

DATED 4TH OCTOBER **2018**

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

KEEPMOAT HOMES LIMITED

and

NATIONAL HOUSE BUILDING COUNCIL

AGREEMENT

under Sections 38 and 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 in respect of highway improvements and new road construction at Thurnscoe Barnsley

A.C. Frosdick, LL.B., DipLG,
Executive Director of Core Services
& Solicitor to the Council
Town Hall
Barnsley
S70 2TA

THIS AGREEMENT is made the 4th day of October

Two thousand and eighteen

BETWEEN

1. **BARNSELEY METROPOLITAN BOROUGH COUNCIL** of the Town Hall
Barnsley South Yorkshire S70 2TA ("**the Council**")
2. **KEEPMOAT HOMES LIMITED** (Company no. 02207338) whose registered
office is at The Waterfront Lakeside Boulevard Doncaster South Yorkshire
DN4 5PL ("**the Developer**")
3. **NATIONAL HOUSE BUILDING COUNCIL** (Company no. 320784) whose
registered office is at NHBC House, Davy Avenue, Knowlhill, Milton Keynes,
Bucks, MK5 8FP ("**the Surety**")

INTERPRETATION

In this Agreement:-

"**the Act**" means the Highways Act 1980 as amended by the New Roads and Street Works Act 1991

"**Developer**" includes the successors in title and assigns of the Developer

"**Site**" means the land situate between Willow Road and School Street at Thurnscoe Barnsley

"**Development**" means the residential development at the Site for which planning permission has been granted

"**Highway**" means the highways maintainable at the public expense called School Street, Willow Road and Lingamore Leys at Thurnscoe Barnsley

"**Drawings**" means drawing nos: QD814-16-01 revision D; QD814-06-01 revision C; QD814-07-01 revision B; and QD814-03-02 revision B attached hereto

"**Improvement Works**" means the improvements to be carried out to the Highway which are described generally in Schedule 1 hereto and indicated in outline on the Drawings or any amended or additional works as provided for herein

"**Road Works**" means the new carriageways shown coloured brown new footways shown coloured yellow and verges/margins shown coloured green on Drawing No.

QD814-16-01 revision D to be constructed pursuant to this agreement including all highway drainage street lighting service strips vehicular crossings road surface water drainage system and all other things ancillary thereto which are described generally in Schedule 2 hereto and shown on the Drawings and "Road" shall be construed accordingly

"Works" comprises both the Improvement Works and the Road Works

"Highways Officer" means the officer of the Council appointed for the purposes of this Agreement

"Part 1 Works" means the works specified in Part 1 of Schedule 2 hereto in relation to the Road Works

"Part 1 Certificate" means the Certificate to be issued by the Highways Officer on the satisfactory completion of the Part 1 Works;

"Part 2 Works" means the works specified in Part 2 of Schedule 2 hereto in relation to the Road Works

"Part 2 Certificate" means the Certificate to be issued by the Highways Officer on the satisfactory completion of the Part 2 Works

"Adoption Certificate" means the certificate to be issued by the Highways Officer upon the satisfactory expiration of the Maintenance Period in relation to the Road Works

"Completion Certificate" means the certificate to be issued by the Highways Officer upon the satisfactory completion of the Improvement Works

"Final Certificate" means the certificate to be issued by the Highways Officer upon the satisfactory expiration of the Maintenance Period in relation to the Improvement Works

"Maintenance Period" means a period of twelve calendar months

"Specification" means, in relation to the Improvement Works, the Specification for Highway Works published by HMSO with amendments up to and including May 2001; and, in relation to the Road Works, the current edition of the publication entitled 'General Specification for Roads to be adopted as Public Highways', and the Developer is deemed to enter into this Agreement with full and complete knowledge thereof

"Costs" means the sum of one thousand five hundred pounds (£1,500.00) being the Council's legal costs in the preparation and completion of this Agreement

"Inspection Fee" means the sum of £46,873.44 (forty six thousand eight hundred and seventy three pounds and forty four pence) being the Council's costs in the administration of this Agreement the testing of materials and the inspection of the Works

"Statutory Undertaker" has the same meaning as in the New Roads and Street Works Act 1991

