

My ref: 20033456 & 20032472

Your ref: EN010110

Date: 31st May 2023

Contact: Emma Fitch

Telephone: [REDACTED]

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Emma Fitch,
Assistant Director,
Place and Sustainability
Planning, Growth, and Environment

New Shire Hall
Emery Crescent
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PE28 4YE

FAO: Andre Pinto and Claire Megginson
Inspectors for Medworth CHP Ltd DCO
The Planning Inspectorate
2 The Square Temple Quay,
Bristol
BS1 6PN

By email only: Medworth@planninginspectorate.gov.uk

Dear Planning Inspectors,

Medworth Non Material Amendment Request / Cromwell Road Junction

The recent notice of intention to submit an application for a non-material amendment has prompted Cambridgeshire County Council to scrutinise the highway boundary more closely at the junction of New Bridge Lane and Cromwell Road.

In doing so, it has become apparent that an area of the north-west arm, eastern side of New Bridge Lane that is within the existing Order limits does not form part of the public highway, as was previously thought. The land in question was included as part of areas to be dedicated as highway under item 4.1 of a section 106 agreement made in 2013 between the County Council and the adjoining landowner, Tesco Stores Ltd. The land is shown shaded pink on the copy plan from that agreement, which is attached with this letter. Item 4.3 of the agreement specifies that the land shall not be dedicated as highway until the issue of a Provisional Certificate by the County Council. Owing to a number of unresolved issues with the works constructed by Tesco Stores Ltd under the terms of the agreement, no Provisional Certificate has ever been issued by the County Council; it follows therefore that the land shaded pink remains in Tesco Stores Ltd.'s ownership and has not been dedicated as highway. The County Council is conscious that this is likely to have a knock-on impact on the deliverability of the required junction design that has been under discussion between itself and the applicant.

We have contacted Tesco Stores Ltd as a priority with a view to regularising the

matter as fast as we can. We will work as constructively as possible with the applicant in seeking to resolve this. We have informed the applicant via separate letter of the situation as detailed above.

Alongside this letter, we have included a copy of Cambridgeshire County Council's Section 106 Agreement with Tesco Stores Ltd, and related land plan.

Yours sincerely



Emma Fitch
Assistant Director,
Planning, Growth, and Environment

Enc.

S106 Agreement (S106 Agreement 11.12.2013.pdf); and
Land Dedication Plan (DC5927.pdf)

DATED 11 December 2013

CAMBRIDGESHIRE COUNTY COUNCIL (1)

AND

TESCO STORES LIMITED (2)

AGREEMENT

under Section 106 Town and Country Planning Act 1990
relating to land at Cromwell Road, Wisbech, Cambridgeshire

 **LGSS Law**

LGSS Directorate of Law & Governance
Director: Quentin Baker

LGSS Law & Governance, Box RES 1001, Shire Hall, Cambridge, CB3 0AP

THIS DEED of AGREEMENT is made the 11 day of December 2013

BETWEEN:

CAMBRIDGESHIRE COUNTY COUNCIL of Shire Hall Castle Hill Cambridge CB3 OAP ("the Council") of the one part; and

TESCO STORES LIMITED of Tesco House Delamare Road Cheshunt Waltham Cross Hertfordshire EN8 9SL ("the Developer") of the other part

WHEREAS:-

- (1) The Developer is registered as freehold proprietor of the land shown edged red on plan 1301-76.001 (the "Plan") and registered with title absolute at the Land Registry under Title Number CB329465 ("the Site").
- (2) The Council is a local planning authority for the purposes of Section 106 of the Town and Country Planning Act 1990 and the local highway authority for the purposes of the Highways Act 1980 and a local authority for the purposes of the Local Government Act 1972 for Cambridgeshire.
- (3) On 10 August 2011 conditional planning permission was issued by Fenland District Council under reference number F/YR11/0184/F for erection of a food store (A1) 8 no screen cinema (D2) 3 no restaurant units (A3) petrol filling station and car wash with ancillary car parking access servicing and landscaping and associated works ("the Development" which expression shall include any variation modification or renewal thereof as may be approved by a local planning authority or the Secretary of State for Communities and Local Government on appeal).
- (4) The Developer has agreed to carry out certain highway works both within and outside the Site at no cost to the Council and to pay other costs specified in this Agreement in accordance with the terms of this Agreement.

