

Appendix C

DATE

20

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

and

[*developers*]

and

[mortgagee]

A G R E E M E N T

under Section 1, Section 38 and Section 278 of the Highways Act 1980

and Section 111 of the Local Government Act 1972 in respect

of a development off

[*development details*]

in the County Borough of Rhondda Cynon Taf

THIS AGREEMENT is made the _____ day of _____
BETWEEN:

- (1) **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL** of The Pavilions, Cambrian Park, Clydach Vale CF40 2XX ('the Council'),
- (2) [] of whose registered office is at [], company registration no [] ('the Developer'), and
- (3) [] whose registered office is at [] company registration no [] ('the Mortgagee').

NOW IT IS AGREED as follows:

1 Definitions and interpretation

2.1. In this agreement:

- 1.1 'the Appropriate Officer' means the highway engineer or other appropriate officer for the time being of the Council,
- 1.2 'the Existing Roads' means the existing highways maintainable at public expense shown on the plan numbered [] edged and hatched [brown],
- 1.3 'the Final Certificate' means the certificate issued under clause 5.3 of this agreement,
- 1.4 'the First Specification' means the specification deposited with the Council in respect of the Section 38 Works and set out in Schedule 1 to this agreement Works including any plan elevation or section of the Section 38 Works and the edition of the publication entitled "Standard Specification for Private Residential and Industrial Estate Development and Private Street Works" dated July 2000, a copy of which the Developer hereby acknowledges has been supplied to him,
- 1.5 'the Interim Certificate' means the certificate to be issued under clause 5.1 of this agreement,
- 1.6 'the Land' means the land situate at [] shown [edged red] on plan numbered [] being [the whole (or) part] of the land comprised in title number [],
- 1.7 'the Maintenance Period' means the period of 12 months from the date of the Interim Certificate,

- 1.8 'the Plans' mean the plans numbered [] annexed to this agreement which have been approved by the Council and any reference to a numbered plan is to the annexed plan or plans so numbered,
- 1.9 'the Roads' means the roads to be constructed on the Land by the Developer in connection with the Section 38 Works including all carriageways, footways, footpaths, road islands and road verges shown coloured [grey] in the case of carriageways, [yellow] in the case of footways and [green] in the case of verges shown on the plan numbered [],
- 1.10 'the Second Specification' means the specification in respect of the Section 111/278 Works set out in Schedule 2 to this agreement including any plan elevation or section of the Section 111/278 Works and the edition of the publication entitled "The Specification for Highway Works" dated 1991 and published by HMO together with any relevant modifications, additions or amendments to the publication,
- 1.11 'the Section 111/278 Works' means the improvements, alterations and additions to the Existing Roads,
- 1.12 'the Section 38 Works' means the construction of the Roads including landscape features and the surface water drains and sewers shown by [blue] lines on the plan numbered [],
- 1.13 'the Street Lighting' means the street lighting facilities to be erected on the Land including the street lights the positions of which are indicated on the plan numbered [] by [orange circles] and all ancillary apparatus,
- 1.14 words importing one gender shall be construed as importing any other gender,
- 1.15 words importing the singular shall be construed as importing the plural and vice versa,
- 1.16 words importing persons shall be construed as importing a corporate body or a partnership and vice versa,
- 1.17 where any party comprises more than one person the obligations and liabilities of that party under this agreement shall be joint and several obligations and liabilities of those persons, and
- 1.18 the clause headings do form part of this agreement and shall not be taken into account in its construction or interpretation.

