

02/00685/100

DATED

24th APRIL

2003

AGREEMENT

THE LEICESTERSHIRE COUNTY COUNCIL

And

SELTHER ASSOCIATES LIMITED

And

CLIVE VERO AND GEOFFREY MALCOLM VERO

And

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

Under Section 278 of the Highways Act 1980 and
Section 106 of the Town and Country Planning Act 1990
Relating to development at Station Road Market Bosworth
In the County of Leicestershire

E M McCalla
Leicestershire County Council
County Hall
Glenfield
Leicester
LE3 8RA

THIS AGREEMENT is made the 24th day of APRIL Two Thousand and Three BETWEEN LEICESTERSHIRE COUNTY COUNCIL of County Hall Glenfield Leicester (hereinafter called "the Highway Authority") of the first part SELTER ASSOCIATATES LIMITED of 61 Loughborough Road West Bridgford Nottingham NG2 7LA (hereinafter called "the Developer") of the second part CLIVE VERO OF Brookhill Farm Ashby Road Barwell Leicestershire and GEOFFREY MALCOLM VERO of Ox Pastures Sutton Lane Cadeby Nuneaton Warwickshire (hereinafter called "the Owners") of the third part and HINCKLEY AND BOSWORTH BOROUGH COUNCIL of Council Offices Argents Mead Hinckley Leicestershire (hereinafter called "the Borough Council") of the fourth part pursuant to Section 278 of the Highways Act 1980 and Section 106 of the Town and Country Planning Act 1990

WHEREAS

- (1) The Owner is seized in fee simple free from encumbrances of land situate adjacent to Godsons Hill Farm Station Road Market Bosworth in the County of Leicestershire and shown edged red on the plan annexed hereto ("the site")
- (2) The Highway Authority is the local highway authority and the County Planning Authority for the County of Leicestershire
- (3) The Highway Authority is a local planning authority for the purposes of this agreement for the area in which the site is situated and by whom the obligations contained in this Agreement are enforceable
- (4) The Borough Council is a local planning authority for the purposes of this agreement for the area in which the site is situated and by whom the obligations contained in this Agreement are enforceable

- (5) By an application number 02/00685/COU ("the Planning Application") the Developer applied to the Borough Council for permission to develop the site as a golf course with ancillary facilities ("the Development") in the manner set out in the Planning Application and in the plans specifications and particulars deposited with the Planning Application and forming part of the Planning Application
- (6) The Highway Authority is desirous that certain works ("the Highway Works") described in the First Schedule hereto and as to matters of the construction shown for illustration purposes on Drawing No.B1993/RL/001/A annexed hereto are carried out in conjunction with the Development

NOW THIS AGREEMENT is made in pursuance of Section 278 of the Highways Act 1980 and Section 106 of the Town and Country Planning Act 1990 (and is a planning obligation for the purposes of that section) and all other powers enabling and enactments which may be relevant for the purposes of giving validity hereto or for facilitating the enforcement of the obligations herein contained the Owners and the Developer for themselves and their successors in title hereby severally agree and undertake with the Highway Authority and the Borough Council and (where applicable) the Highway Authority and the Borough Council agree with the Owner and the Developer as follows:-

1 Highway Works

- (a) No part of the Development shall be brought into use until the Highway Works (including all works ancillary or incidental thereto) have been

completed in accordance with the stipulations requirements and conditions laid down in this Agreement

- (b) The Developer shall once having commenced the Highway Works proceed with them conscientiously and expeditiously and with all due diligence
- (c) Subject to the provisions of this Agreement and immediately prior to the commencement of the Highway Works the Owner and the Development shall dedicate as public highway (and the Highway Authority shall forthwith accept) all such land (if any) as is within its ownership and is required for the construction of the Highway Works which does not already form part of the public highway or is already maintained as if it were a public highway