Where the Developer consists of two or more persons the covenants and obligations on their respective parts shall be given jointly and severally by them

A reference to a statute shall be deemed to include a reference to any statute from time to time modifying consolidating or replacing the same

Clause headings are for ease of reference only and shall not form part of this Agreement for the purpose of its construction or interpretation

WHEREAS

- (1) The Council is the Highway Authority for the purposes of the 1980 Act and the absolute freehold owner of the Site which is contained in registered Title SYK536243
- (2) The Council and the Developer have agreed that the Developer shall (inter alia) construct the Works specified herein and once the Works 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 of this Agreement as are hereinafter contained
- (3) Planning permission has been granted pursuant to the Town and Country Planning Act 1990 (as amended) for the development of the Site and the Council and the Developer are desirous that the Improvement Works shall be carried out to improve access to the Site a standard required for traffic safety and thus facilitate the Development and the Developer and the Council will derive a special benefit if the Improvement Works are executed
- (4) The Developer has agreed to execute or procure the execution of the Works as agent for and on behalf of the Council

- (5) The Surety has agreed to join in this Agreement to guarantee the obligations of the Developer hereinafter contained and to be bound in the manner hereinafter appearing
- (6) This Agreement is made pursuant to the provisions of sections 38 and 278 of the Act and section 111 of the Local Government Act 1972 and the Council is satisfied it will be of benefit to the public
- (7) Nothing herein contained shall operate to restrict or prejudice the powers duties and rights of the Council under the Highways Act 1980 and the New Roads and Street Works Act 1991

NOW IT IS HEREBY AGREED by and between the parties as follows:-

CONSENT TO EXECUTE THE WORKS

- 1. The Council shall during such hours of working as may be agreed in advance with the Highways Officer permit the Developer to enter upon the Highway for the purpose of carrying out the Works and all matters in connection with the Works

THE WORKS

- 2.1 The Developer shall carry out and complete the Works at its own expense in a good and workmanlike manner and with proper materials and in accordance in all respects with the Specifications to the entire satisfaction of the Highways Officer within a period of two years from the date of this Agreement (unless such longer period is agreed with the Highways Officer in writing) and shall :-
 - (a) carry out surveys as required by the Highways Officer of the Highways and the Site
 - (b) carry out site investigation works
- 2.2 In the event the Highways Officer determines that any variations to the

Improvement Works are required the Highways Officer shall notify the Developer as soon as reasonably practicable of any revised or additional works which may be necessary and the Developer shall carry out and complete the revised or additional works at its own expense and in the same manner as the Improvement Works

2.3 The Developer shall prior to the commencement of any part of the Improvement Works:

- (a) take whatever steps are necessary to locate and identify any services apparatus and equipment of any utility company Local Authority or other body which is situated in on under or over the Highway or which may otherwise be affected by the Works and shall issue and serve all statutory notices pursuant to the New Roads and Street Works Act 1991 as may be necessary for the purpose of carrying out the Works within the prescribed periods and shall supply to the Highways Officer copies of all consultations which have been carried out copies of all consents and approvals obtained and details of any diversion or other works required to any services equipment or apparatus ("the Apparatus Works") and shall carry out and complete the Apparatus Works at its own expense and in the same manner as the Works and shall in all respects procure compliance with all conditions and requirements imposed by any of them in respect of any of their services equipment or apparatus that may be affected by the Works
- (b) give the Highways Officer not less than seven working days notice of the date on which the Company intends to start the Improvement Works and shall give the Highways Officer free access to every part

thereof and permission to inspect the same and all materials used or to be used therein and if so required shall uncover or open up the Improvement Works or any part or parts thereof for inspection and to remove any works or materials which in the opinion of the Highways Officer are defective or fail to comply with the Specification and to re-execute any such Work at the Developer's own expense substituting proper and suitable materials to the entire satisfaction of the Highways Officer