2 Background

- 2.1 The Council is the highway authority for the county borough of Rhondda Cynon Taf.
- 2.2 The Developer is registered as proprietor of the Land with an absolute freehold title under title number [].
- 2.1. The Developer intends to carry out the Section 38 Works and the Section 111/278 Works on the Land in accordance with the Plans, the First Specification and the Second Specification.
- 2.1. The Developer desires that upon completion the Roads should become highways maintainable at the public expense.
- 2.5 The Developer also wishes to carry out work on the Existing Roads.
- 2.6 The covenants contained in clauses 3.2 3.3 and 5.2 below are to bind the Developer as the owner of the site of the Roads and its successors in title to that land.
- 2.7 This agreement is entered into pursuant to the Highways Act 1980 sections 38 and 278 and the Local Government Act 1972 section 111.
- 2.8 The Council has agreed with the Developer that subject to payment of the cost of inspection of the Section 38 Works as contained in clause 5.19 and their maintenance in a proper manner on the terms and conditions of this agreement, the Council will do and procure all acts and things necessary for the taking over and adoption of the Roads as highways maintainable at the public expense.
- 2.9 The Mortgagee is proprietor of the charge on the Land dated **(date)** registered on **(date)**.

3. The Section 38 Works: construction of the Roads Junctions

- 3.1. Where the Roads abut or join an existing highway the bellmouth joining the Roads to that highway shall be constructed at the expense of the Developer and to the satisfaction of the Appropriate Officer.

Construction of the Section 38 Works

- 3.2. The Developer shall at his own expense construct the Section 38 Works or cause the Section 38 Works to be constructed in accordance with the Plans and the First Specification, in all respects to the satisfaction of the Appropriate Officer, provided that any amendment to the Plans or the First Specification shall be previously approved in writing by the Council and the work comprised in the amendment shall not be commenced until notification in writing of approval has been received by the Developer.
- 3.3. The Developer shall complete the Section 38 Works or any part of them as soon as is practicable and in any case not later than [16on instruction letter] months of the date of this agreement.

Restriction on occupation of houses

- 3.4. Prior to occupation of any house or other dwelling that fronts, joins or abuts the Roads, the Developer shall complete:
- 3.5. all road and other drainage contained within the Roads,
- 3.6. all kerb foundations and kerbs, including lowering at vehicle crossings and pram ramps,
- 3.7. carriageway sub-base, road base and any supporting structures,
- 3.8. carriageway base course surfacing,
- 3.9. demarcation of site lines and clearance of visibility splays, and
- 3.10. the Street Lighting,
- 3.11. and make the carriageway to at least base course stage outside each house before that house is occupied.

Mortgagee's consent

- 3.12. The Mortgagee consents to the Developer entering into this agreement, joins in the execution of this agreement, and acknowledges that this agreement binds the Land.

4. The Section 111/278 Works: on the Existing Highway

4.1. Developer's liability

The Developer shall carry out the Section 111/278 Works, at his own expense but as agent for the Council, in accordance with the Plans and the Second Specification and to the satisfaction of the Appropriate Officer, within [16 on instruction letter] of the date of this agreement.

4.2. Statutory undertakers

The Developer shall pay all charges that may be levied on the Council or the Developer by any of the statutory undertakers in respect of removal, protection or alteration of any of their apparatus necessitated by the Section 111/278 Works.

4.3. Road Safety

During the periods when the Section 111/278 Works are being executed the Developer shall comply with the provisions of the Traffic Signs Regulations and General Directions 2002 (SI 2002/3113) or any modifications thereto for lighting and signing the Section 111/278 Works.

4.4. Traffic Control

During the periods when the Section 111/278 Works are being executed the Developer shall institute at his own expense measures and signs reasonably approved or required by the Appropriate Officer to maintain traffic flows on the public highways in the vicinity of the site of the Section 111/278 Works and to direct and control traffic and pedestrians and pedestrians and traffic control measures shall be discussed with the police at regular progress meetings.

