintenance of the Highway Land such as sweeping and cleaning as may be required to facilitate the use of the Highway Land by vehicles and pedestrians;
- (b) undertake routine maintenance of all Street Furniture; and
- (c) be responsible for, the supply of energy and all associated costs including any CRC Costs for all the Street Furniture.

8.3 Before applying for a Final Certificate the Developer shall commission the preparation and completion of a Stage 4 Safety Audit Report and carry out and complete at its own cost any additional works, alterations or amendments to the Highway Works reasonably required by the Proper Officer as a result of the Stage 4 Safety Audit Report within such reasonable period as the Proper Officer shall allow.

9. FINAL CERTIFICATE

9.1 After the expiry of the Maintenance Period the Developer must apply to the Proper Officer in writing for a Final Certificate.

9.2 Within 10 Working Days following receipt of a written application for the issue of a Final Certificate the Proper Officer shall:

- (a) inspect the Highway Works to which the application relates; and
- (b) provide the Developer (where necessary) with a definitive written list of any further works required to be carried out in order to remedy and make good any defect or damage to the Highway Works which may have arisen during the Maintenance Period (including any defect in, or damage to, the road surface water drainage system) and any remedial works reasonably required as a result of the Stage 4 Safety Audit Report (Further Works).

9.3 The Developer must carry out any Further Works without delay and at its own cost.

9.4 The Further Works shall be subject to the same inspection procedure detailed in clause 9.2(a) until such time as the Developer has remedied or made good any such defect or damage to the satisfaction of the Proper Officer.

9.5 Within 20 Working Days of a satisfactory inspection the Proper Officer shall issue the Final Certificate to the Developer provided that:

(a) the Developer has paid to the Council all amounts due to the Council under this agreement including the:

- (i) Additional Inspection Fee; and
- (ii) Additional Design Check Fee.

The payment shall be made within 10 Working Days of receipt by the Developer of notification from the Proper Officer of any sum due.

(b) the Developer has delivered to the Proper Officer each of the following:

- (i) Two sets of coloured drawings showing to a scale of 1:500 or as agreed by the Proper officer the Highway Works as constructed, in paper format and a further copy in an electronic PDF and DWG format as agreed by the Proper Officer
- (ii) Two copies of the Health and Safety File and the final Health and Safety Plan in paper format and a further copy in an electronic PDF format or as agreed by the Proper Officer.

(c) The Developer has at its own cost provided the Proper Officer with verification that any sewers constructed on or under the Highway Land, in accordance with a Sewer Adoption Agreement, have been adopted by a sewer authority.

9.6 From the date of issue of the Final Certificate the Highway Works shall become part of the Highway Land maintainable at the public expense.

10. MINOR ALTERATIONS

10.1 If the Developer wishes to amend the design or revise the proposals for implementation of the Highway Works, including the Programme or Method Statement, it shall submit details in writing to the Council. No amendments or

revisions shall be implemented without the prior written approval of the Proper Officer.

- 10.2 If the Proper Officer considers it necessary and reasonable and notifies the Developer in a timely manner the Developer may be required to incorporate minor alterations or additions to the design or construction of the Highway Works.
- 10.3 The terms and provisions of this agreement shall apply to any such amended or revised works as they apply to the Highway Works as originally designed.