2.4 The Developer shall:

- (a) procure that the Improvement Works are undertaken pursuant to the Construction (Design and Management) Regulations 1994 ("the CDM Regulations")
- (b) ensure the Improvement Works comply in every respect with the latest edition of Chapter 8 of the Traffic Signs Manual published by the Department of Transport
- (c) at its own expense arrange for all materials and soils in connection with the Works to be tested by a UK Accreditation Service (NAMAS) accredited laboratory and shall submit the test results to the Highways Officer and meet the costs of any further testing required by the Highways Officer

Declaration

- 3.** The Developer hereby declares and warrants to the Council that the Developer 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 maintainable at the public expense

Statutory Undertakers - Connections to Existing Services

4. The Developer shall before connecting the Road with any highway maintainable at the public expense give notice to each person Board or Authority being a Statutory Undertaker for the time being of any service or services laid in upon or under such highway of the proposal to make such connection as required by Section 84 of the New Roads and Street Works Act 1991 (as defined at Section 86 of the said Act of 1991) and the Developer shall indemnify the Council in respect of the cost of any works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection

Access to the Site

5. The Developer shall during the carrying out of the Works give the Highways Officer access to every part of the Works and the sites thereof for the purpose of inspecting the Works and all materials used or intended to be used therein

Part 1 Certificate – Road Works

6. On completion of the Part 1 Works to the satisfaction of the Highways Officer in all respects the Highways Officer shall issue the Part 1 Certificate

Occupation of Buildings

7. No dwelling erected on the Site which has a frontage onto adjoins or abuts the Road Works or is adjacent thereto shall be used and occupied for habitable purposes until and unless:-
 - (a) the Part 1 Certificate has been issued in respect of the Road Works or such part of the Road Works as will provide the occupier of the dwelling with proper access to a vehicular highway and (where

applicable) a base course pedestrian access to such highway has been provided;

- (b) lighting columns have been erected ready for lighting in accordance with the Specifications and the Drawings and the Developer has arranged with the Electricity Board or Company for an electricity supply thereto by giving at least six weeks' prior notice in writing or as may be otherwise agreed in writing by the Highways Officer; and
- (c) street name plates have been provided and erected by the Developer in the position(s) agreed with and in all respects to the satisfaction of the Highways Officer

Part 2 Certificate – Road Works

8. On completion of the Part 2 Works to the satisfaction of the Highways Officer in all respects AND PROVIDED that any sewer constructed under the Road Works has been certified as being or as having been on maintenance the Highways Officer shall issue the Part 2 Certificate

AND from the date of that certificate:-

- (a) the Maintenance Period in respect of the Road Works shall commence;
- (b) the Road shall be deemed to be dedicated as a highway and shall remain open for use by the public at large; and
- (c) the Developer shall remain the Street Manager for the purposes of section 49 of the New Roads and Street Works Act 1991 until such time as the Road shall become a highway maintainable at the public expense

Completion Certificate – Improvement Works

9. On the completion of the Improvement Works to the satisfaction of the Highways Officer the Highways Officer shall issue the Completion Certificate to the Developer and on that date the Maintenance Period in respect of the Improvement Works shall commence

Obligations during the respective Maintenance Periods

10. During the respective Maintenance Periods for the Road Works and the Improvement Works :-
- (a) the Developer shall at his own expense maintain every part of the Road Works and the Improvement to the satisfaction of the Highways Officer including all grassed and planted areas and shall carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians; and
 - (b) the Council shall at its expense undertake routine maintenance of all street lights and illuminated traffic signs and shall be responsible for payment of the energy costs thereof

Adoption Certificate – Road Works

11. Prior to the expiration of the Maintenance Period in relation to the Road Works 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 Road surface water system) of which the Developer has been notified in writing by the Highways Officer so that the Road 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 have been completed to the satisfaction in all respects of the Highways Officer; and
- (c) the Developer has delivered to the Highways Officer drawings showing the Road Works as constructed coloured and to scale as required by the Highways Officer

the Highways Officer shall issue the Adoption Certificate

Final Certificate – Improvement Works

12. After the expiration of the Maintenance Period in relation to the Improvement Works the Developer shall submit to the Highways Officer in an electronic format 'as-built' drawings of the Improvement Works and the whole of the Health and Safety file pursuant to the CDM Regulations and then provided the Company has made good any defects or damage to the Improvement Works to the entire satisfaction of the Highways Officer and provided that all monies due to the Council hereunder have been paid the Highways Officer shall issue the Final Certificate to the Developer