4.5. Danger of Nuisance

If at any time it appears to the Appropriate Officer that the Section 111/278 Works are being carried out in any manner which constitutes or is likely to constitute a danger or nuisance to any person or class of persons or to affect the stability or integrity of any structure or apparatus including the Existing Highway or otherwise indicates any deviation from the Section 111/278

Works Specification the Appropriate Officer may give notice to the Developer requiring the immediate cessation of the execution of all or any part of the Section 111/278 Works pending agreement between the parties hereto as the appropriate method of proceeding and if such agreement is not reached within 48 hours of the serving of the notice then the Appropriate Officer may make such arrangements as are necessary for the expeditious completion of the Section 111/278 Works or, at his discretion restore the Existing Highway to a safe and acceptable condition, and recover his reasonable and proper costs from the Surety or the developer.

5. Provisions applying to both the Section 38 Works and the Section 111/278 Works

5.1. The Interim Certificate

5.1.1. After the completion of the Section 38 Works and the Section 111/278 Works in accordance with this agreement the Appropriate Officer shall issue the Interim Certificate to the Developer stating that those works have been carried out to his satisfaction, and for the Maintenance Period the Developer shall execute all such works of repair, reconstruction or rectification of any and all defects and imperfections and of any and all other faults of whatsoever nature that may be required of him in writing by the Appropriate Officer.

5.2. Parties' obligations during the Maintenance Period

During the Maintenance Period:

- 5.2.1. the Developer shall at his own expense maintain the Section 38 Works and the Section 111/278 Works to enable safe use by vehicles and pedestrians to the satisfaction of the Appropriate Officer, and
- 5.2.2. the Council shall at its own expense undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs.

5.3. Final Certificate

5.3.1. If at the expiration of the Maintenance Period the Appropriate Officer is satisfied that the Section 38 Works and the Section 111/278 Works have been duly and properly maintained and are not then subject to any defects, and all other obligations under this agreement have been performed, he shall issue the Final Certificate stating that the Section 38 Works are suitable for adoption, and shall procure the adoption of the Roads by the Council as highways maintainable at the public expense.

5.4. Issue of certificates for part

5.4.1. Notwithstanding the provisions of this agreement, the Appropriate Officer may in his absolute discretion give an interim certificate and a final certificate in respect of such part or parts only of the Section 38 Works and the Section 111/278 Works as are from time to time constructed and maintained in accordance with this agreement, and clauses 5.1 and 5.3 shall apply accordingly to such part or parts of the Existing Roads or the Roads as are from time to time the subject of such certificates.

5.5. Notice and access to be given to surveyor

The Developer shall:

- 5.5.1. before commencing the Section 38 Works or the Section 111/278 Works give notice in writing to the Appropriate Officer of his intention to do so,
- 5.5.2. during the progress of the Section 38 Works or the Section 111/278 Works and until the issue of the Final Certificate give to the Appropriate Officer and any person or persons duly authorised by him free access to any part of the Section 38 Works or the Section 111/278 Works,
- 5.5.3. permit him or them to inspect the Section 38 Works or the Section 111/278 Works and all or any materials used or intended to be used in the Section 38 Works or the Section 111/278 Works, and
- 5.5.4. give effect to any requirements made or instructions given by the Appropriate Officer or any person duly authorised by him, including the removal of specimens for analysis or other examination, for securing that the Section 38 Works conform to the Plan and First Specification,

and the Section 111/278 Works conform to the Plan and the Second Specification, and both are executed to the satisfaction of the Appropriate Officer.

5.6. No erection of overhead services

5.6.1. The Developer shall not at any time give consent to any service undertaking or supplier whether statutory or otherwise for the erection of overhead services in the Existing Roads or the Roads without the written consent of the Appropriate Officer being first obtained, and the location and the disposition of underground services shall follow best practice.

