

Appendix B

DATED

201

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

and

[Developer]

AGREEMENT

Under Section 111 of the Local Government Act 1972
and Sections 1 and 278 of the Highways Act 1980
in respect of

[Development details]

in the County Borough of Rhondda Cynon Taf

THIS AGREEMENT is made the day of 201 between RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL of the Pavilions Cambrian Park Clydach Vale Tonypany CF40 2XX (hereinafter called the “Council”) of the one part and [] of [](company registration number []) (hereinafter called “the Developer”) of the second part

WHEREAS

By an [] planning permission issued by the Council as Local Planning Authority on [] under reference number [] [] planning permission was granted for [] in the County Borough of Rhondda Cynon Taf

In order to provide safe and adequate vehicular and pedestrian access to and from the proposed development it is necessary for parts of the said road to be modified as hereinafter described.

The Council as highway authority has agreed to grant consent to enter upon the public highway subject as is hereinafter described.

The Council is satisfied that the works to be undertaken in accordance with this Agreement will be of benefit to the public.

NOW THIS DEED WITNESSETH:-

This Agreement is entered into pursuant to Section 111 of the Local Government Act 1972 and Sections 1 and 278 of the Highways Act 1980 and all other powers enabling the Council in that behalf.

The following terms of this agreement shall have the following meanings:

“the Development”	the development referred to at Recital (1) of this Agreement;
“the Drawings”	the drawing numbered [] a copy of which is attached to this Agreement and upon which the carriageway is coloured grey the footway and paved highway verge is coloured yellow the highway surface water and land drainage are coloured blue the grassed verge is coloured green and the existing area of adopted highway is edged and hatched brown and the drawings numbered [] together with such other drawings and plans as may be approved by the Inspector under the terms of this Agreement;
“the Inspector”	such person as shall be appointed by the Council and notified to the Developer for the purpose of checking the design and inspecting the Works on its behalf;
“the Letter of Acceptance”	the letter issued by the Inspector pursuant to Paragraph 13 of the Second Schedule to this Agreement;
“the Letter of Substantial Completion”	the letter issued by the Inspector pursuant to Paragraph 11 of the Second Schedule to this Agreement;

“the Maintenance Period”	the period referred to in Paragraph 12 of the second Schedule to this Agreement;
“the Road”	that part of [] within the limits of the new highways boundaries as shown coloured yellow and/or coloured grey on the Drawing;
“the Specification”	“The Specification for Highway Works” published in 1991 by Her Majesty’s Stationery Office and any relevant modification additions or amendments;
“the Surety”	means [];
“Working Days”	means any day(s) upon which Banks in the City of London are open to the general public
“the Works”	the modification to parts of [] in the First Schedule to this Agreement.

THE DEVELOPER HEREBY COVENANTS with the Council that:

the Developer will design and execute the Works strictly in accordance with the provisions of the second Schedule to this Agreement without expense to the Council;

the Works shall commence only on such date as shall be agreed with the Council such agreement not to be unreasonably withheld or delayed;

having commenced the Works the Developer will diligently and expeditiously proceed with and substantially complete the Works within [] weeks in accordance with the Specification and Drawings to the reasonable satisfaction of the Inspector unless otherwise agreed with the Inspector;

the Developer will pay to the Council all proper and reasonable costs and expenses (including all VAT payable thereon) incurred in relation to the following:

the checking of all plans, drawings and other details submitted by the Developer;

the preparation of this Agreement; and

inspection of the Works

the costs due from the Developer shall be payable to the Council upon entering into this Agreement and the Developer shall pay such sum as the Council then estimates as the total costs which will be payable by the Developer under Clause 3.4;