11. ACCESS TO AND OPENING OF THE HIGHWAY WORKS

- 11.1 During construction of the Highway Works the Developer shall give to or procure for the Proper Officer and any other person or persons authorised by the Proper Officer free access to every part of the Highway Works and the site for the purpose of inspecting the Highway Works and all materials used, or intended to be used, for the Highway Works. The Developer shall give effect to any requirements made or direction given by the Proper Officer so that the Highway Works conform to the Drawings, the detailed design for the Highway Works and the Specification.
- 11.2 While carrying out any inspection under this clause, the Proper Officer and any other authorised person shall comply with any reasonable health and safety requirements notified to them by the Developer.
- 11.3 Unless otherwise directed by the Proper Officer, the Developer shall not cover up or put out of view any works without the approval of the Proper Officer. The Developer shall give at least 5 Working Days written notice to the Proper Officer whenever any works or foundations are ready or about to be ready for examination. The Developer shall give the Proper Officer full opportunity to examine any works about to be covered up or put out of view and to examine foundations before any permanent work is placed on top.
- 11.4 During construction of the Highway Works and prior to the issue of the Certificate of Practical Completion, the Proper Officer may require the Developer to open up or expose any of the Highway Works that have been covered up without previously being notified to the Proper Officer. If the Developer fails to comply with any such instructions the Council may take up or expose the relevant part of the works. The Developer shall pay the Council's reasonable and proper costs of such taking up, exposure and reinstatement.

12. MATERIALS SAMPLING AND TESTING

- 12.1 The Developer shall, if requested by the Proper Officer, make all necessary arrangements for an independent accredited testing facility, approved by the Council,

to test the materials proposed to be used in connection with the Highway Works. The Developer shall bear the full cost of such testing and give to the Proper Officer, at no expense to the Council, copies of all material testing certificates.

- 12.2 Any material rejected by the Proper Officer, acting reasonably, as a result of the tests carried out shall not be used by the Developer for any of the Highway Works.

13. KEEPING THE HIGHWAY CLEAN AND TIDY

- 13.1 All roads, footpaths, rights of way and other means of passage that lead to, from or cross the site of the Highway Works and are available for use by the public during the carrying out of the Highway Works shall be kept free from mud or other substances deposited through the construction operations of the Highway Works and any such substance deposited by the Developer or the Contractor shall be promptly removed at no cost to the Council.

- 13.2 If such substances are not promptly and adequately removed the Council may close any associated crossings, entrances and exits and in the event of there being a danger to highway users may arrange for the substances to be removed by its own employees or contractors and may recover its reasonable and proper costs from the Developer. On removal of the substances the Council shall allow such crossings, entrances and exits to be reopened. Any losses or expenses incurred as a result of these measures shall be borne by the Developer.

- 13.3 On completion of the Highway Works the Developer shall clear away and remove from the Highway Land all construction plant, surplus material, rubbish and temporary works and leave the site of the Highway Works in a good and workmanlike condition.

14. EXTENSION OF TIME TO COMPLETE THE HIGHWAY WORKS

- 14.1 Without prejudice to any remedy of the Council, the Proper Officer may in its absolute discretion give written notice to the Developer granting an extension of time to complete the Highway Works. The Proper Officer may grant more than one such extension.

- 14.2 If, by any impediment, prevention or default, whether by act or omission by the Council (except to the extent caused or contributed to by any default, whether by act or omission of the Developer), the Council delays the carrying out and completion of the Highway Works the Proper Officer shall grant an extension of time to complete the Highway Works for a further period or periods, by giving written notice to the Developer. Such extension shall be commensurate with the delay suffered by the Developer that was caused by such impediment, prevention or default.

15. SUSPENSION OF THE HIGHWAY WORKS

- 15.1 If the Developer intends to suspend construction of the Highway Works for a period of more than 5 Working Days, the Developer shall notify the Proper Officer in writing of:
- (a) the intended suspension not less than 10 Working Days before the start of the suspension; and
 - (b) the Developer's intention to re-commence construction of the Highway Works not less than 5 Working Days before such re-commencement.
- 15.2 If the Developer fails to notify the Proper Officer the Estimated Inspection Fee shall be increased by such amount as the Proper Officer, exercising absolute discretion, sees fit to reimburse the Council any additional cost incurred in inspecting the Highway Works because of such failure.