5.7. Default provisions

If the Developer:

- 5.7.1. fails to perform or observe any of the conditions, covenants, agreements or obligations on the part of the Developer contained in this agreement or described or referred to on the Plan, the First Specification or the Second Specification, or
- 5.7.2. fails to proceed with the Section 38 Works and the Section 111/278 Works in respect of the Existing Roads or the Roads or any of them to the satisfaction of the Appropriate Officer (whose decision shall be conclusive), or
- 5.7.3. fails to complete the Section 38 Works and the Section 111/278 Works within the time limits set out in this agreement, or
- 5.7.4. being a company is wound up either voluntarily (except for the purpose of reconstruction or amalgamation) or compulsorily or being an individual becomes bankrupt or in either case enters into composition with its or his creditors, or
- 5.7.5. suffers any distress or execution to be levied against its or his goods, or
- 5.7.6. is the subject of the appointment of a receiver,
- 5.7.7. the Council shall (after 28 days' notice in writing to the Developer of its intention so to do) have the right to exercise any powers whatsoever enabling it to carry out or cause to be carried out the Section 38 Works or any part of them in respect of the Roads or any part of them, or the Section 111/278 Works or any part of them in respect of the Existing Roads or any part of them, and to remedy any defect in them before their adoption as highways maintainable at the public expense. In addition the Council shall

have the right (without prejudice to any other rights, claims and remedies arising out of matters listed in this clause or otherwise under this agreement) to determine this agreement by 28 days' written notice.

5.8. Notice of default in respect of part

5.8.1. Where the Council serves a notice under clause 5.7 of this agreement in respect of any of the Existing Roads or the Roads or part of them, the service of the notice shall not in any way relieve the Developer from the performance and observance of the conditions covenants agreements or obligations on his part contained in this agreement in respect of the rest of the Existing Roads or the rest of the Roads or part of them included in this agreement, whether or not specified in the notice, and so far as such other road or roads or parts of them are concerned the terms of this agreement shall remain in full force and effect.

5.9. Recovery of costs

5.9.1. If the Council serves a notice under clause 5.7 of this agreement and carries out the Section 38 Works and the Section 111/278 Works or any part of them or causes them to be carried out, the Council shall be entitled to recover the cost of doing so from the Developer.

5.10. Limited action by the Council

5.10.1. If, at any time after work has been done in or for the purpose of erecting any building adjoining the Roads or part of them and before the Developer has completed the Section 38 Works in respect of the Roads or parts of them, the Council is of the opinion that the circumstances warrant action on its part but do not at that time warrant action under clause 5.7, the Council may by notice require the Developer to pay to the Council on demand such sum as the Council thinks fit not exceeding the estimated cost of completion of the parts of the Roads opposite the frontage of any such building and of any completed building (including any buildings built before the date of this agreement) and any parts intervening between any of those parts and between them and the nearest highway maintainable at the public expense. If the Council takes action under this clause such action shall not in any way prejudice the Council from taking further action under clause 5.7 of this

agreement should any further work subsequently be done in or for the purpose of erecting any building adjoining the Roads.

- 5.10.2. The Highways Act 1980 section 203(1) shall apply for the interpretation of this clause as it applies for the interpretation of the advance payments code of that Act.

5.11. Indemnity

The Developer hereby indemnifies the Council in respect of all actions claims demands expenses and proceedings (including claims for compensation under Part 1 of the Land Compensation Act 1973 or related legislation) arising out of or in connection with or incidental to the carrying out of the Section 38 Works or the Section 111/278 Works and their use other than those arising out of or in consequence of any act neglect default or liability of the Council.

5.12. Dedication of land

- 5.12.1. Upon the issue of the Final Certificate or certificates as provided for in this agreement the Developer shall give up and dedicate to the public the Land on which the Section 38 Works are constructed or such part of the Land as is covered by the Final Certificate to the intent that the Land shall become a public highway up to and including the boundary of the Land with other land as indicated on the Plan.

5.13. Developer may be called upon to transfer land

- 5.13.1. If and when called upon by the Council to do so within 21 years from the date of this agreement, the Developer shall prove his title to the land dedicated to the public and shall upon payment of [£1.00] transfer the freehold estate in the Land to the Council or its nominee with full title guarantee.

