00893/11

Dated 31st August 2010

THE LEICESTERSHIRE COUNTY COUNCIL (1)

CREST NICHOLSON MIDLANDS LIMITED (2)

and

NATIONAL HOUSE BUILDING COUNCIL (3)

A G R E E M E N T

Under Section 38 of the Highways Act 1980

Development at The Greyhound Stadium Site, Off Paddock Way, Hinckley in the County of Leicestershire

Leicestershire County Council,
County Hall,
Glenfield,
Leicester,
LE3 8RA

Ref: EJB/HTWMT/1597

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THIS AGREEMENT is made the 31st day of August Two thousand and ~~Ten~~ eleven **BETWEEN THE LEICESTERSHIRE COUNTY COUNCIL** of County Hall Glenfield Leicester LE3 8RA (hereinafter called "the Council") of the first part and **CREST NICHOLSON MIDLANDS LIMITED** whose registered office is situate at Pycroft Road, Chertsey, Surrey, KT16 9GN (hereinafter called "the Owner") of the second part and **NATIONAL HOUSE BUILDING COUNCIL** whose registered office is situate at Buildmark House Chiltern Avenue Amersham Buckinghamshire HP6 5AP (hereinafter called the "the Surety") of the third part

WHEREAS

(1) The Owner is seised in fee simple in possession free from incumbrances of the land shown coloured grey green brown purple and yellow on the plan annexed hereto being the site of certain private roads including footways verges and the highway drainage shown coloured blue on the said plan together therewith (the said private roads footways verges and highway drainage being hereinafter collectively called "the said roads" except where individual specification is required) situate at The Greyhound Stadium Site, Off Paddock Way, Hinckley in the County of Leicestershire and is desirous of making up and dedicating the said roads so that the same shall become highways maintainable at the public expense and the Owner has agreed to construct the said roads at its own expense in accordance with the terms and conditions hereinafter appearing

(2) The Council has agreed with the Owner that on completion of the said roads as hereinafter provided to the satisfaction of the Council the said roads shall become as hereinafter provided highways maintainable at the public expense

(3) The Surety has agreed to join herein in the manner hereinafter appearing

(4) The clause headings in this Agreement are for ease of reference only and shall not affect the construction thereof

N O W in pursuance and by the authority of Section 38 of the Highways Act 1980 and of all other powers enabling the parties hereto respectively

IT IS HEREBY AGREED AND DECLARED as follows:-

Highway Works

1. The Owner shall immediately on the execution of this Agreement lay out the said roads including the footways and dedicate them as highways for use by the public

2. The Owner will at its own expense carry out the following works (hereinafter called "the said works") namely:-

(a) properly construct and otherwise make good the said roads and install the road humps and speed restricting devices together with the required warning signs such warning signs to be sited at the commencement of the road hump system and any other place considered necessary in accordance with the plan annexed hereto and the Council's specifications for the construction of estate roads to the satisfaction in all respects of the

Director of Highways Transportation and Waste Management for the time being to the Council (hereinafter called "the Director") and inspected by the officers appointed on the Council's behalf and

(b) before making up the carriageways and footways of the said roads cause all surface water and foul sewers connecting with suitable outfalls or mains gas and water mains and electric light cables and appropriate ducting for accommodation of cable services (telephone television or otherwise) to be laid under the said roads and all alterations to the existing services to be carried out where necessary including those when constructing a junction with an existing highway to the approval and satisfaction of the appropriate authorities and statutory undertakers and

(c) erect lamp columns together with all necessary equipment of the type and in the positions specified by the Director and arrange with the electricity company for the laying and jointing of electricity cables to such columns and will pay the electricity company's charges for such laying and jointing and for the supply of electricity and time control or other ancillary equipment

(d) carry out all necessary tests as may be reasonably required by the Director to establish the suitability and standard of road construction carried out on the site prior to the completion of this Agreement and without the benefit of inspection of the works by the Director

(e) carry out such Safety Audits as are required by the Council by an Auditor approved by the Director together with any works arising as a result of such audits

(f) execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure to the Council full rights for maintenance and retention of installations in respect of such parts of the highway drainage of the said roads and street lighting equipment associated with the said roads as are situated outside the limits of the said roads and highways maintainable at the public expense and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising in connection with such deeds