16. CDM REGULATIONS

- 16.1 The Developer and the Council agree that, to the extent that the Council may be a Client for the purposes of the CDM Regulations, the Developer is to be treated as the only Client in respect of the Highways Works for the purposes of the CDM Regulations.
- 16.2 The Developer agrees to undertake all the obligations of a Client and to use all reasonable endeavours to ensure that the Highway Works are carried out in accordance with the CDM Regulations.
- 16.3 The Developer shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.
- 16.4 The Developer warrants it has taken or shall take all reasonable steps to be satisfied that all contractors (including the Contractor) engaged on the Highway Works are suitable and competent having regard to their responsibilities in relation to the Highway Works and the CDM Regulations.
- 16.5 The Developer shall indemnify and keep the Council indemnified against any breach of the Developer's obligations under this clause 16.

17. INDEMNITIES

17.1 The Developer shall indemnify the Council against any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance by the Developer of its obligations in this agreement or at any time in connection with or incidental to the carrying out or use of the Highway Works (including without limitation any negligent or defective design or construction of the Highway Works) including (but not limited to):

- (a) third party claims for death, personal injury or damage to property;
- (b) statutory or other liability for the safety or security of the working methods, employment practices, protection of the environment and control of pollution; and
- (c) third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.

This indemnity shall not apply in respect of any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any act, neglect, default or liability of the Council.

17.2 The Developer shall indemnify the Council in respect of any claims under Section 10 of the Compulsory Purchase Act 1965, the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 (*SI 1975/1763*) arising out of, in connection with or incidental to, the carrying out of the Highway Works and their subsequent use, other than those arising out of or in consequence of any negligent act, default or omission of the Council.

17.3 The indemnification referred to in clause 17.2 includes:

- (a) all fees incurred by claimants which the Council is obliged to pay, and those of the Council or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- (b) statutory interest payments to claimants and their professional advisors; and
- (c) the Council's reasonable and proper legal costs in making the compensation, fees and interest payments under clause 17.2.

18. INSURANCE

- 18.1 From and including the date of this agreement until the date of issue of the Final Certificate, the Developer shall maintain public liability insurance for a sum of not less than £5 million (5,000,000) in respect of any single claim, the number of claims being unlimited, in the Developer's own name to cover claims for injury to, or death of, any person or loss or damage to any real or personal property arising out of the execution and use of the Highway Works.
- 18.2 The Developer shall ensure that the Council's interests under this agreement are endorsed on the insurance policy.
- 18.3 Before commencing the Highway Works the Developer shall provide the Council with a certificate of insurance cover and shall supply the Council (if requested) with a copy of the insurance policy as proof that it is in force and any such other information relating to the policy as the Council shall reasonably require.

19. SECURITY FOR PERFORMANCE OF THE DEVELOPER'S OBLIGATIONS

- 19.1 If any Default Event occurs, the Council may, without affecting any statutory rights or powers or any other right, claim, or remedy under this agreement for such non-performance or non-observance, give to the Surety a default notice:
- (a) specifying the Default Work; and
 - (b) containing an estimate by the Proper Officer of the Default Cost.
- 19.2 Within 20 Working Days following the date of receipt of the default notice, the Surety shall:
- (a) pay the Default Cost to the Council; or
 - (b) send the Surety's Counter Notice to the Council.
- 19.3 If the Surety, having sent the Surety's Counter Notice to the Council, fails to start the Default Work within 20 Working Days from and including the date of service of the Surety's Counter Notice, the Surety shall without delay, pay the Default Cost to the Council together with Interest calculated from and including the date on which the default notice was sent to the Surety to and including the date the payment is made.
- 19.4 If the Surety, having sent the Surety's Counter Notice to the Council, starts the Default Work, and the Default Work is not completed within calendar months from and including the date of service of the Surety's Counter Notice, or within such

further period or periods as may be agreed by the Proper Officer, the Surety shall on demand, pay to the Council:

- (a) such sum as the Proper Officer may determine as being the cost of carrying out any Default Work not carried out by the Surety or the cost of maintaining the Highway Works for a period of two calendar months before the Highway Works become part of the Highway Land maintainable at public expense (or the cost of both); and
- (b) the amount determined by the Proper Officer as representing the usual establishment charges of the Council.

