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# FORSTERS

DATED

6 December

2018

- (1) **TESCO STORES LIMITED**
- (2) **MCDONALD'S RESTAURANTS LIMITED**
- TO
- (3) **ASHFIELD DISTRICT COUNCIL**
- (4) **NOTTINGHAMSHIRE COUNTY COUNCIL**



## UNILATERAL UNDERTAKING PURSUANT TO S.106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

relating to

Land adjacent to Tesco Filling Station, Ashgate Road, Hucknall



DATE 6 December 2019

**UNILATERAL UNDERTAKING BY**

- (1) **TESCO STORES LIMITED** (Co. Regn. No. 519500) of Tesco House, Shire Park, Kestrel Way, Welwyn Garden City AL7 1GA ("the Owner")
- (2) **MCDONALD'S RESTAURANTS LIMITED** (Co. Regn. No. 01002769) of 11-59 High Road, East Finchley, London N2 8AW ("the Developer")

**TO**

- (3) **ASHFIELD DISTRICT COUNCIL** of Urban Road, Kirkby, Nottingham NG17 8DA ("the Council"); and
- (4) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, West Bridgford, Nottingham NG2 7QP ("the County Council")

**RECITALS**

- (A) The Council and the County Council are local planning authorities for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The County Council is the highway authority for Nottinghamshire.
- (C) The Owner is the registered proprietor of the freehold interest in the Site registered at HM Land registry under Title Number NT363387.
- (D) The Developer has the benefit of an agreement for lease entered dated 13 July 2017 in respect of the Site as noted at paragraphs 18 and 19 of the Charges Register of Title Number NT363387.
- (E) On 4 October 2016 the Application for the Development was registered by the Council.
- (F) The Council resolved at a meeting of its Planning Committee held on 28 September 2017 to refuse the Application and the decision was issued on 9 October 2017.
- (G) On 5 April 2018 the Developer submitted the Appeal to the Secretary of State against the Council's decision to refuse the Application.

- (H) The Owner and the Developer have, subject to Clause 3.1, entered into this Deed in order to mitigate the impact of the Development in the event that the Appeal is allowed and Permission is granted.

## **OPERATIVE PROVISIONS**

### **1. GENERAL PROVISIONS**

#### **1.1 Interpretation**

In this Deed, unless the context otherwise requires, the following words and expressions shall have the meanings shown:

<b>Act</b>	the Town and Country Planning Act 1990
<b>Appeal</b>	the appeal dated 5 April 2018 and give reference APP/W3005/W/18/3199748 against the decision of the Council to refuse the Application.
<b>Application</b>	the application for planning permission for the Development submitted by the Developer to the Council and given reference V/2016/0626.
<b>Bus Stop Improvements Contribution</b>	the sum of £13,700 to be paid to the County Council towards improvements to bus stops AS0405 and AS0406 located within the vicinity of the Site including the provision of real time bus stop pole and displays, associated electrical connections and the refurbishment of the bus shelter at bus stop AS0405.
<b>Commencement</b>	the date upon which a material operation as defined in section 56(4) of the Act shall be commenced in respect of the Development save that for the purposes of this Deed the definition shall not include works of demolition, site clearance or preparatory works, ground investigations, site surveys, construction of temporary boundary fencing or hoardings and the phrase "Commenced" shall be construed accordingly.
<b>Development</b>	the development of the Site comprising demolition of existing building, erection of restaurant with

associated drive through, car parking, landscaping and associated works, associated play area, 2 customer order displays and associated canopies.

**Financial Contributions**

the:

- (a) Guard Rail Contribution;
- (b) Bus Stop Improvements Contribution;
- (c) Off-Site Highway Junction Improvements Contribution; and
- (d) Pedestrian Improvements Contribution

**Guard Rail Contribution**

the sum of £7,400 to be paid to the County Council towards the provision of a pedestrian guardrail on Ashgate Road as shown on the plan attached to this Deed at Appendix 2.

**Highways Agreement**

an agreement entered into pursuant to s.278 of the Highways Act 1980.