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement is and shall at all times be construed as a Deed

1.2 This Agreement is made pursuant to Section 106 of the Town and Country Planning Act 1990 Sections 38 and 278 of the Highways Act and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (where relevant) and Section 111 of the Local Government Act 1972 and all other enabling powers to the intent that it shall bind the Developer and any person deriving title from the Developer and:

1.2.1 the obligation on the part of the Developer contained in Clause 2.1 below is a planning obligation;

1.2.2 the land the subject of the planning obligation is the Site;

1.2.3 the Developer is the person entering into the planning obligation and is the owner of the Site;

1.2.4 the Council is the local planning authority by whom the planning obligation is enforceable.

2. The Developer hereby covenants and agrees with the Council:-

2.1 not to occupy (except for the purposes of fitting out) the Development or any part thereof until the highway works described in the Second Schedule ("the Works") shall have been designed executed and completed in accordance with the provisions of the Third Schedule and to the satisfaction of the Executive Director, Environment Services for the time being of the Council ("the Executive Director" which expression shall include persons duly authorised to act on his behalf) as notified to the Developer in writing by the issue of the Provisional Certificate (as defined in the Third Schedule).

2.2 to comply with the covenants and all other obligations terms and conditions contained in this Agreement including (for the avoidance of doubt) the Third Schedule.

2.3 to pay the Council's reasonable legal and administrative costs associated with the preparation negotiation and execution of this Agreement

- 2.4 within 21 days of the date of any disposition of any legal interest in the Site to give the Council written notice thereof PROVIDED ALWAYS that this shall not apply to interests by way of mortgage or legal charge
3. The Developer hereby further covenants and agrees with the Council:-
- 3.1 at no cost whatsoever to the Council:-
- 3.1.1 to design in detail (in accordance with the Third Schedule) and thereafter to commence and diligently to proceed with the Works;
- 3.1.2 to complete the Works in full accordance with the Programme (as defined in paragraph 1.1.2 to the Third Schedule) and as soon as shall be reasonably practicable after commencement on site;
- 3.1.3 to construct complete and maintain the Works in accordance with the provisions of the Third Schedule and to the reasonable satisfaction of the Executive Director.
- 3.2 to fully and completely release and indemnify and keep indemnified the Council from and against all valid and enforceable actions suits claims charges costs expenses damages and demands and any other proper and enforceable liabilities whatsoever arising out of or in connection with the existence and implementation of this Agreement and the construction completion and maintenance of the Works and each and every part thereof including:-
- 3.2.1 the negligent and defective design and/or construction of the Works including the use of defective workmanship or materials or methods of construction not in accordance with the Plan the Drawings and the Specification (as defined in the Second and Third Schedules) and good practice current when the Works are constructed;

3.2.2 in respect of depreciation in the value of any interest in land caused by or resulting from the proper execution and/or use of the Works or any part thereof; and

3.2.3 in respect of nuisance loss or damage caused during or by the proper execution and/or use of the Works or any part thereof.

whether such actions suits claims charges costs expenses damages and demands are made or awarded under the provisions of the Land Compensation Act 1973 or any other enactment or provisions replacing or re-enacting the same or under any other statute or statutory provision or at common law or otherwise but excluding always any negligent act omission or default of the Council and/or its employees servants agents and contractors PROVIDED THAT the Council shall notify the Developer in writing as soon as reasonably possible following receipt of any such actions suits claims charges costs expenses damages and demands and the Council shall at all time after notifying the Developer keep the Developer informed of the progress of any such claim or liability and the Council shall not accept or settle any actions suits claims charges costs expenses damages and demands without first having given the Developer the opportunity to provide the Council with representations as to the validity of the same.