19.5 The sum payable shall not exceed the Default Cost.

19.6 Following the issue of a Final Certificate the Surety shall be released from all liability under this agreement with the exception of liability under the indemnity given in Clause 17.

19.7 The Council covenants with the Developer and the Surety for the benefit of each and every building plot fronting, adjoining, abutting, or having access to the Highway Land:

- (a) to use all reasonable endeavours in consultation with the Surety to mitigate any loss or damage sustained because of any default by the Developer, by taking such reasonable steps as the Council thinks fit;
- (b) to use all monies received from the Surety to secure the performance of the Developer's covenants and obligations contained in this agreement in accordance with the terms of this agreement including but not limited to carrying out or completing the Highway Works and maintaining and making good all defects for a period of 12 calendar months after completion of the Highway Works;
- (c) if the sum paid by the Surety to the Council exceeds the cost of carrying out or completing the Highway Works and maintaining and making good all defects as set out in this agreement (together with the amount of the Council's usual establishment charges) to repay

to the Surety within 20 Working Days following the date of the Final Certificate, the amount of any excess; and

- (d) on the issue of the Final Certificate to give such notices and do whatever else may be required for securing that the Highway Works become part of the highway maintainable at public expense.

20. DEFAULT EVENTS

The Council may terminate this agreement immediately by written notice to the Developer without prejudice to any other rights the Council may have, if any of the following events occur:

- (a) the Developer is in fundamental breach of any of its obligations and liabilities in this agreement; or
- (b) the Developer is in substantial breach of any of its obligations and liabilities in this agreement and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Council; or
- (c) where the Developer is a corporation:
 - (i) has an administrative receiver or receiver appointed over the whole or part of the Developer's assets or suffers the appointment of an administrator; or
 - (ii) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
 - (iii) an application is made for an administration order in relation to the Developer; or
 - (iv) an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice is given of an intention to appoint an administrator by the Developer or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - (v) a receiver or manager is appointed in relation to any property or income of the Developer; or
 - (vi) a liquidator is appointed in respect of the Developer; or
 - (vii) a voluntary winding-up of the Developer is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a

solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or

- (viii) a petition is made for a winding-up order for the Developer; or
- (ix) the Developer is struck-off from the Register of Companies; or
- (x) the Developer otherwise ceases to exist.

(d) Where the Developer is an individual:

- (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
- (ii) the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developer.

21. COUNCIL'S POWER TO EXECUTE HIGHWAY WORKS IN DEFAULT

If the Developer fails to carry out or complete the Highway Works in accordance with the Developer's obligations under this agreement, the Council after giving not less than 20 Working Days written notice or in the event of there being a significant danger to users of the Highway Land such lesser period as may be reasonable in the circumstances to the Developer and the Surety, shall be entitled to carry out or complete the Highway Works in default, using the Council's own employees, or by contractors or otherwise and to recover from the Developer or Surety the cost of carrying out or completing the Highway Works as certified by the Proper Officer.

22. DELEGATION OF DEVELOPER'S OBLIGATIONS

The performance of the Developer's obligations to carry out the Highway Works on behalf of the Council may be delegated to the Contractor or sub contractor(s) provided that:

- (a) The Developer shall remain liable to the Council for the due performance and observance of this agreement;
- (b) the Construction Contract by which the obligations contained in this agreement are delegated shall incorporate the Engineering Contract or such other conditions disclosed to and approved by the Proper Officer prior to the date of this agreement but shall in any event contain terms and conditions no less stringent than the terms and conditions contained in this agreement and shall incorporate the Specification, the Drawings, the detailed

design for the Highway Works, the Method Statement and the Programme;

- (c) the Developer shall give the Council the opportunity and reasonable time to comment upon the documentation for the Construction Contract and shall have regard to any reasonable representations made before letting the Construction Contract; and
- (d) the Developer shall ensure that for the purposes of the Construction Contract the amount of insurance cover against losses and claims for injuries or damage to persons or property arising out of or in consequence of the Highway Works shall be not less than £5 million (5,000,000) in respect of any one claim or such other sum as may be specified by the Council in writing.

