

DATED 9TH MAY 2018

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

BDW TRADING LIMITED

and

NATIONAL HOUSE BUILDING COUNCIL

AGREEMENT

under Sections 72 and 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 relating to highway improvements at New Road Pilley Barnsley South Yorkshire

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 9th day of May

Two thousand and eighteen

BETWEEN

1. **BARNSELY METROPOLITAN BOROUGH COUNCIL** of the Town Hall
Barnsley South Yorkshire S70 2TA ("**the Council**")
2. **BDW TRADING LIMITED** (Company number 3018173) whose registered
office is at Barratt House Cartwright Way Forest Business Park Bardon Hill
Coalville LE67 1UF ("**the Company**")
3. **NATIONAL HOUSE BUILDING COUNCIL** (Company number 00320784)
01575839) whose registered office is at NHBC House Davy Avenue,
Knowlhill, Milton Keynes, Bucks, MK5 8FP ("**the Surety**")

INTERPRETATION

In this Agreement:-

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

"**Blue Land**" means the land shown coloured blue on Drawing number 41 – 09 revision P4 attached at Schedule 1 hereto which is intended to become highway maintainable at public expense as provided herein

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2007

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

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

“Conditions of Contract” means the Institution of Civil Engineers- Conditions of Contract with such additions or amendments thereto as may be approved by the Highways Officer

“Development” means the residential development at the Site for which planning permission has been granted

“Drawings” means the drawings listed and attached at Schedule 1 hereof

“Final Certificate” means the certificate to be issued by the Highways Officer upon the satisfactory expiration of the Maintenance Period

“Highway” means the highway called New Road Pilley Barnsley

“Highways Officer” means the Head of Highways Engineering and Transportation for the time being of the Council and includes any professional officer appointed by him for the purpose of the supervision or inspection of the Works

“Maintenance Period” means a period of twelve calendar months from the date of the issue of the Certificate of Completion

“Safety Audit” means a specified stage or stages of independent road safety audit procured pursuant to the Design Manual for Roads and Bridges

“Safety Audit Works” means any amended or additional works or any other measures necessary in order to comply with the recommendations of a Safety Audit

“Section 115 Agreement” means an agreement entered into between the Council and a relevant sewerage undertaker pursuant to section 115 of the Water Industry Act 1991 to allow connections of highway drainage to the public sewerage system made pursuant to or ancillary to the Works

“Site” means the land to the north of New Road Pilley Barnsley

“Supervision Fee” means the sum of £8,202.29 (eight thousand two hundred and two pounds and twenty nine pence) being the fees which are estimated will be

incurred by the Council in checking and approving the drawings site inspections and administration of the Works of which a sum of £4,000.00 (four thousand pounds) has already been paid to the Council receipt of which is hereby acknowledged

“Specification” means the Specification for Highway Works published by HMSO with all amendments up to the date hereof

“Works” means the works described generally in Schedule 2 hereof and indicated in outline on the Drawings and any amended or additional works as provided for herein

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

WHEREAS

- (1) The Council is the Highway Authority for the purposes of the Act
- (2) Planning permission has been granted for the Development at the Site and the Council and the Company are desirous that the Works shall be carried out to facilitate the Development
- (3) The Works are wholly required to improve access to the Site to a standard required for traffic safety and thus facilitate the Development and the Company will derive a special benefit if the Works are executed and the Surety has agreed to join in this Agreement to guarantee the obligations of the Company hereinafter contained and to be bound in the manner hereinafter appearing
- (4) The Company is the freehold owner of the Site which is registered under title SYK648491 which includes the Blue Land and warrants that at the date hereof the Blue Land is free from any restrictions or incumbrances that might affect its dedication as highway maintainable at public expense and enters into this

agreement with the intention that the Blue Land shall be dedicated as highway for use by the public as provided for herein

(5) The Company shall execute or procure the execution of the Works as agent for and on behalf of the Council

(6) This Agreement is made pursuant to Sections 72 and 278 of the Act and Section 111 of the Local Government Act 1972 and the Council is satisfied that 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:-