the Developer will hold the Council harmless and indemnified from and against any legally sustainable liability loss cost or claim (including claims for compensation under the Land Compensation Acts or related legislation) arising out of or incidental to the carrying out of the Works and their use PROVIDED THAT no claim shall be settled or liability accepted by the Council without first obtaining the approval of the Developer (such approval not to be unreasonably withheld or delayed) and provided further that the Council shall notify the Developer immediately upon receipt of any cost claim demand or liability in respect of which it intends to make a claim on the Developer under this Clause and shall at all times after that date keep the Developer fully informed in respect of the same and shall permit the Developer at the Developer's expense to make such investigations and/or tests as the Developer may reasonably deem necessary to verify such cost claim demand or liability and Provided Further that such indemnity shall not apply in respect of any action cost claim demand or liability arising or which may arise out of or be incidental to any negligent act or default or omission on the part of the Council; and

without expense to the Council the Developer will enter into a Bond with the Surety to be bound with the Surety to the Council in the sum of [] () to the effect that subject to Paragraph 10 of the Second Schedule should the Developer default in any way in the execution of its obligations to carry out the Works in accordance with the terms of this Agreement then the Council may carry out the Works and call upon the Surety to reimburse the lesser of:

the reasonable and proper cost to be expended in so doing; or

the Bond figure provided that upon the issue of the Letter of Substantial Completion the Council will authorise the reduction of 90% of the Bond figure and the Bond shall be discharged in full upon the issue of the Letter of Acceptance.

THE COUNCIL HEREBY COVENANTS with the Developer:

that it will from time to time at the request and cost of the Developer and then as expeditiously as possible use such powers as are available to it for the purpose of restricting traffic on the Road when the exercise of such power is necessary for the proper execution of the Works;

that where any Letter consent permission or approval is required by the Developer and is to be given by the Council or the Inspector in respect of the whole or any part or parts of the Works or the design or execution thereof, such Letter permission approval or consent will not be unreasonably withheld or delayed;

that upon the issue of the Letter of Acceptance the whole of the Works shall thenceforth form part of the highway and at all times be maintainable at the public expense;

that it will subject to the date to be agreed under Clause 3.2 hereof procure access and permit the Developer to enter into and upon and remain upon with or without workmen plant and machinery such part of the Road and the existing adopted highway as shall be reasonably necessary for the Developer to carry out its obligations hereunder and it is hereby expressly declared that the said permission extends to breaking open the surface and carrying out works in on or under the Road for the purposes of carrying out the obligations of the Developer under this Agreement.

It is HEREBY AGREED AND DECLARED that the performance of the obligations on the part of the Developer contained in this Agreement may be delegated to a Contractor PROVIDED that:

the Developer shall remain liable to the Council for the due performance and observance of this Agreement; and

the Developer shall ensure that during the whole of the period of the execution of the Works there is a person nominated by him as being in overall control thereof and whose identity is made known to the Inspector;

the Contract by which the obligations contained in this Agreement are delegated shall contain terms and conditions no less stringent than the terms and conditions contained in this Agreement and shall incorporate the Specification the description of the Works appearing in the First Schedule to this Agreement and the Drawings.

At any time prior to the letting of a contract for the execution of the Works the Council may acting reasonably terminate this Agreement by giving the Developer notice of his decision to terminate it.

At any time prior to the commencement of the Works the Developer may terminate this Agreement by giving notice to the Council that it does not wish the Works to be carried out.

On any termination under Clause 6 or 7 the Council shall give the Developer an account of all reasonable costs incurred by the Council in respect of matters specified in Clause 3.4 of this Agreement and within 28 Working Days from the date of that account:

if the account shows that payments made by the Developer under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess; or

if the account shows that those costs exceed the payment made by the Developer under the foregoing provisions of this Agreement the Developer shall pay to the Council a sum equal to that excess.

IT IS HEREBY AGREED AND DECLARED that this Agreement shall be without prejudice to the proper exercise by the Council of all statutory powers and duties vested in him whether as highway authority or otherwise.

Any notice, account or demand required by this Agreement to be given or made shall be in writing and given as required hereunder:

if it is to be given to the Developer it shall be sufficiently served if left at or sent by ordinary or recorded delivery post addressed to the Company Secretary of the Developer at the address recited above and bearing the reference []; and

if it is to be given to the Council it shall be sufficiently served if left at or sent by recorded delivery post addressed to the Director of Legal and Democratic Services The Pavilions Cambrian Park Clydach Vale Tonypanydy CF40 2XX.