23. ASSIGNMENT

The Developer may not assign this agreement without the prior written consent of the Council such consent not to be unreasonably withheld.

24. LOCAL LAND CHARGES REGISTER

As soon as practicable, following the date of completion of this agreement, the Council shall enter this agreement and its terms and conditions in the local land charges register.

25. LAPSE OF AGREEMENT

If the Planning Permission lapses without having been implemented or is varied without the consent of the Developer or is revoked and construction of the Highway Works has not commenced, then this agreement shall lapse and be of no further effect provided that the Developer agrees to pay to the Council any costs properly incurred by the Council prior to the lapse of the Planning Permission and an agreed proportion of the Design Check Fee and Inspection Fee.

26. DISPUTES

Any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Institution of Civil Engineers the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

27. NOTICES

27.1 A notice to be given under this agreement must be in writing and must be:

- (a) sent by pre-paid first class post or other next working day delivery service.

27.2 Any notice to be given under this agreement must be sent to the relevant party as follows:

- (a) to the Council at: County Hall The Rhadyr Usk NP15 1QJ marked for the attention of Legal Services
- (b) to the Developer at: Ty'r Efail, Lower Mill Field, Pontypool, NP4 0XJ marked for the attention of Scott Rocks
- (c) to the Surety at: Crown Buildings, Cathays Park, Cardiff, CF10 3NQ marked for the attention of Housing Legal Charges

or as otherwise specified by the relevant party by notice in writing to each other party.

27.3 Any notice given in accordance with clause 27.1 and clause 27.2 will be deemed to have been received:

- (a) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

27.4 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

27.5 This clause does not apply to the service of any proceedings or other documents in any legal action.

28. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

29. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales as it applies in Wales.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 The works

Excavation to reduce levels including breaking out existing carriageways and footways where necessary	
Carriageway construction	
Footway construction	
Kerbing	
Tactile paving	
Verges	
Road drainage	
Operational street lighting	
Road markings and signing	
Soft landscaping	
Hard landscaping	
Traffic signals and all associated equipment	
Traffic islands	
Carriageway resurfacing	
Footway resurfacing	
Reinstatement of existing carriageway footway and verge to the satisfaction of the Proper Officer	
Vision splays and service strips.	
Street name plates.	
All other Highway Works described in the detailed design and the Specification and shown in the Drawings.	
Such other ancillary works as the Proper Officer may reasonably require	
Works which may as a consequence of any of the above be reasonably necessary to Statutory Undertakers' apparatus and all other equipment or structures under in or over the Highway Land.	

Executed as a deed by affixing)
the **COMMON SEAL** of)
MONMOUTHSHIRE)
COUNTY COUNCIL)
in the presence of:)



Member of the Council



Authorised Officer



Executed as a Deed by

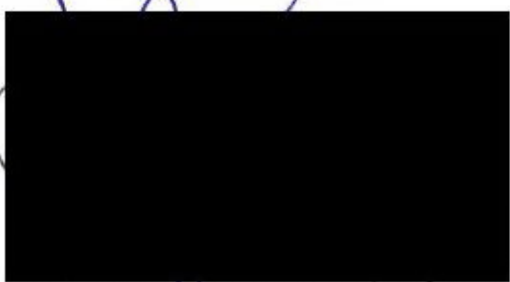
MELIN HOMES LIMITED

Acting by its attorneys:

Peter Hurn

and

David King



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

Dated 9th April 2020

Executed as a deed by
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.

NAME
ADDRESS
~~{(AND OCCUPATION) OF WITNESS}~~