3.3 on or before completion of this Agreement to pay the Council a sum representing 8.5% of the Bond Figure as defined in Paragraph 1.1.4 of the Third Schedule as a contribution towards the reasonable costs of the Executive Director incurred in approving the design of and inspecting the Works (for the avoidance of doubt) this sum is payable in addition to costs arising pursuant to clauses 2.3 and 6.2 and paragraphs 3, 5.3, 10.1 and 11.1 of the Third Schedule.

4. The Developer hereby further covenants and agrees that:-

4.1 subject to Clause 4.2 below not to use or permit the use of the land coloured pink on drawing number 1301-76.002 Rev. E (the "Dedication

Land”) for any purpose other than for or in connection with the construction of the Works and/or access to the Site.

4.2 on or before the issue of the Provisional Certificate to pay the Council the sum of £95,315 (ninety five thousand three hundred and fifteen pounds) towards the costs of future maintenance of the Works.

4.3 upon the issue of the Provisional Certificate to dedicate at no cost whatsoever to the Council to the public as highway for all purposes that part of the Works and the Site thereof which is not already highway AND (for the avoidance of doubt):-

4.3.1 if the land actually dedicated shall differ from the Dedication Land the parties shall enter into a supplemental Deed of Agreement incorporating a revised plan to effect the dedication; and

4.3.2 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 shall apply to the covenants contained in this clause 4.2.

5. The Developer hereby covenants with the Council that the Council and its respective employees servants agents and contractors shall have the right to enter onto and upon and remain upon (with or without plant machinery and vehicles) land in the ownership of or under the control of the Developer as shall be reasonably necessary for the Council and the Executive Director to carry out their obligations under this Agreement including the inspection of the Works and to undertake (if necessary) default works.

6. The Council hereby:

6.1 permits the Developer its servants employees contractors or agents to enter onto such part or parts of the highways maintainable at public expense including those highways shown coloured green on the Plan and such other highways as shall be reasonably necessary to enable the Developer to construct complete and maintain the Works at no cost

whatsoever to the Council in accordance with the terms and conditions of this Agreement.

6.2 agrees that subject to its statutory powers and duties from time to time at the reasonable request and at the cost of the Developer the Council will use all reasonable endeavours to publish and to make or procure the publishing and making of such orders for the temporary stopping up or diversion or restricted use of highways maintainable at public expense including drainage and any apparatus of any undertaker (which expression shall include any company corporation board and authority authorised to carry on any undertaking for the supply of telephone and television communications electricity gas water or drainage) as may in each case be reasonably necessary to facilitate the carrying out of the Works.

7. IT IS HEREBY AGREED AND DECLARED that:-

7.1 all works on highways maintainable at public expense shall be subject to all requisite statutory procedures;

7.2 that except insofar as legally or equitably permitted nothing in this Agreement shall prejudice or affect any statutory rights powers or duties of the Council in the exercise of any of its functions in any capacity and in particular the Council shall not be precluded from entering into any agreement under the Highways Act 1980 and/or the Town and Country Planning Act 1990 with any other party for any highway works or other works whatsoever and shall not be deemed to be in breach of this Agreement by so doing;

7.3 unless otherwise provided all sums payable by the Developer under this Agreement are due 28 days after the date of any invoice or other document requesting payment ("the due date") and in the event of any delay by the Developer in the making of any payment required under this Agreement that payment shall:-

7.3.1 thenceforth be a debt due to the Council recoverable by action and may be deducted from any monies due to the

Developer from the Council under any contract agreement or arrangement whatsoever; and