2 Maintenance Period

When and so soon as the Highway Works have been completed to the reasonable satisfaction of the Direction of Highways Transportation and Waste Management for the time being of the Highway Authority ("the Director") he shall issue a provisional certificate of completion ("the provisional certificate") such certificate not to be unreasonably withheld or delayed and the Developer shall maintain the Highways Works for a period of twelve months from the date of the provisional certificate ("the maintenance period") in like manner as if the Highway Works had been constructed by the Developer acting as contractor to the authority under the ICE Conditions of Contract (as defined in Clause 16 hereof) and as if the provisional certificate were a Certificate of Completion of Works issued in accordance with Clause 48 of the same

3 Final Certificate

At the expiration of the maintenance period or on a date (whichever is the later) on which any defect or damage arising during the maintenance period is made good to the reasonable satisfaction of the Director he shall issue a final certificate ("the Final Certificate") and as from the date of such Final Certificate the Highway Works shall become highways maintainable at the public expense

4 Indemnity

(a) The Developer shall indemnify the Highway Authority and the Borough 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 carrying out of the Highway Works or any part or parts thereof including but without prejudice to the generality of the foregoing any claim against the Highway Authority 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 Highway Authority by virtue of it exercising its discretionary powers under the said Regulations

(b) The Developer shall comply with all aspects of the Construction (Design and Management) Regulations 1994 and in particular shall ensure that all obligations imposed on the client (as defined in the said Regulations) are satisfied and will indemnify the Highway Authority against all claims liabilities actions arising out of a failure to so do

5 Security

Prior to the commencement of the Highway Works the Developer shall secure the cost thereof by the deposit with the Highway Authority of a Bond in the manner and form incorporated in the Second Schedule hereto in a sum equivalent to the Director's reasonable estimate of the cost of the Highway Works (including any Statutory Undertakers works)

6 Notices etc

Where under this Agreement the Highway Authority or the Director is required to agree to approve to express satisfaction with or to give notice of any matter such agreement approval satisfaction or notice shall be deemed to have not been given or expressed unless given or expressed in writing (and shall not be unreasonably withheld or delayed) and further thereto the Highway Authority agrees to use its best endeavours to ensure that any agreement or approval which is required will be given or refused within 20 working days.

7 Arbitration

Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force

8 Statutory Undertakers' Apparatus

For the avoidance of doubt it is hereby expressly declared that the Developer 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 properly to be 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

9 Specification

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

Specification

Specification for Highway Works and the associated Notes for Guidance
Leicestershire County Council's Standard drawings

Design

Design Manual for Roads and Bridges

Lighting

Design in accordance with BS5489

Leicestershire County Council's Lighting Specification

Signing and Lining

The Traffic Signs and Regulations and General Directions 2002

The Traffic Signs Manual (DOT)

Leicestershire County Council's Traffic Signing and Lining Specification

10 Approval of Design

No work is to commence until detailed designs and specification have been submitted to and approved by the Director

11 Workmanship

All work is to be carried out to the reasonable satisfaction of the Director

12 Traffic and Safety Control

In carrying out work in or adjoining the public highway the Developer shall comply in all respects with Chapter 8 of the Traffic Signs Manual

13 Approval of Persons undertaking the Highway Works

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

14 Supervision

The Developer shall:-

- (a) permit and shall require any contractor or sub-contractor engaged on the Highway Works to permit at all reasonable times persons authorised by the Highway Authority whose identify shall have been previously notified to the Developer to gain access to the site of the Highway Works to supervise compliance with the provisions of this Agreement ;and
- (b) prior to commencing the Highway Works pay to the Highway Authority in respect of the costs incurred by the Highway Authority in such supervision design checking and administration the sum calculated as follows:-
 - i. where the total cost of the Highway Works as certified by the Director does not exceed £100,000, 10% of the cost thereof

- ii. where the total cost of the Highway Works exceeds £100,000,
the sum of £10,000 plus 5% of the amount by which the total
cost of such Highway Works as certified by the Director exceeds
£100,000