5.14. Bond

- 5.14.1. The Developer shall as a guarantee for the due performance of the terms and conditions contained in this Agreement, provide a bond by [surety] whose registered office is at [] in favour of the Council in the sum of [] £[]. The bond shall be reduced by 50% upon the completion of the works identified in clause 3.3 to the satisfaction of the Appropriate officer and shall be further reduced by 80% of the total bond figure upon the issue of the Interim Certificate and will be terminated when the Final Certificate has been issued in respect of all the Section 38 Works and the Section 111/278 Works or at such earlier stage as to the whole bond or part of it as the Appropriate Officer may in his absolute discretion agree

5.15. Further bond

At any time after [12] months from the date of this agreement the Developer shall, if required by written notice served by the Council to do so, procure a further bond by (*surety*) in favour of the Council in such sum as the Appropriate Officer shall determine to guarantee further the terms and conditions contained in this agreement. The further bond shall be terminated in accordance with clause 5.14. If within [14] days of service of any notice under this clause the Developer disputes the reasonableness of the sum specified, the Developer shall give notice to that effect to the Council and the dispute or difference shall be referred to the determination of a single arbitrator to be agreed upon by the parties, or failing agreement nominated by the President of the Institution of Civil Engineers, in the manner provided by the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

5.16. Adoption not to include drains

- 5.16.1. It is agreed that the adoption of the Roads as highways maintainable at the public expense shall not include the adoption as part of such highways of the drains or sewers to be constructed by the Developer but subject to this exception the adoption shall include the surface water drains, gullies and connections shown by blue lines on the plan numbered [].

5.17. Service of notices

- 5.17.1 Any notice required to be given to the Developer under this agreement shall be deemed to have been properly served if it is sent by the Council by pre-paid recorded delivery post to the Developer at the addresses given in this agreement.
- 5.17.2 Any notice required to be given by the Developer to the Council (which expression shall include the Appropriate Officer) shall be deemed to be properly served if sent by pre-paid recorded delivery post to the [Chief Executive] of the Council at the address given in this agreement.

5.18. Arbitration

- 5.18.1. In the event of any dispute arising out of the Section 38 Works or the Section 111/278 Works under this agreement the same shall be referred to a sole arbitrator to be agreed between the parties, or failing agreement to be appointed by the President for the time being of the Institution of Civil Engineers, in accordance with and subject to the Arbitration Act 1996.

5.19. Inspection Fee

- 5.19.1 Upon the execution of this Agreement the Developer shall pay to the Council the sum of [20] £[21] in respect of the costs incurred by the Council in the checking of all plans drawings and other details submitted by the Developer, the preparation of this Agreement and inspecting the Section 38 Works and the Section 111/278 Works.
- 5.19.2 RECEIPT by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Section 38 Works and the Section 111/278 Works by the Council

5.20. Prevention of Mud Being Carried on to the Public Highway

Provisions shall be made by the Developer in accordance with the Appropriate Officer's reasonable requirements at the site of Section 38 Works and the Section 111/278 Works to prevent mud and other materials from being carried on to adjacent highways by vehicles and plant and the highway in the vicinity of the Land shall be swept at the end of each working day to ensure its proper and continued use as a public highway

SCHEDULE 1

Specification for the Section 38 Works

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
7. Pedestrian ways
8. Vision splays and verges
9. Street Lighting and street furniture
10. Street name plates
11. Road markings
12. All other works described in the Specification and shown in the Drawings



SCHEDULE 2

Specification for the Section 111/278 Works
(insert details)

Appendix C (Continued)

THIS BOND is made the day of

BETWEEN:

- (1) [] of whose registered office is at [], company registration no [] ('the Surety'),
- (2) **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL** of The Pavilions, Cambrian Park, Clydach Vale CF40 2XX ('the Council') and
- (3) [] whose registered office is at [], company registration no [] ('the Developer')

Background

1. The Developer has entered into an agreement pursuant to the Highways Act 1980 section 38 and section 278 and the Local Government Act 1972 section 111 with the Council dated [] ('the Agreement') for works to existing highway and the construction of roads at [] which are more particularly described in the Agreement.