- 7.3.2 thereafter be liable to interest thereon calculated on a daily basis at a daily rate of 1/365th of the annual rate of interest of four per centum per annum greater than the Barclays Bank plc base rate in force from time to time from the due date until the payment thereof.
- 7.4 that any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if transmitted by facsimile delivered by hand or sent by recorded delivery post to the party to be served at its address herein specified or in the case of the Developer such other address as may from time to time be notified to the Solicitor to the Council for the purpose by notice in writing and marked "for the attention of the Company Secretary" with a copy to "the Property Director of Assets and Estate" bearing the reference "Cromwell Road, Wisbech – Section 278 Agreement" AND any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council or by an officer or duly authorised signatory thereof;
- 7.5 the development and use of the Site shall be restricted and regulated in accordance with the provisions of this Agreement which shall be registered as a local land charge;
- 7.6 no person shall be liable for breach of a planning obligation contained in this Agreement after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of obligation prior to parting with such interest PROVIDED THAT the release contained in this sub-clause shall not become effective in favour of any such person unless they shall after parting with any such interests have given written notice to the Council of the fact of their transfer of all interest in

the Site and included in such notice details of the name and address of the person or persons to whom such interest was transferred.

7.7 that unless otherwise specified:-

7.7.1 where any agreement certificate consent permission or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed; and

7.7.2 where any expression of satisfaction is to be given by any party or any person under this Agreement such expression of satisfaction shall not be unreasonably withheld or delayed.

7.8 Subject to clause 3.2 no compensation shall be payable by the Council to any party to this Agreement arising from the terms of this Agreement and all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developer and at no cost to the Council.

7.9 the obligations in this Agreement are condition upon commencement of the Works.

7.10 if any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties.

7.11 the failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a

waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

7.12 the applicable law for this Agreement shall be English Law.

8. IT IS HEREBY FURTHER AGREED AND DECLARED THAT:-

8.1 any reference to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or applied by or under any other enactment and these shall include all instruments orders and regulations;

8.2 words importing the singular meaning where the context so admits include the plural meaning and vice versa and words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations firms and other organisations and all such words shall be construed interchangeably in that manner;

8.3 the word "including" shall mean "including without limitation or prejudice to the generality of any description or defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly;

8.4 the paragraph headings in this Agreement are for convenience only and do not affect its interpretation and references in this Agreement to a clause paragraph schedule plan or recital is a reference to a clause paragraph schedule plan or recital of or (in the case of a plan) attached to this Agreement;

8.5 the expression "the Council" shall include its successors in title and function and the expression "the Developer" shall include all persons claiming title to the Site under it or them and shall include (if appropriate) two or more owners of the legal estate and covenants given by two or more owners of the Site shall be joint and several.

9. Nothing in this Agreement shall require the performance by the Developer of any obligation whatsoever in upon or under land outside its ownership or

control unless such land shall be within the public highway for which the Council's licence under clause 6.1 has been given.

EXECUTED as a Deed on the date given above

FIRST SCHEDULE

("the Site")

ALL THAT land at Cromwell Road Wisbech Cambridgeshire which is shown for the purpose of identification only edged red on the Plan.

SECOND SCHEDULE

("the Works")

1. The following works as shown on the attached drawing number 1301-76.002 Rev. E and as may be approved by the Executive Director pursuant to paragraph 1.1.2 of the Third Schedule:
 - (i) provision of a three-arm signal controlled junction incorporating pedestrian crossing facilities and forming access to the Development on Cromwell Road;
 - (ii) kerb re-alignment along Cromwell Road to widen the carriageway and provide two lanes on either approach;
 - (iii) kerb re-alignment to widen the radii on both sides of the existing junction into New Bridge Lane;
 - (iv) kerb re-alignment to widen New Bridge Lane to facilitate service vehicle access;
 - (v) provision of new bus stop facilities on both sides of Cromwell Road east of the new access;
2. The provision of all ancillary works required for or associated with the construction of that part of the Works set out in paragraph 1 above including (where appropriate) the following:-
 - (i) widening and tying into existing footways and carriageways, including; provision and installation of new carriageway and footway sub-base, road-base, base course and wearing course;
 - (ii) planing off existing surfacing and resurfacing of carriageway and footway where necessary;
 - (iii) provision and installation of new kerb foundation and backing, kerbing, and edging;
 - (iv) alterations to existing highway drainage systems;