**Highways Works**

the widening of the Tesco access, tactile paving, keep clear markings and speed radar sign on Ashgate Road

**Index Linked**

the increasing of a sum by reference to the All Items Index of Retail Prices Issued by the Office for National Statistics (the comparison being between the Index published in the month preceding that in which this Deed is completed and the Index published in the month preceding the date of the payment).

**Inspector**

the inspector appointed by the Secretary of State to determine the Appeal, or in the event that the Appeal is recovered by the Secretary of State, the Secretary of State.

**Off-Site Highway Junction Improvements**

the sum of £31,000 to be paid to the County Council towards the provision of CCTV and GPS kits at the Ashgate Road/Station Road junction, Station

	Road/HIRR Junction and High Street/Watnall Road Junction.
<b>Pedestrian Improvements Contribution</b>	the sum of £9,600 to be paid to the County Council towards the provision of pedestrian Improvements including (but not limited to) the provision of timber diamond rail fencing, landscaping amendments, tactile paving and road markings/white lining on Ashgate Road as shown on the plan attached to this Deed at Appendix 2.
<b>Permission</b>	the planning permission for the Development granted by the Inspector.
<b>Secretary of State</b>	the Secretary of State for Housing, Communities and Local Government or any successor Secretary of State exercising planning functions under the Act.
<b>Site</b>	all that land adjacent to Tesco Filling Station, Ashgate Road, Hucknall shown for the purposes of identification edged dashed black on the plan attached to this Deed at Appendix 1.
<b>Working Day</b>	means any day of the week other than Saturday, Sunday or any bank holiday and any other day upon which clearing banks in England are closed and the phrase "Working Days" shall be construed accordingly.
<b>1.2</b>	References to any part in this Deed shall include the successors in title and assigns of that party and, in the case of the Council and the County Council shall include any successor local planning authorities exercising planning powers under the Act.
<b>1.3</b>	References in this Deed to any statutes or statutory instruments include any statute or statutory instrument amending, extending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
<b>1.4</b>	References to the singular includes the plural and vice versa.

- 1.5 References to clauses, paragraphs and schedules are references to clauses, paragraphs and schedules to this Deed and are for reference only and shall not affect the construction of this Deed.
- 1.6 Where any approval, consent, agreement, confirmation, expression of satisfaction, or any other act of co-operation is required under the terms of this Deed from any party, that approval, consent, agreement, confirmation, expression of satisfaction, or other act of co-operation shall be given in writing and shall not be unreasonable and shall not be unreasonably withheld or delayed.
- 1.7 No waiver (whether express or implied) by either the Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent either the Council or the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 2. STATUTORY POWERS**
- 2.1 To the extent that the obligations in this Deed are capable of being so made, they are made pursuant to Section 106 of the Act but otherwise pursuant to Section 111 of the Local Government Act 1972 the Localism Act 2011 and all other powers enabling and the obligations and covenants herein contained:
- (a) are covenants and planning obligations to which these statutory provisions apply; and
  - (b) relate to the Site as set out in this Deed;
  - (c) are enforceable by both the Council and the County Council as local planning authorities; and
  - (d) are for the purposes of regulation 122 of the Community Infrastructure Levy Regulations 2010 necessary, directly related to the Development, and fairly and reasonably related in scale and kind.
- 2.2 The obligations in this Deed shall be binding on the Owner and the Developer together with their successors in title and assigns and those deriving title to the Site under them.
- 2.3 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of either the Council or the County Council in the exercise of their functions as local planning authorities for the purposes of the Act or otherwise as local authorities.

**3. LEGAL EFFECT**

- 3.1** This Deed is conditional upon the Appeal being allowed and Permission being granted by the Inspector and upon the Inspector finding in specific terms in his decision letter that the planning obligations in the Schedule hereto meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 3.2** Subject to the conditionality in Clause 3.1 being satisfied this Deed shall take effect on the date hereof.
- 3.3** Nothing contained in this Deed shall prohibit or limit the right of the Owner or the Developer to develop any part of the Site in accordance with a planning permission (other than the Permission) that may be granted whether or not on appeal either before or after the date of this Deed.
- 3.4** If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired.