3 (a) The Owner shall proceed with the said works with all diligence and shall complete the same not later than one month after the completion of all the buildings fronting or served by the said roads or within a period of three years from the date of this Agreement whichever shall first occur (completion of the works shall be taken as the issuing of the provisional certificate by the Director)

(b) the Council may in its absolute discretion and by notice in writing extend such period for such further period not exceeding a further three years as it considers appropriate and necessary (either prior to or following the expiration of the said period of three years) **PROVIDED THAT** before any buildings in any road the subject of this Agreement are occupied the Owner shall construct up to at least binder course level and maintain the carriageways and the footways leading to and fronting such buildings and will erect and light the lamp columns thereon to the approval and satisfaction of the Director

(c) whenever such extension to the period for completion of the works is given by the Council whether for the first period of three years or any

subsequent period of three years the Council will re-asses the sum payable under Clause 18 of this Agreement **AND** the Owner shall pay to the Council a further administration charge of 3 per cent based on the cost of the outstanding works as assessed by the Council with a minimum charge of **FIVE HUNDRED POUNDS** (£500)

(d) The Owner shall at all times until the said roads become highways maintainable at the public expense keep the same forever open to the use of the public

Approval of Persons Undertaking the Said Works

4. The Owner shall not engage a Contractor or permit the engagement of any sub-contractor to execute the said works or any part thereof unless that contractor or sub-contractor has first been approved by the Council as suitable to carry out such works (such approval not to be unreasonably withheld or delayed)

Inspection of the Said Works

5. The Owner will during the progress of the said works give to the Director and every officer appointed by the Council free access to each and every part of the said roads and the sites thereof and permit them to inspect the same and all materials used or intended for use therein and to give instructions relating thereto

Existing and Proposed Apparatus

6 (a) The Owner shall not at any time erect in or lay or permit to be erected in or laid under or over the said roads or the sites thereof any cables pipes lines conduits etc or any apparatus of a like nature or ancillary thereto including poles housing or other means of providing the same without the written consent of the Council first being obtained and in the event of such consent being obtained the Owner shall be responsible for the observance of any conditions imposed by the Council with regard to the laying and siting of such cables wires poles etc and apparatus

(b) The Owner in carrying out any works which it is required by this Agreement to execute shall at its own expense divert or protect all or any pipes wires cables or equipment belonging to any person or body having power to undertake street works under the New Roads and Street Works Act 1991 as may be necessary to enable such works to be properly carried out or may be reasonably directed by the Director and all alterations to existing services shall be carried out to the reasonable satisfaction of the appropriate authorities and undertakers

(c) The Owner shall remain the street manager for the purposes of Section 49 of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the said roads shall become a highway or highways maintainable at the public expense

Specification

7. The following shall be the requirements and appropriate standards to be taken into account by the Owner in preparing any detailed drawings for submission to the Highway Authority:-

Specification

Leicestershire County Council's Specification for highway works for new developments

Leicestershire County Council's Standard drawings

Design

Leicestershire County Council's Highways, transportation and development – the Leicestershire guide

Design Manual for Roads and Bridges

Street Lighting

Design in accordance with BS5489

Leicestershire County Council's Street Lighting Specification

Signing and Road Marking

The Traffic Signs Regulations and General Directions 2002

The Traffic Signs Manual (DOT)

Leicestershire County Council's Traffic Signs and Road Markings Specification

Approval of Design

8. No work is to commence until detailed designs and specifications have been submitted to and approved by the Director notwithstanding that in giving approval to drawings the Owner is not relieved of their obligation to design

and construct the works to the standards and specifications also contained in this Agreement

Conditions

9. The Owner shall comply with the Leicestershire County Council's Standard conditions applying to highway works for new developments

Indemnity

10. The Owner shall indemnify the Council from and against all costs expenses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design carrying out and maintenance of the said works or any part or parts thereof including but without prejudice to the generality of the foregoing any claim against the Council under the Land Compensation Act 1973 or by virtue of the application of the provisions of the Noise Insulation Regulations made thereunder including any liability falling upon the Council by virtue of its exercising its discretionary powers under the said Regulations **PROVIDED THAT**

(i) the foregoing indemnity shall not extend to any damage caused by or arising out of the neglect or default of the Council or its officers servants agents or contractors

(ii) the Council shall notify the Owner forthwith upon receipt of any claim

(iii) the Council shall not accept any such claim without first having given the Owner details of such claim and having given the Owner the opportunity to make representations to the Council as to the validity and quantum of such claim