- (v) provision of trenches for ducting associated with the signals works;
- (vi) taking down and re-erecting street lighting columns, street furniture and traffic signs;
- (vii) provision and erection of new street lighting columns, street furniture and traffic signs;
- (viii) alterations to carriageway markings and linings and the provision of new carriageway markings and lining;
- (ix) temporary traffic management measures including traffic controls and diversions;
- (x) statutory undertakers' diversion works including any associated ancillary works;
- (xi) any works reasonably required in response to stages 2, 3 and 4 Road Safety Audits;
- (xii) landscaping; and any other ancillary works required.

THIRD SCHEDULE

(terms and conditions of the execution of the Works)

1. It is hereby agreed and declared that the following terms and conditions shall apply in relation to the design construction completion and maintenance of the Works.

1.1 The Developer shall not commence the Works until:-

1.1.1 the Executive Director shall have given his written approval to any suitably qualified consulting engineer proposed to be engaged to carry out the detailed design of the Works;

1.1.2 the Developer shall have submitted to and the Executive Director shall have approved in writing the detailed design of the Works the detailed engineering drawings ("the Drawings") for the Works and a statement of the overall sequence in which the Works are to be designed and carried out which shall include an estimate of the amount of time to be spent in carrying out and completing the various parts of the Works ("the Programme");

1.1.3 the Executive Director shall have given his written approval to any contractor proposed to be engaged to carry out the Works and of any sub-contractor employed in connection therewith;

1.1.4 the Developer at no cost whatsoever to the Council shall have entered into and delivered to the Council a bond the terms of which shall be to the reasonable satisfaction of the Council ("the Bond") with HSBC Bank Plc ("the Guarantor") in a sum of £685,522 (six hundred and eighty five thousand five hundred and twenty two pounds) being equal to the estimated cost of the Works as itemised in the Tender of the contractors engaged to construct and complete the Works such sum to include VAT, provision for maintenance costs

pursuant to paragraph 11 below and the costs of statutory undertakers works) plus ten per centum (10%) ("the Bond Figure") and the Executive Director shall be given such reasonable access to the Tender documentation so as to enable him to verify the said Tender costs;

1.1.5 the Bond shall be provided to the effect that should the Developer default in its obligation to carry out complete and maintain the Works then having given the Developer reasonable opportunity to remedy the default the Council may itself carry out complete and/or maintain the Highway Works (as the case may be) call upon the Guarantor to reimburse the lesser of (a) the costs expended in so doing or (b) the Bond Figure PROVIDED THAT the Bond shall be reduced by fifty per cent (50%) following the issue of the Provisional Certificate referred to in paragraph 10 below AND discharged upon both the issue of the Final Certificate referred to in paragraph 12 below and the payment by the Developer of all accrued costs properly due to the Council in respect of the Works under the terms of this Agreement;

1.1.6 the Developer shall have paid to the Council the sum of £58,269 (fifty eight thousand two hundred and sixty nine pounds) representing the reasonable costs of the Executive Director in approving the design and inspecting the Works such sum to be equal to 8.5% of the Bond Figure and net of costs (if any) under clause 6.2 above and paragraphs 3 5.3 10.1 and 11.1 to this Third Schedule;

1.1.7 the Developer shall have paid to the Council a sum representing the Council's reasonable legal and administrative costs in respect of the preparation negotiation and execution of this Agreement under clause 2.3 above;

1.2 If following approval of the Programme the Developer shall wish to revise the Programme the Developer shall submit any revisions to the

Programme in writing to the Executive Director for his approval at least 15 working days before the intended implementing of such revisions