1. SAFETY AUDITS

- 1.1 The Company shall procure a Stage 3 Safety Audit and shall immediately upon receipt supply a copy of each respective report to the Highways Officer
- 1.2 The Company shall prepare and submit to the Highways Officer for his approval details of any Safety Audit Works and if the Highways Officer deems that no amended or additional works or any other measures are necessary he shall notify the Company in writing to that effect
- 1.3 The Company shall carry out and complete the Safety Audit Works at its own expense and in the same manner as the Works
- 1.4 The Company shall certify to the Highways Officer in writing that it has fully complied with the recommendations of the Safety Audit in respect of the Works or if the Highways Officer has notified the Company that no Safety Audit Works are required it shall submit to the Highways Officer a written

statement of the reasons why the recommendations of the Safety Audit have not been complied with

2. **CONSENT TO WORK IN THE HIGHWAY**

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

3. **EXECUTION OF THE WORKS**

3.1 The Company shall at its own expense for the purpose of carrying out the Works:-

- (a) carry out surveys as required by the Highways Officer of the Highway and the Site
- (b) carry out site investigation works
- (c) appoint a designer approved by the Highways Officer to design a scheme for the Works (including all necessary drawings and documents to be approved by the Council) ("**the Approved Documents**")
- (d) appoint a contractor approved by the Highways Officer for the construction of the Works in accordance with a form of contract which shall be approved by the Highways Officer ("**the Contract**")

3.2 The Company shall:

- (a) procure the provision in writing of a programme and timetable for the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof ("**the Approved Programme**")

- (b) upon the request of the Highways Officer procure the provision of a written programme and timetable for any temporary traffic arrangements or any other measures which may be necessary or required in connection with the carrying out of the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof and shall comply with any further requests of the Highways Officer at any time during the carrying out of the Works
- (c) procure that the Works are carried out at its own expense in a good and workmanlike manner with proper and suitable materials to the reasonable satisfaction of the Highways Officer in accordance with the Specification and the Approved Documents and once commenced to proceed diligently with the Works and to use reasonable endeavours to complete the Works in accordance with the Approved Programme and in any case within two years from the date of this Agreement
- (d) before the commencement of the Works 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 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 affected by the Works
(“Apparatus Works”)

- (e) carry out and complete the Apparatus Works at its own expense and in the same manner as the Works
- (f) procure compliance with all conditions and requirements imposed by any utility company local authority or other body in respect of any services equipment or apparatus affected by the Works
- (g) give the Highways Officer free access to the Site as is reasonably necessary for the proper inspection of the Works
- (h) procure that the Works are undertaken pursuant to the CDM Regulations
- (i) ensure the Works comply in every respect with the latest edition of Chapter 8 of the Traffic Signs Manual published by the Department of Transport
- (j) 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

3.3 In the event the Highways Officer determines that any variations to the Works are required the Highways Officer shall notify the Company as soon as reasonably practicable of any revised or additional works which may be necessary and the Company shall carry out and complete the revised or additional works at its own expense and in the same manner as the Works

4. FEES AND COSTS

4.1 The Company shall on the completion of this Agreement pay to the Council:

- (i) the remaining balance of the Supervision Fee; and

(ii) the sum of £1,000.00 being the Council's legal fees in the preparation and completion of this Agreement

4.2 In the event the fees incurred by the Council exceed the Supervision Fee the Highways Officer shall provide a certified estimate of the sum of the increased fees and the Company shall pay the said sum of the increased fees to the Council within 28 days of receiving a written request therefor

5. **CERTIFICATES AND MAINTENANCE PERIOD**

5.1 The Company may at any time when it believes the Works have been completed notify the Highways Officer in writing whereupon the Highways Officer shall make arrangements to inspect the Works and if the Works have been completed to his satisfaction the Highways Officer shall issue the Certificate of Completion to the Company or if not the Highways Officer shall notify the Company of any outstanding items and the Company shall provide the Highways Officer with a program for their completion

5.2 The Company shall at its own expense maintain the Works and the Blue Land throughout the Maintenance Period and shall make good any defects or damage arising or occurring in the Works during that period to the satisfaction of the Highways Officer