15 Programme of Works

The Developer shall prior to the commencement of any of the Highway Works submit to the Director for his approval a programme of works setting out the Developer's proposed timetables for executing those works and following such approval (which may be given with or without modification but which shall not be unreasonably withheld or delayed) the Developer shall use all reasonable endeavours to ensure that the programme of works is complied with

16 Insurance

Arrangements shall be made at the expense of the Developer to effect insurance with an insurer in terms and for such amounts as may be reasonably required by the Highway Authority for such insurance to cover the same risks as would be required to be covered by Clauses 21 22 and 23 of the Conditions of Contract issued by the Institution of Civil Engineers The Association of Consulting Engineers and the Federation of Civil Engineering Contractors ("the ICE Conditions of Contract")

17 Notification of Commencement

The Developer shall prior to the commencement of the Highway Works give the Highway Authority at least five weeks' notice in writing of the proposed date on which the Highway Works will start

18 Safety Audit

- a) Prior to the approval of the detailed design the Developer shall (if so required by the Director) carry out a Stage 2 Safety Audit in accordance with Department of Transport Standard HD 19/94 and Advice Note HA 42/94 and submit the same to the Director and (if so required by the Director) any recommendations made in the Safety Audit Report shall be implemented to the satisfaction of the Director
- b) Prior to the issue of the Provisional Certificate the Developer shall (if so required by the Director) carry out a Stage 3 Safety Audit in accordance with Department of Transport Standard HD 19/94 and Advice Notice HA 42/94 and submit the same to the Director and (if so required by the Director) any recommendations made in the Safety Audit Report shall be implemented to his satisfaction

19 Traffic Orders

The Developer shall pay to the Highway Authority upon demand the total costs properly and reasonably incurred by the Highway Authority in undertaking any statutory procedure or preparing and bringing into force a traffic regulation order or orders necessary to carry out or for effectively implementing the Highway Works and whether or not such procedure or order is or are experimental temporary or permanent

20 Dedication

Subject to the provisions of the Agreement the Developer shall be deemed to have immediately on the commencement of the Highway Works dedicated a public highway (and the Highway Authority shall forthwith accept) all such

land (if any) as is within its Ownership that is required for the construction of the Highway Works which does not already form part of the public highway or is already maintained as if it were a public highway

21 Costs

The Developer shall upon executing this agreement pay to the Highway Authority Five Hundred Pounds (£500.00) in respect of the costs of preparing this agreement and to the Borough Council their reasonable costs in connection with this Agreement

22 Enforceability of Covenants

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Development in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof or any reserved matters approval with respect thereto) granted after the date of this Agreement in respect of which development this Agreement will not apply PROVIDED THAT the obligations in this Agreement can be applied to any planning permission granted subsequent to the grant of the Planning Permission as herein defined by agreement between the Developer and the Highway Authority as evidence by a memorandum endorsed on this Agreement

Until such time as there is commencement of the Development pursuant to the Planning Permission any obligations in this Agreement (except that created under clause 21 hereof) requiring the payment of money or the carrying out of any works shall be of no effect

Neither the Owner nor the Developer shall be liable for any breach or non-performance of the covenants herein or for the performance of any obligations

hereunder in respect of any land of which it is no long seized save in respect of any prior subsisting breach.

It is hereby agreed that the provision of Section 1 of the Contracts (Rights of Third Parties) Act 1999 be expressly excluded from this agreement

FIRST SCHEDULE

The provision of a right turning lane fully in accordance with the standard contained in TD 42/95 and including pedestrian refuges within the hatched areas on both approaches as shown generally on drawing No.

B1993/RL/001/A.