Procedure for Inspection and Issue of Certificates

13. Within Twenty eight days of receiving a written application from the Developer for the issue of any of the certificates referred to herein the Highways Officer shall carry out an inspection of the Works and where necessary provide the Developer with a definitive list in writing of any works required to be carried out and any such works shall be subject to the same inspection procedure provided herein until such time as they shall be completed in accordance with the Specifications and in all respects to the satisfaction of the Highways

Officer who shall within twenty eight days thereafter issue the relevant

Certificate applied for

Inspection Fee & Costs

14.1 The Developer shall pay the Inspection Fee and the Costs to the Council upon completion of this Agreement

14.2 Receipt by the Council of the Inspection Fee shall not create any contractual relationship between the parties hereto nor absolve the Developer from any liability or obligation under this Agreement or under statute or at common law and the Council shall 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 Highways Officer

Determination by the Council

15. If the Developer fails to perform or observe any of the covenants or obligations as herein contained or if a receiving order in bankruptcy is made against the Developer or if the Developer is wound up or enters into a composition or arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies for such non-performance or non-observance determine this Agreement by notice in writing to the Developer sent to the address stated in this Agreement Subject always to the provisions of clauses 16 17 and 18 hereof

Default Powers

16. Without prejudice to clause 15 hereof if the Developer fails to execute or complete the Works in accordance with the Developer's obligations hereunder the Council shall be entitled to execute or complete the Works in

default by its own employees contractors or otherwise and to recover from the Developer the costs incurred by the Council thereby as certified in writing by the Highways Officer Provided that this default power shall only be exercisable by the Council after at least twenty eight days notice of intention has been given in writing to the Developer

Surety's Obligations

17.1 In the event of any circumstances described in clause 15 hereof arising the Council may instead of determining this Agreement and without prejudice to its rights claims or remedies as aforesaid give notice in writing to the Surety (hereinafter referred to as the "Default Notice") specifying the works to be carried out (hereinafter referred to as "the Default Works") and containing an estimate by the Highways Officer of the cost of carrying out the Default Works and of maintaining the same for a period of twelve months together with a statement of the amount of the Council's usual establishment charges (hereinafter together referred to as "the Default Cost")

17.2 The maximum sum of the liability of the Surety in relation to this Agreement shall be £689,392.67 (six hundred and eighty nine thousand three hundred and ninety two pounds and sixty seven pence) comprising:-

- (i) the sum of £400,000.00 (four hundred thousand pounds) in relation to the Improvement Works which shall be reduced to the sum of £40,000.00 on the issue of the Completion Certificate; and
- (ii) the sum of £289,392.67 (two hundred and eighty nine thousand three hundred and ninety two pounds and sixty seven pence) in relation to the Road Works which shall be reduced to the sum of £144,696.34 (one hundred and forty four thousand six hundred and ninety six pounds and thirty four

pence) on the issue of the Part 1 Certificate and further reduced to the sum of £28,939.27 (twenty eight thousand nine hundred and thirty nine pounds and twenty seven pence) on the issue of the Part 2 Certificate

- 17.3** Within twenty eight days after the Surety has received the Default Notice the Surety shall either pay the Default Cost in full to the Council or give notice in writing to the Council of the Surety's intention to carry out the Default Works (hereinafter referred to as "the Surety's Counter-Notice");
- 17.4** If following the giving of the Surety's Counter-Notice the Surety fails for twenty eight days to start the Default Works the Surety shall forthwith pay the Default Cost to the Council with simple interest thereon at the rate of four per cent above current base rate calculated from the date on which the Surety received the Default Notice;
- 17.5** If following the giving of the Surety's Counter-Notice the Surety starts the Default Works but they are not then completed to the reasonable satisfaction of the Highways Officer within four months of the date of that Counter-Notice (or within such longer period as may be agreed by the Council) the Surety shall subject to sub-clause 17.6 below forthwith pay to the Council such sum as the Highways Officer may determine to be the cost of carrying out any part of the Default Works not completed by the Surety or the cost of maintaining the Road Works for a period of twelve months prior to the Road Works becoming maintainable at the public expense (as the case may be) or both plus the usual establishment charges of the Council as aforesaid; and
- 17.6** The sum payable under sub-clause (4) above shall not exceed the Default Cost