5.3 After the expiration of the Maintenance Period the Company shall submit to the Highways Officer in an electronic format 'as-built' drawings 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 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 Company

5.4 For the avoidance of doubt the covenants on the part of the Company contained in Clause 7 of this Agreement shall not be affected by the issue of the Final Certificate

6. DEDICATION AND ADOPTION OF THE BLUE LAND

6.1 The Company hereby acknowledges and agrees that upon the issue of the Certificate of Completion the Company shall be deemed to have dedicated the Blue Land as highway for use by the public and the Company shall not grant any wayleave licence easement or right in respect of any part or parts of the Blue Land without the written consent of the Council

6.2 Upon the issue of the Final Certificate the Blue Land shall become highway maintainable at the public expense

7. COMPENSATION AND INDEMNITY

7.1 The Company will on demand reimburse the Council with all expenditure it may properly incur in relation to any valid and proper 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 Works and the Roads constructed by the Works together with the reasonable legal costs and surveyor's fees incurred either by the Council or any third party whose costs the Council is legally obliged to pay in connection with the processing and settlement of any such claims

7.2 The Company 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 Company'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 carrying out of the Works

- 7.3 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising as a consequence of the discharge of water or any other substance or material whatsoever from the highway drainage system
- 7.4 The Company shall insure or shall procure that the Contractor carrying 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 (such approval not to be unreasonably withheld or delayed) for at least the sum of £10,000,000 for each and every claim
- 7.5 The Company shall be responsible for:
- (a) all of the costs that the Council may incur in entering into a section 115 Agreement including any costs the sewerage undertaker may charge under the Section 115 Agreement for technical administrative supervisory or legal costs from time to time
 - (b) notifying the relevant sewerage undertaker of their intention to commence drainage connection works
 - (c) carrying out any maintenance or remedial works required by the sewerage undertaker pursuant to the Section 115 Agreement; and
 - (d) shall indemnify the Council against all losses liabilities claims costs damages and expenses arising from any claim by a sewerage undertaker any

person or competent authority arising from or ancillary to the connection of the highway drains to the public sewer

8. DETERMINATION BY THE COUNCIL

8.1 In the event the Company fails to perform or observe any of the obligations herein contained or if a receiving order in bankruptcy is made against the Company or of the Company 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 against the Company for such non-performance or non-observance determine this Agreement by notice in writing to the Company sent to the address stated in this Agreement Subject always to the provisions of clauses 9 and 10 hereof

9. DEFAULT POWERS

9.1 Without prejudice to clauses 6 and 8 hereof if the Company fails to execute or complete the Works in accordance with the Company'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 Company all of 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 that intention has been given in writing to the Company and the Surety and none of those parties has commenced action to remedy any breach non-observance or non-performance during that time

10. SURETY'S OBLIGATIONS

- 10.1 The Surety hereby covenants with the Council that if at any time the Company fails to observe or perform any of the obligations or covenants herein contained or if circumstances shall arise which would entitle the Council to terminate this Agreement then without prejudice to any other rights and remedies of the Council against the Company under this Agreement or under statutory powers the Surety shall pay to the Council such sum or sums which become due under this Agreement and which the Company would have been liable to pay under the terms hereof Provided that the total liability of the Surety under this clause shall not exceed the sum of £60,032.74 (sixty thousand and thirty two pounds and seventy four pence)
- 10.2 The Surety shall not be discharged or released from its liability under this Agreement by any arrangement made between the Company and the Council or by any alteration in their respective obligations or by any forbearance whether as to payment performance or otherwise made with or without the assent of the Surety
- 10.3 The Surety shall only be released from its liability hereunder once the Council's Final Certificate has been issued pursuant to this Agreement unless otherwise agreed in writing by the Council