**4. RELEASE AND LAPSE**

- 4.1** This Deed shall not bind or be enforceable against any statutory undertaker or other person with any interest in any part of the Site for the purpose of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.
- 4.2** Neither the Owner nor the Developer shall be liable for a breach of any of its obligations under this Deed or obligations relating to any part of the Site after it has parted with all of its interest in the Site or the part in which the breach arises (as the case may be) save in either case for antecedent breaches.
- 4.3** This Deed shall lapse and be of no further effect if:
- (a) the Appeal is dismissed and no challenge is made to the courts against the decision; or
  - (b) the Permission lapses without having been Commenced or is varied or revoked other than with the consent of the Owner and/or the Developer.

**5. COVENANTS**

- 5.1** The Owner and Developer covenant with the Council and the County Council as set out in Schedule 1.



**6. INDEXATION**

All payments to be made under this Deed to the County Council shall, where stated, be Index Linked.

**7. NOTICES**

**7.1** Unless otherwise expressly stated any notice notification amendments to approved documents consent or approval or demand for payment required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post or recorded delivery or by commercial courier as follows:

**7.2** In the case of the Council at the address for the Council given on Page 1 of this Deed or any other address previously notified by the Council in writing;

**7.3** In the case of the County Council at the address for the County Council given on Page 1 of this Deed or any other address previously notified by the County Council in writing;

**7.4** In the case of the Owner at the address for the Owner given on Page 1 of this Deed or any other address previously notified by the Owner in writing; and

**7.5** In the case of the Developer at the address for the Developer given on Page 1 of this Deed or any other address previously notified by the Developer in writing.

**8. LOCAL LAND CHARGE**

This Deed shall be registerable by the Council as a local land charge.

**9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no other person other than the parties shall have any rights under or be able to enforce the provisions of this Deed.

**10. JURISDICTION**

This Deed shall be governed by the laws of England and Wales.

**EXECUTED AND DELIVERED AS A DEED** on the date of this document

### **SCHEDULE 1 - Owner and Developer Covenants**

The Owner and Developer covenant to the Council and the County Council as follows:

#### **1. Notice**

- (i) To give to the Council no less than 10 Working Days prior written notice of the Intended date of Commencement of the Development.