- 1.1. This bond is supplemental to the Agreement.
The Surety has agreed to guarantee the due performance of the Agreement in the following manner.

2. The Surety's covenants

- 2.1. The Surety covenants with the Council as follows:
- 2.2. The Surety will in all respects guarantee the due and proper performance of the Agreement and the due observance and punctual performance of all the obligations, duties, undertakings, covenants and conditions by or on the part of the Developer and to be observed and performed by it which are set out in the Agreement (collectively 'the Obligations'), which guarantee shall extend to include any variation of or addition to the Agreement.

2.2 If the Developer in any respect or for any reason fails or is unable to carry out observe or perform all or any of the Obligations (unless relieved of any of the Obligations by any condition of the Agreement or by the decision of a court or tribunal of competent jurisdiction) then the Surety shall be liable for, and shall indemnify the Council against, all losses, damages, costs and expenses whatsoever that may be incurred by the Council by reason of or in consequence of any default or inability on the part of the Developer in performing any of the Obligations under the Agreement, to the extent that such losses, damages, costs and expenses may be claimed by the Council against the Developer under the Agreement, up to a maximum of [] £[]

3. Avoidance of obligation

- 3.1. The Surety shall not be discharged or released from this Bond by:
- 3.2. any agreement, concession, conduct, forbearance or indulgence granted to the Developer under the Agreement or any alteration to the terms of the Agreement, or
- 3.3. any other compromise or settlement of any dispute between the Council and the Developer (but so that the Council shall not pursue against the Surety a remedy contrary to the terms of any such compromise or settlement in so far as the Developer has complied with such terms).

4. Duration of bond

- 4.1. This bond is a continuing guarantee and:
- 4.2. shall remain in operation until either:
- 4.3. all the Obligations of the Developer under the Agreement have been satisfied or performed in full or
- 4.4. the Surety has paid to the Council all the sums payable by the Developer to the Council under the terms of the Agreement provided that the total sum payable by the Surety shall not exceed [] £[],
- 4.5. is in addition to and not in substitution for any other security which the Council may at any time hold for the performance of such obligations, and
- 4.6. may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Developer.

5. Sums due from the Developer

- 5.1. In so far as any sums are due by the Developer to the Council under the terms of the Agreement then the Surety shall not:
- 5.2. by paying any sum due in accordance with this bond or by any other means or grounds claim or recover by the institution of proceedings or threat of proceedings or otherwise such sum from the Developer, or
- 5.3. claim any set-off or counterclaim against the Developer, or
- 5.4. prove in competition with the Council in respect of any payment by the Surety in accordance with this bond, or
- 5.5. be entitled in competition with the Council to claim or have the benefit of any security which the Council holds or may hold for any money or liabilities due or incurred by the Developer to the Council
- 5.6. and in case the Surety receives any sums from the Developer in respect of any payment made by the Surety in accordance with this bond the Surety shall hold such monies in trust for the Council so long as any sums are payable (contingently or otherwise) under this bond.

6. Disclaimer of the Agreement

- 6.1. The Surety's obligation and liability under this bond shall continue notwithstanding any disclaimer of the Agreement by a liquidator or administrator appointed of the Developer, and in the event of such a disclaimer the Agreement shall for the purposes of this bond be deemed to continue.

7. Surety's liability no greater than the Developer's liability

- 7.1. This bond shall not be construed as placing any greater liability upon the Surety than is upon the Developer under the terms of the Agreement.

8. English law

- 8.1. This bond shall be governed by and construed in accordance with the law of England and Wales.



Executed as a deed by affixing the common seal of RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL in the presence of :-

AUTHORISED SIGNATORY

Executed as a Deed by

[*developer*]

in the presence of

Director Director/Secretary

Executed as a Deed by

[*surety*]

in the presence of

Director Director/Secretary