(iv) the Council shall in settling any such claim give full and due regard to any representations made by the Owner in respect thereof

(v) the Council shall following the acceptance of any claim notify the quantum thereof to the Owner in writing and the Owner shall within 14 days of the receipt of such notification pay to the Council the amount specified as the quantum of such claim

Construction (Design and Management) Regulations 1994

11. The Owner shall comply with all aspects of the Construction (Design and Management) Regulations 1994 or any statutory amendment or variation of the same and in particular shall ensure that all obligations imposed on the client (as defined in the said Regulations) are satisfied and will indemnify the Council against all claims liabilities and actions arising out of a failure so to do

Incomplete Development

12. If at the time when the said roads or any part or parts thereof become highways maintainable at the public expense in accordance with Clause 25 hereof any plot or plots of land fronting thereto remain undeveloped or any building or buildings thereon remain uncompleted the Owner shall pay to the Council such sum as may be certified by the Director (whose certificate shall be final) as being the estimated cost of making good any damage which in the Director's opinion will be caused to the said roads or part or parts thereof as a result of the subsequent development of such plot or plots or as a result of the completion of such building or buildings

Site Safety

13. The Owner shall until the said roads become as hereinafter provided highways maintainable at the public expense keep the said works safe and in a good state of efficiency and repair including the fencing and lighting of all open trenches and shall keep all building materials and plant clear of the carriageways and footways

Maintenance Period

14. When and so soon as the said works have been completed to the satisfaction of the Director or where it is agreed in writing between the parties hereto that the said works shall be carried out in sections any section of the said works shall have been so completed the Director shall issue a Provisional Certificate of completion (hereinafter called "the Provisional Certificate") and the Owner shall fully maintain the said works or section thereof as the case may be for a period of twelve months from the date of the Provisional Certificate (hereinafter called "the maintenance period")

15. If during the maintenance period any defect or damage shall arise or occur in the said roads or any part or parts thereof the Owner shall at its own expense forthwith make the same good to the satisfaction of the Director and the Owner shall during the maintenance period and during the period until such defects or damage are made good maintain the said roads to the like satisfaction

Power to Execute Works in Default or Emergency

16. (a) If at any time the Owner does not comply with any of the terms of this Agreement or of any stipulations made thereunder then the Council shall on giving to the Owner and the Surety fourteen days' notice in writing to that effect be entitled to carry out and complete the said works and any maintenance works and the Owner shall within 28 days pay to the Council the cost so incurred by the Council

(b) Nothing in this Agreement shall prevent the Council from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the Owner in the event of an emergency or danger to the public the cost to the Council of such work or action being chargeable to and recoverable from the Owner

Insurance

17. The Owner shall upon execution of this Agreement effect insurance with an insurer in the minimum sum of **FIVE MILLION POUNDS** (£5,000,000) for any one claim the total number of claims to be unlimited such terms to include indemnity with a maximum excess of One Thousand Pounds (£1,000) (in the event of there being any excess the Owner shall provide a written undertaking in terms satisfactory to the Council agreeing irrevocably to be responsible for any third party claims or parts of claims within the excess amount) against any legal liability for damage loss or injury to any property or any persons as a direct or indirect result of the execution and maintenance of the Highway Works or any part thereof

Surety's Obligations

18. Without prejudice to the other rights and remedies of the Council under this Agreement in the event of the Director certifying that there has been a breach or non-observance of any of the terms or conditions herein contained and to be performed by the Owner (the certificate of the Director in this respect being final) the Surety shall within 28 days pay to the Council

(a) such sum of money as may be estimated by the Director (whose estimate shall be final) to be required in order to complete the said roads in accordance with the said terms and conditions herein contained and remedy any defects prior to the said roads becoming highways maintainable at the public expense

(b) such sum as may be certified by the Director under the provisions of Clause 12 hereof as being the estimated cost of making good any damage which in the Director's opinion will be caused to the said roads or part or parts thereof as a result of the completion of such building or buildings and

(c) such amount as may be due to the Council in respect of the cost of any works carried out by it under the provisions of Clause 16 hereof

(d) such amounts as may be due to the Council in respect of the costs properly and reasonably incurred by it under the provisions of Clauses 23 and 24 hereof

(e) such amount as may be due to the Council in respect of the cost of any works carried out by it under the provisions of Clause 26 hereof