17.7 On the issue of the Adoption Certificate and the Final Certificate the Surety shall be released from all liability under this Agreement

Council's Covenants

18. The Council hereby covenants with the Developer and 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 moneys 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 the premises fronting the Road under the provisions of the Highways Act 1980; and
- (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 Council's usual establishment charges to repay to 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 Council's bankers

Compensation and Indemnity

- 19.1** The Developer will on demand reimburse the Council with all expenditure it may incur in relation to any claims made pursuant to the Noise Insulation Regulations 1975 or Part I of the Land Compensation Act 1973 arising from the use of the Highway as altered by the Improvement Works and the Roads constructed by the Works together with legal costs and surveyor's fees incurred either by the Council or any third party whose costs the Council is obliged to pay in connection with the processing and settlement of any such claims provided that no such claim shall be settled without the Council first notifying the Developer
- 19.2** The Developer will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising out of the non-observance non-performance or other breach of the Developer's obligations under this Agreement and all claims demands damages and losses of whatever nature which may be suffered by the Council due to any reason connected with the Works
- 19.3** The Developer shall insure or shall procure that any Contractor appointed by the Developer to carry out the Works shall insure against any damage loss or injury which may occur to any property or person arising by or out of the execution of the Works otherwise than due to any act or omission of the Council and such insurance shall be effected prior to the commencement of the Works with an insurer on terms approved by the Council for at least the sum of £5,000,000 for each and every claim

Notices

20. Any notice or demand required by this Agreement to be given or made shall be in writing and delivered by recorded delivery post to the addresses stated in this Agreement

Benefits

- 21.1 The Land which is to be benefited by the Improvement Works is the Land to which the planning application hereinbefore referred to relates

- 21.2 This Agreement will be of benefit to the public

Assignment

22. This Agreement is personal to the parties hereto and shall not be assigned to any other party without the Developer having first obtained the written consent of the Council and the Surety

Arbitration

23. In the event of any dispute or difference between the parties hereto arising as to the construction of this Agreement or any of the provisions hereof such dispute or difference shall be referred to the President for the time being of the Institution of Civil Engineers arbitration of the Secretary of State for Transport whose decision shall be final and binding on the parties hereto Provided that nothing in this Clause shall authorise the reference to arbitration of any question as to whether the whole or any part of the Works has been carried out and completed to the satisfaction of the Highways Officer

SCHEDULE 1

1. Carriageway resurfacing
2. Footway reconstruction and resurfacing
3. re-kerbing
4. Provision of drainage
5. Street lighting
6. Road markings
7. Any other works ancillary to the above.

SCHEDULE 2

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. Carriageway sub-base road base and any supporting structures thereto
5. Carriageway base course surfacing where appropriate
6. Demarcation of sight lines and clearance of vision splays

PART 2

7. All outstanding kerbing not completed in Part 1
8. Pedestrian ways
9. Carriageway wearing course and/or carriageway base course
10. Vision splays and verges
11. Street lighting and street furniture
12. Street name and plates
13. Road markings
14. All other works described in the Specifications and shown on the Drawings

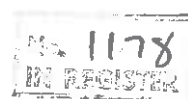
EXECUTED by the parties hereto as a Deed the day and year first before written

THE COMMON SEAL of Barnsley)

Metropolitan Borough Council was)

hereunto affixed in the presence of:-)

Executive Director of Core Services & Solicitor to the Council/Authorised Signatory



Executed as a Deed by

Keepmoat Homes Limited

acting by two authorised attorneys:

Attorney (signature & print name beneath)

JAMES THOMSON

Attorney (signature & print name beneath)

CHRIS PENN

Signed as a Deed by:

and

as attorneys for National House Building Council

under a power of attorney dated 6th December 2016

Customer Contact Manager

As attorney for National House Building Council

**CUSTOMER CONTACT TEAM LEADER
CUSTOMER SERVICES**

As attorney for National House Building Council