Dispute Resolution Procedure

All differences and questions which arise between the parties concerning arising out of or connected with this Agreement shall be referred to an expert whose decision shall (save in the case of manifest error) be final on all parties.

The expert shall be a civil engineer agreed upon by the parties in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Institution of Civil Engineers.

If the parties are unable to agree as to the appointment of such expert within 7 Working Days of one party serving notice on the other calling for the appointment of an expert then such expert shall be appointed on the application of either party to whoever is appropriate having regard to the nature of the dispute of the President or (as appropriate) Chairman from time to time of the Bar Council or the Royal Institution of Chartered Surveyors or the Institute of Chartered Accountants in England and Wales or Institution of Civil Engineers provided that any expert so appointed pursuant to this clause shall have had at least 10 years' post qualification experience in an advisory capacity in the relevant area.

Each party shall bear their own costs in relation to preparing and submitting evidence to the Expert save that the Expert shall have the power to determine how costs are to be awarded.

It shall be an agreed term of the appointment of the Expert that the Expert shall not be liable to either party for any loss arising from his decision other than in the case of any fraudulent or corrupt or improper act on the part of the Expert or any act or omission on his part amounting to a repudiatory breach of contract.

The parties shall use all reasonable endeavours to appoint the Expert (whether agreed between the parties or nominated in default of agreement) within one calendar month of the date of the right to refer the matter to the Expert having arisen.

It shall be a specific term of the appointment of the Expert that he is to reach his decision within one calendar month of the date of the right to refer the matter to the Expert having arisen.

It shall be a specific term of the appointment of the Expert that he is to reach his decision within one calendar month of the date of his appointment and that he is to set a timetable for each of the steps specified above to be complied with.

The Expert shall require each party to deliver to him and each other written submissions on their respective opinions as to the matter in dispute.

Each party shall have the opportunity to deliver to the Expert and to each other written counter submissions.

After delivery of counter submissions or (if none) after submission of written submission no party shall be entitled to make any further submissions and the Expert shall forthwith deliberate and deliver to each party his decision in writing within a reasonable time of closing submissions or counter submissions.

The Expert shall be restricted in settling the dispute to choosing between one or other of the proposals put to him by the parties or elements compatible with one another from the submissions of either party.

FIRST SCHEDULE

The Works

The Works are as shown on the Drawings and shall consist of Modifications to:

SECOND SCHEDULE

Terms and conditions for the execution of the Works

Procedure

The Works shall be designed and executed in accordance with the Specification and the Drawings

Before commencing the Works the Developer shall submit to the Inspector for his approval such further detailed plans and drawings as the Inspector may require together with a programme for the Works including traffic management proposals

Access

The Developer shall during the progress of the Works give the Inspector and any person or persons duly authorised by him free access to every part of the Works and the site thereof and permit him or them to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and property requirements made or reasonable direction given by the Inspector to conform to the Drawings and the Specification.

Testing of materials

The Inspector shall have full power to test all materials plant and workmanship used or proposed to be used in the Works and in his reasonable discretion to reject any materials plant or workmanship which he may reasonably and properly find to be unsatisfactory or improper.

The Developer shall as soon as is practicable replace or repair any materials, plant or works which have been found unsatisfactory with such as shall reasonably satisfy the Inspector.

The Inspector shall for the purposes of this paragraph be allowed reasonable access and admission to the Works or the places where materials or plant for the Works may be stored or in the course of preparation manufacture or use.

Opening of the Works

The Inspector may in his reasonable discretion issue instructions to the Developer to open up or expose any of the Works which have been covered up without previously being inspected by the Inspector prior to the issue of the Letter of Substantial Completion.

Should the Developer unreasonably fail to comply with any such instructions the Council may if it is reasonable to do so and after giving notice in accordance with Clause 10 of this Second Schedule take up or expose the Works provided that the Council shall minimise the cost of damage and inconvenience to the Developer arising out of the exercise of this right.