SECOND SCHEDULE

BY THIS BOND WE SELTER ASSOCIATES LIMITED of 61

Loughborough Road West Bridgford Nottingham NG2 7LA (hereinafter

called "the Developer") and

whose

registered office is situate at

(hereinafter called "the Surety") are held and firmly bound to

LEICESTERSHIRE COUNTY COUNCIL (hereinafter called "the

Authority") in the sum of

POUNDS (£ ,000) to be paid

to the Authority for which payment we bind ourselves and our

successors and assigns jointly and severally by these presents

WHEREAS the developer has entered into an Agreement with the

Authority dated the day of

Two Thousand and

Three (hereinafter called "the S278 Agreement) pursuant to Section 278

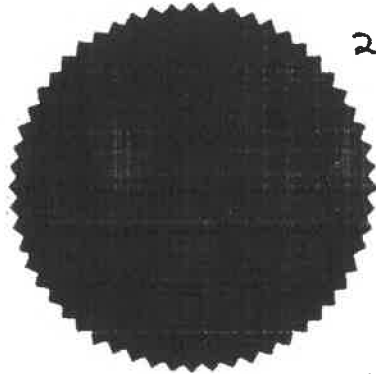
of the Highways Act 1980 whereby the Developer has covenanted to carry out the Highway works referred to in the S 278 Agreement (hereinafter called "the S 278 covenants")

NOW THE CONDITION of the above written bond is such that if the Developer shall well and truly perform and fulfil the S 278 covenants according to the true purpose intent and meaning of the S 278 Agreement or if on failure by the Developer so to do the Surety shall pay to the Authority the said sum of POUNDS (£ , 00.00) then the above written Bond will be null and void but otherwise it shall be and remain in full force and the giving by the Authority of any extension of time for the performing of the S278 Covenants or any covenant contained in the S278 Agreement and on behalf of the Developer to be performed or fulfilled or any forbearance or forgiveness on the part of the Authority to the Developer in respect of any matter referred to in or concerning the S278 Agreement shall not in any way release the Surety from the Surety's liability under the above written Bond **PROVIDED THAT** upon the issue of the Provisional Certificate under Clause 2 of the S278 Agreement the liability of the Developer and the Surety under this Bond shall be reduced to a sum equivalent to ten per cent of the sum stated above and upon the issue of the Final Certificate under the S278 Agreement the liability of the Developer and the Surety under this Bond shall absolutely cease

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

THE COMMON SEAL of
LEICESTERSHIRE COUNTY
COUNCIL was hereunto affixed
in the presence of

)
)
)
)



22552(c)

Authorised Officer

Executed as a Deed by **SELTHER ASSOCIATES LIMITED** by the
Signature of two Directors and the
Company Secretary

Director

Director

Company Secretary

SIGNED AS A DEED by the)
said **CLIVE VERO** in the)
presence of)

Witness

Signature ..

Name ..

Address ..

Occupation

SIGNED AS A DEED by the)
said **GEOFFREY MALCOLM**)
VERO in the presence of)



Witness

Signature ...

Name ...

Address ...

.....

.....

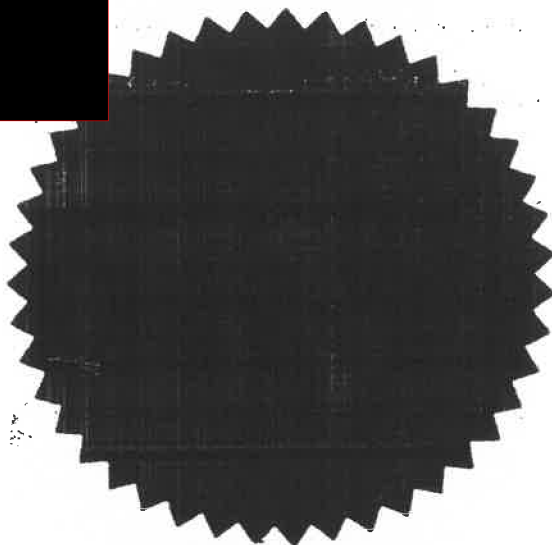
Occupation ...



THE COMMON SEAL of)
HINCKLEY AND BOSWORTH)
BOROUGH COUNCIL was hereunto)
affixed in the presence of)



Authorised Officer



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