11. IT IS HEREBY AGREED AND DECLARED as follows:-

- 11.1 If at any time prior to the commencement of the Works the Company wishes to terminate this Agreement it may do so by giving notice to the Council accompanied with the written consent of the Surety and the Council shall give the Company an account of all abortive costs reasonably and properly incurred by the Council in respect of this Agreement Within 28 days from the

date of that account if that account shows that the payments made by the Company under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess and if that account shows that those costs exceed the payment made by the Company under the foregoing provisions of this Agreement the Company shall pay to the Council a sum equal to that excess

- 11.2 That for the purpose of carrying out its obligations under this Agreement but for no other purpose whatsoever the Company will act as agent for and on behalf of the Council
- 11.3 The Company is to act as the only client in respect of the Works pursuant to the CDM Regulations
- 11.4 None of the residential dwellings constructed on the Development pursuant to the planning permission shall be occupied and used for habitable purposes until the Completion Certificate has been issued by the Highways Officer
- 11.5 Any monies due to be paid under the provisions of this Agreement shall be paid within twenty one days of the due date or if not paid within that period shall bear interest at 3% above the Base Rate of Barclays Bank Plc for the time being such interest being payable from the due date to the date of payment
- 11.6 Once executed the Contract shall be deemed incorporated in this Agreement insofar as it is applicable and does not conflict with the provisions herein
- 11.7 The Company shall not assign any of its rights and obligations arising under this Agreement without the prior written consent of the Council
- 11.8 Any notice or demand required by this Agreement to be given or made shall be in writing

11.9 The land which is to be benefited by the Works is the land to which the planning application hereinbefore referred to relates

11.10 This Agreement will be of benefit to the public

11.11 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 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

THE DRAWINGS

880991/41-03 P5 SITE CLEARANCE

880991/41-04-01 P7 PROPOSED GENERAL ARRANGEMENT (attached)

880991/41-04-02 P3 LONG SECTION AND CONTOUR PLAN

880991/41-05 P7 SETTING OUT INFORMATION

880991/41-06 P6 ROAD MARKINGS AND TRAFFIC SIGNS

880991/41-07 P3 PROPOSED DRAINAGE LAYOUT

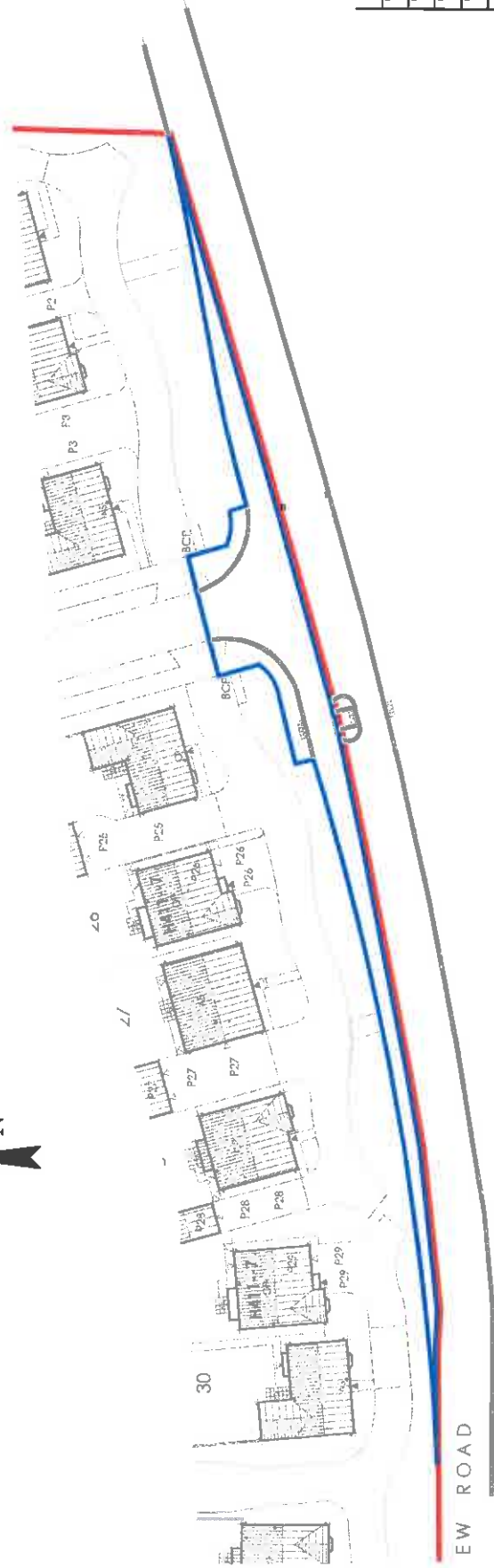
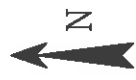
880991/41-08 P3 ROAD DRAINAGE AND CONSTRUCTION DETAILS