The reasonable and proper costs in respect of uncovering inspection and reinstating the part of the Works uncovered in accordance with this paragraph shall be met by the Developer except where:

the relevant part of the Works was covered up by the Developer having given 48 hours' notice and the Inspector failed to inspect the relevant part of the Works and;

it is revealed on an inspection following an instruction from the Inspector that the relevant part of the Works had been completed in accordance with the Specification and the Drawing.

Where Clauses 4.3.1 and 4.3.2 apply the costs of uncovering inspection and reinstatement of the relevant part of the Works shall be borne by the Council and the Council shall be liable for any cost expense loss or damage which shall be attributable to delay or interference occasioned by such uncovering inspection and reinstatement.

Notice to undertakers and diversion of undertakers' apparatus

The Developer shall before the Works are commenced give notice to such person or persons board or authority being the Undertakers for the time being of any service or services laid in upon or under the highway the subject of the Works as if the Works were to be executed for road purposes and were mentioned in Section 84 of the New Roads and Streetworks Act 1991.

Should any of the Undertakers require all or any part of their underground or overhead plant or apparatus to be removed or diverted as a consequence of the Works the costs of any such removal or diversion (as certified by the undertaker affected) shall be borne by the Developer.

Prevention of mud being carried on to the public highways

Provisions shall be made in accordance with the Inspector's reasonable requirements at the site of the 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 such site shall be swept at the end of each Working Day to ensure its proper and continued use as a public highway.

Traffic control

During the periods when the Works are being executed the Developer shall institute at its own expense measures and signing reasonably approved or reasonably required by the Inspector to maintain the traffic flows on the highways in the vicinity of the site of the Works and to direct and control traffic and pedestrians and traffic control measures shall be discussed with the police at regular progress meetings.

Road safety

During the periods when the Works are being executed the Developer shall comply with the provisions of the Traffic Signs Regulations and General Directions 1994 (published by the Department of Transport) and any amendment thereto for lighting and signing the Works.

Danger or nuisance

If at any time it appears to the Inspector that the 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 highway or otherwise indicates any deviation from the Specification or the Drawings he may give notice to the Developer or the person nominated in accordance with Clause 5(b) of this Agreement, requiring the immediate cessation of the execution of all or any part of the 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 he may make such arrangements as are necessary for the expeditious completion of the Works or, at his discretion restore the highway to a safe and acceptable condition, and recover his reasonable and proper costs as certified by the Inspector from the Surety or the Developer.

Remedial Works

If the Works or any part or parts thereof are not carried out or not completed to the reasonable satisfaction of the Inspector in accordance with the terms hereof the Council may after giving 21 Working Days' notice of its intentions to the Developer execute or complete the Works, or at his discretion restore the highways to a safe and acceptable condition, by his own employees or by Contractors or in such manner as he thinks fit and recover his reasonable and proper costs as certified by the Inspector from the Developer or Surety.

Letter of Substantial Completion

When the Works have been substantially completed to the reasonable satisfaction of the Inspector he shall issue forthwith a Letter to that effect on behalf of the Council to the Developer.

Twelve months' maintenance period

The Developer shall for a period of 12 months after the date of issue of the Letter of Substantial Completion at its own expense make good to the reasonable satisfaction

of the Inspector any material defects in the Works so certified and for whatever reason appearing within such period.

Letter of Acceptance

After the expiration of the period of 12 months referred to in the preceding paragraph and after any defects have been made good as therein provided to the reasonable satisfaction of the Inspector the Inspector shall issue forthwith a Letter of Acceptance provided that the Letter of Acceptance shall in the case of road gullies and their connections extend only as far as their points of entry to the surface water sewers where these are not being adopted by the Council as highway AUTHORITY.

DELIVERED AS A DEED ON THE DATE OF THIS AGREEMENT

THE COMMON SEAL of)
RHONDDA CYNON TAF COUNTY)
BOROUGH COUNCIL was hereunto)
affixed in the presence of :

Authorised Signatory

Executed as a Deed by)
[])
Acting by:)

Director

Director/Secretary

Executed as a Deed by)

[]Acting by:)

)

Director

Director/Secretary