(f) such amount as may be due to the Council in respect of the commuted sum under the provisions of Clause 27 hereof

ALWAYS PROVIDING that the total sum payable by the Surety shall not exceed **FOUR HUNDRED SEVENTY SEVEN THOUSAND EIGHT HUNDRED AND FIFTY EIGHT POUNDS** (£477,858)

19. In the event of there being any surplus between the amount paid by the Surety under the provisions of Clause 18 hereof and the final cost of the works carried out thereunder (the certificate of the Director as to the amount of any surplus being final) such surplus shall be refunded to the Surety

20. The Surety shall not be discharged or released from its liability by any arrangement made between the Council and the Owner with or without the consent of the Surety or by any alteration in the obligations undertaken by the Owner or by any forbearance whether as to payment time performance or otherwise

Fees

21. The Owner shall upon execution of this Agreement by it pay to the Council

(i) a charge in respect of the costs incurred by the Council for the inspection design checking and administration amounting to **TWENTY SEVEN THOUSAND EIGHT HUNDRED AND SEVENTY TWO POUNDS** (£27,872) being a charge calculated at six per cent of the total cost of the said works for this Development or one thousand pounds whichever is the greater

(i) the Council's legal costs in the preparation and completion of this Agreement amounting to **SEVEN HUNDRED AND FIFTY POUNDS** (£750.00)

Highway Related Structures

22. The Owner shall pay to the Council on demand the total costs properly and reasonably incurred in undertaking the technical approval design checking and inspection of any highway related structure such costs being in addition to the sum payable under Clause 21 of this Agreement

Orders

23. The Owner shall pay to the Council upon demand the total costs properly and reasonably incurred by the Council in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the said works or such other order or orders as the Council shall deem reasonably necessary and whether or not such procedure or order is or are experimental temporary or permanent

Consultation

24. The Owner shall pay to the Council upon demand the total costs properly and reasonably incurred by the Council in undertaking public consultations in respect of the said works be the consultations a statutory requirement or any other form of consultation that the Council would normally carry out if it were undertaking the said works

Final Certificate

25. (a) The Owner shall apply to the Director for issue of the Final Certificate at the expiration of the maintenance period or in the event of there being any such defect or damage as is mentioned in Clause 14 hereof on the date such defect or damage has been remedied to the satisfaction of the Director whichever date shall last occur and provided that all sewers constructed under the said roads have been constructed to an agreement under Section 104 of the Water Industry Act 1991 (as amended) and have been certified by the sewerage undertaker concerned as having been constructed in accordance with that agreement (such certificate normally being by way of a "Provisional Certificate" as defined therein) the Director shall issue a Final Certificate to the effect that the said roads have been constructed to his satisfaction and as from the date of such Final Certificate the said roads shall become highways maintainable at the public expense

(b) If the Owner does not apply for and receive a Final Certificate within two years of the date of the issue of the Provisional Certificate the Owner shall pay to the Council a further administration charge of **FIVE HUNDRED POUNDS** (£500)

Bulk Clean and Lamp Change

26. (a) Where the period from commencement of the works or the date of this Agreement (whichever is the earlier) to the issue of the Final Certificate exceeds a period of three years prior to the issue of the Final Certificate the Owner shall pay to the Council the costs of carrying out a bulk clean and lamp

change for all the street lighting erected as part of the works the cost of such procedure to be calculated by the Council

(b) Prior to the issue of the Final Certificate the Owner shall pay to the Council the cost of a bulk clean and lamp change of all illuminated signs and bollards erected as part of the works the reasonable cost of such procedure to be calculated by the Council

(c) The sum of the costs payable under (a) and (b) of this clause shall be a minimum of **FIVE HUNDRED POUNDS**(£500)

Commuted Sum

27 Immediately prior to the issue of the Final Certificate of Completion the Owner shall pay to the Council a commuted sum towards the cost of future maintenance of the said roads in the sum of **THIRTEEN THOUSAND THREE HUNDRED AND TWENTY FIVE POUNDS** (£13,325) adjusted in accordance with the Schedule hereto to arrive at the Final Sum

Use of Sums Paid

28. The County Council shall use such sums as are payable in accordance with the terms of this agreement together with any interest which may accrue only for the purposes set out above