880991/41-09 P4 LAND DEDICATION PLAN (attached)

CIVIL / STRUCTURAL DESIGN RISK MANAGEMENT

Approved or issued technical data associated with this design solution is shown on the drawing area.

RSK LDC LTD has followed the Design Risk Management process as stated in the Design Risk Management Plan. The design team has been instructed to identify the design risks on the drawing and to ensure that the design team has taken appropriate measures to manage the risks. The design team has been instructed to ensure that the design team has taken appropriate measures to manage the risks. The design team has been instructed to ensure that the design team has taken appropriate measures to manage the risks.



EW ROAD

Legend

- Extent of Land to be Deducted as Right-of-Way
- Planning Consent Boundary

Drawing based on:
 Site Layout as shown on Chris Cothard Architectural Ltd 2335/TL01/1
 Existing Road Survey: ATM/PILLEY/SURVEY OF ROAD 070617/070617 ROAD SURVEY
 Site Topographical Survey: HH Surveys-WC/350SP
 Coordinates & Datum are OS GPS RTK

[Handwritten signatures in blue ink]

The details provided on this drawing are subject to comments by all the relevant approving authorities. Until such time as all comments have been received and incorporated onto the drawings, all the information provided and costings, are used at Barrat Homes risk and no liability will be accepted by RSK.

Rev.	Date	Description	Drawn	Checked	App'd.
01	18.11.17	Site layout submitted	TL	MAK	
02	18.11.17	Site layout submitted	TL	MAK	
03	11.12.17	Planning submitted	GPY	MAK	
04	11.12.17	Planning submitted	GPY	MAK	



LAND & DEVELOPMENT ENGINEERING LTD
 Spring Lane
 11th Floor
 11th Floor
 11th Floor
 11th Floor

Client	64 GREAT ST BARNLEY
Project Title	New Road Barnley
Revision	Approval
Drawing Title	S278 Land Dedication Plan
Drawn	GPY
Checked	MAK
App'd.	MAK
Date	17.12.17
Project No.	800591
Drawing No.	41-09
Rev.	P4

SCHEDULE 2

THE WORKS

- a) Provision of right a turn pocket;
- b) Construction of pedestrian island;
- c) Realignment of kerb line
- d) Carriageway construction and resurfacing
- e) Footway construction and resurfacing
- f) Drainage;
- g) Street Lighting;
- h) Provision of road markings and signing
- i) Any works ancillary to the above.

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:-^{of})

A handwritten signature in black ink, appearing to read 'A. C. R. ...', is written over the line for the presence of a witness.

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

No. 927
IN REGISTER

*(print name here)

Signed as a Deed by * D. HUDSON)

and *)

as attorneys for and in the name)

of BDW TRADING LIMITED)

In exercise of the power of)

Attorney Dated 12 May 2016 in the)

presence of:)

(signature)

(signature)

MARTIN PURDY
COMMERCIAL DIRECTOR

Witness Signature : M. Brown

Name : Martin Brown

Address : Roynham House, 2 Capitol Close,
Morley, Leeds, LS27 0WH

*(print name here)

Signed as a Deed by: * M. Audey
and * K. Fyfe

as attorneys for National House Building Council

under a power of attorney dated 6th December 2016

M. Audey CUSTOMER SUPPORT MANAGER
CUSTOMER SERVICES
.....(signature)

As attorney for National House Building Council

K. Fyfe CUSTOMER CONTACT TEAM LEADER
CUSTOMER SERVICES
.....(signature)

As attorney for National House Building Council