#### **2. Financial Contributions**

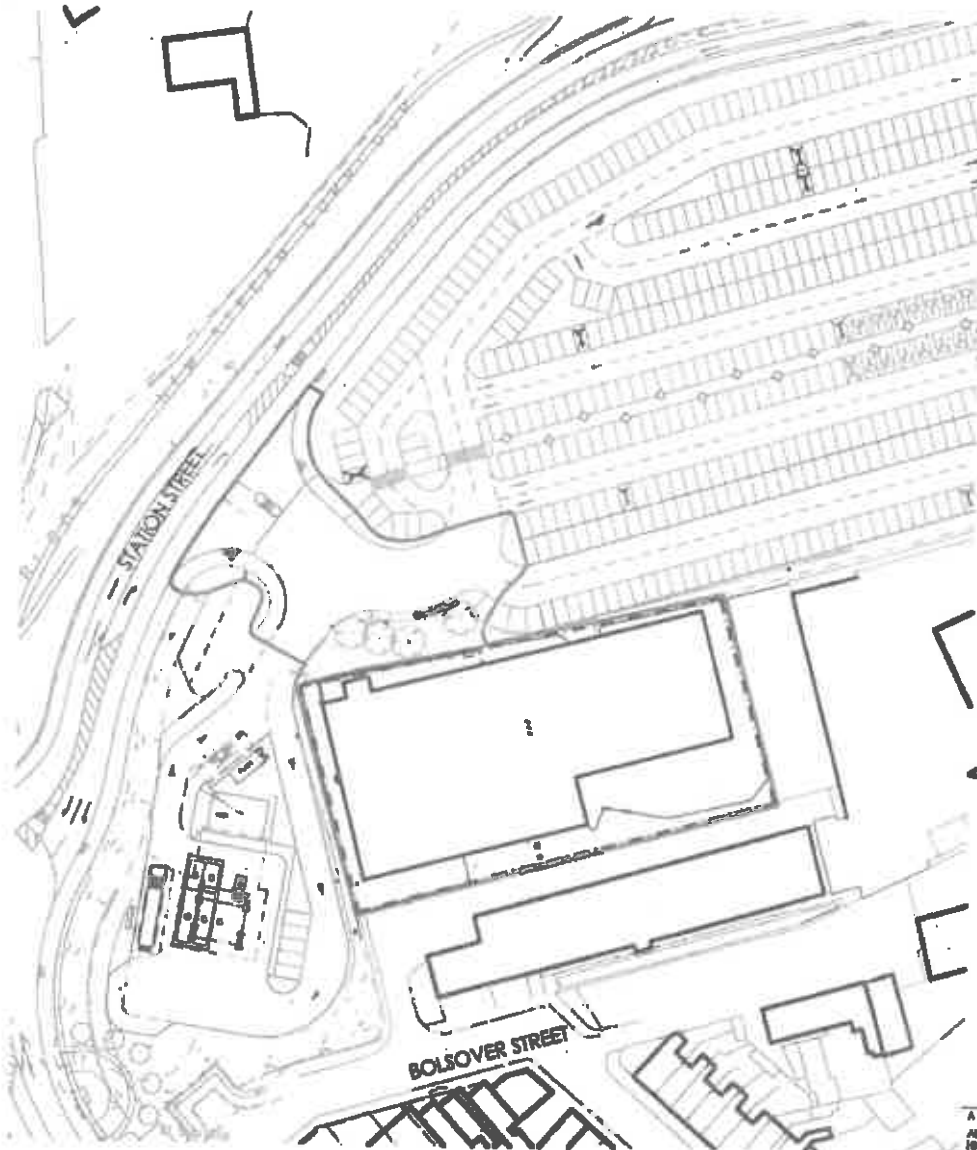
- (i) Not to Commence the Development until the Financial Contributions have been paid to the County Council.
- (ii) Upon payment of the Financial Contributions to the County Council pursuant to paragraph 2.1 above, to notify the Council of such payments having been made.

#### **3. Highways Agreement**

- (i) To enter into a Highways Agreement for the carrying out of the Highway Works prior to Commencement of the Development.

**APPENDIX 1**

**Site Plan**

[illegible]

A	MC	JD
APPLICATION SOUNCAP® REVERED TO		
REVERED TO		
W	MC	JD
W		
NEW	Date	Drawn by
Item	Purpose of Item	
CR	For Information	
Drawing of Page	PLANNING	
Notes		
McDonald's Restaurants Ltd		
Project	Date	
Tesco	SOF	
Hucknall		

1001 NEW 6261


 ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ  
 БІЛІМ ЖӘНЕ ҒЫЛЫМ МИНИСТРЛІГІ



**LOCATION PLAN**  
**Scale @ 1:1250**



0 10 20 30 40 50m  
Scale 1:1250

date	02/25/14	dept	05
empid	10100	plant	AC

**APPENDIX 2**

**Drawing H1214-101 Rev J**



EXECUTED as a DEED by Marcus Winnicombe  
As attorney for TESCO STORES LIMITED )  
under a power of attorney in the )  
presence of: )



Attorney for  
TESCO STORES LIMITED



Witness Signature

Witness Name:

JOHN ROBSON

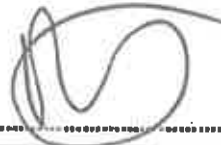
Witness Address:

40 BLUEBELL DRIVE  
BD12 8AQ

Witness Occupation:

CHARTERED SURVEYOR

EXECUTED as a DEED by Mike Williams  
MCDONALD'S RESTAURANTS LIMITED )  
acting by authorised signatory as an )  
Attorney pursuant to a power of )  
attorney dated 31 July 2017 in the )  
presence of: Elmayech



Witness Signature

Witness Name:

JOHN ROBSON

Witness Address:

40 BLUEBELL DRIVE  
BD12 8AQ

Witness Occupation:

CHARTERED SURVEYOR,