Title

29 The Owner hereby covenants with the Council that if and when called upon to do so by the Council (or its successor in title as Highway Authority) within the period of 80 years of the date hereof it will prove title to the said

roads and transfer its Title Absolute to the Council free of charge with full title guarantee **PROVIDED ALWAYS** that the Owner shall not be personally liable under the obligations in this Clause after and to the extent that it shall have disposed of its interest in all or any part of the said roads (save in respect of any antecedent breach of such obligations)

Land Charge

30. It is hereby agreed that Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 106 of the Town and Country Planning Act 1990 shall apply to this Agreement where relevant in order that the obligations on the part of the Owner contained in this Agreement shall be enforceable by the Council against any person deriving title from the Owner and in this respect the Council shall register a Land Charge in the Local Land Charges Register **AND FURTHER** the Owner hereby consents to the registration if so required by the Council of a Land Charge against the Owner in the Land Charges Register or a Notice in the Registered Title or Titles of the land comprised in the said roads **AND FURTHER** agrees to pay the Council's costs in making the relevant registrations

Determination

31. If the Owner shall fail to perform or observe any of the covenants or agreements on its part contained herein or shall fail duly and regularly to proceed with the works to the satisfaction of the Director or if the Owner shall be adjudicated bankrupt or shall go into liquidation (voluntary or otherwise)

other than for the purpose of re-organisation or shall execute a deed of assignment for the benefit of creditors or otherwise compound with creditors generally the Council or any Committee authorised in that behalf may by resolution passed at any meeting without previous notice to the Owner and without prejudice to any of its claims or remedies against the Owner for any such non-performance or non-observance and without prejudice to the rights and remedies of the Council herein contained determine this Agreement by notice in writing signed by the County Solicitor and delivered to the Owner or sent by post to the address as stated in this Agreement

32. Nothing in this Agreement shall affect or prejudice the rights of the Council under the Highways Act 1980 and notwithstanding this Agreement the Council shall be at liberty to proceed in accordance with the provisions of that Act to secure the making up and completion of the said roads

Supplemental Agreement

33. If the Owner wishes to make any alterations in the road layout or in any other matter to which this Agreement relates it shall make a written application to the Council in that behalf together with such plans and other documents as the Council may from time to time require and if the Council consents to the proposals of the Owner the parties hereto shall enter into a Supplemental Agreement specifying the alterations to this Principal Agreement and the Owner shall pay any costs incurred by the Council in the preparation of a Supplemental Agreement with a minimum charge of **FIVE**

HUNDRED POUNDS and such further charges as the Council considers reasonable in all the circumstances

Rights of Third Parties

34. **IT IS HEREBY AGREED** that the provisions of Section 1 of the Contracts (Rights of Third Parties) Act 1999 be expressly excluded from this Agreement

SCHEDULE

1.In this schedule:-

"Index"	means the Resource Cost Index of Road Construction (ROCOS) published by the Department for Business Enterprise and Regulatory Reform (BERR) as part of the Quarterly Building and Cost Indices for Public Sector Construction Works or such other index as may from time to time be published in substitution thereof
"Base Index Date"	means the date of this Agreement
"Base Index Figure"	means the figure last published in respect of the Index prior to the Base Index date at the time of the Base Index Date
"Final Index Figure"	means the figure including any provisional figure last published or otherwise agreed or determined in respect of the Index prior to the respective date upon which the Commuted Sum is payable

2. The Commuted Sum shall be increased by such sum if any in pounds sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where: "A" equals the Commuted Sum

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made but if for any reason the Index shall be otherwise altered or shall be abolished or replaced, there shall be substituted for the purposes of this Schedule such index as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty's Government and if no such index is published, the parties thereto shall

endeavour to agree such other index as shall most closely reflect changes in the cost of Public Works (Roads)

4. If any substitution for the said Index or any index previously substituted thereof shall occur pursuant to the provisions of Clause 3 of this Schedule, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the ROCOS Index or any index previously substituted thereof on the other hand

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

29612(b)

THE COMMON SEAL of **THE LEICESTERSHIRE COUNTY COUNCIL** was hereunto affixed in the presence of:-)

Authorised Signatory

EXECUTED as a Deed by **CREST NICHOLSON (MIDLANDS) LIMITED** acting by two Directors or a Director and Company Secretary)

Director

Director/Secretary

THE COMMON SEAL of **NATIONAL HOUSE BUILDING COUNCIL** was hereunto affixed in the presence of:-)
)
)

Director

Secretary

ESTHER ATTLEY
AUTHORISED SIGNATORY