- 1.3 Following receipt of any proposed revision of the Programme in accordance with paragraph 1.3 the Executive Director shall approve or submit to the Developer his written comments in full upon those matters referred to in paragraphs 1.1.1, 1.1.2, 1.1.3 (insofar as these are affected by the proposed revision) and 1.2 of this Third Schedule within 20 working days of receipt of all the information necessary for the purpose.
- 1.4 If the Executive Director decides reasonably to withhold his approval in relation to any of those matters referred to in paragraph 1.3 of this Third Schedule he shall in each case as soon as possible within the period specified in paragraph 1.3 above in writing so inform the Developer giving reasons therefore and the Programme shall not be revised unless and until the Executive Director shall subsequently decide to give approval upon hearing representations from the Developer.
- 1.5 The contract for the Works shall be let by the Developer using the NEC 3 Term Service Conditions of Contract 2005 approved by the Institution of Civil Engineers or any such other form of contract as may be reasonably agreed by the Executive Director ("the Conditions of Contract") and the Executive Director shall have all rights and powers in relation to the construction completion and maintenance of the Works as if he were "the Service Manager" for the Works as defined in the Conditions of Contract but the Executive Director hereby undertakes that he will exercise the said powers only to ensure that the Works are constructed completed and maintained to his satisfaction.
- 1.6 The Developer shall ensure that the person or persons carrying out the Works shall be insured for public liability risks for the sum of at least five million pounds (£5,000,000.00) in respect of any single claim.

1.7 The Developer shall give the Council at least 28 days (or such lesser period as the Executive Director may agree in writing) prior written notice of its intention to commence the Works on site and shall, at least 28 days prior to commencement of the Works (or such lesser period as the Executive Director may agree in writing), give notice to:-

1.7.1 the Parish Council for the area in which the Works are located; and

1.7.2 the owner and occupier of every premises adjoining the part of the highway on which the Works are to be carried out by letter addressed to "the owner/occupier of (address)" and sent by first class post or delivered to each premises; and

1.7.3 in each case containing the following information:-

1.7.3.1. a brief description of the Works emphasising any changes to the appearance of the streetscape (e.g. removal of grass verges or significant changes in materials used);

1.7.3.2. planned start date;

1.7.3.3. contract period or planned completion date;

1.7.3.4. name and address of contractor carrying out the Works;

1.7.3.5. details of the person responsible for supervision of the Works including an address and telephone number to contact should a query arise;

1.7.3.6. where further details of the proposed Works may be viewed.

1.8 The Works shall be carried out in accordance with the "Specification for Highway Works" published by Her Majesty's Stationery Office consolidated edition 1998 with amendments as modified and extended

by the Council's standard additional and supplementary clauses ("the Specification") PROVIDED ALWAYS that where there is any conflict between the provisions of paragraphs 2 to 14 (inclusive) of this Third Schedule and the Specification the provisions of the said paragraphs 2 to 14 shall prevail.

2. Access

- 2.1 Subject to compliance with the Developer's reasonable health and safety requirements the Developer shall during the progress of the Works upon reasonable request give or procure for the Executive Director free access to each and every part of the Works and the site thereof and permit the Executive Director to inspect the Works as the Works proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper direction given by the Executive Director to conform to the Drawings and/or the Programme and/or the Specification.
- 2.2 The Developer unless otherwise directed by the Executive Director shall not cover up or put out of view any works without the approval of the Executive Director and shall afford full opportunity for the Executive Director to examine any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least two working days notice to the Executive Director whenever any such work or foundations is or are ready or about to be ready for examination.
- 2.3 The Executive Director shall without unreasonable delay unless he considers it unnecessary and advises the Developer in writing accordingly attend when required by the Developer upon at least two working days notice for the purpose of examining such works or of examining such foundations.

3. Testing of Materials

- 3.1 The Executive Director shall have power in his reasonable discretion to test or require the testing of materials plant and workmanship used or proposed to be used in the Works and to reject any materials plant or workmanship so tested which he may reasonably and properly find to be not in accordance with the Specification and the Drawings and the costs reasonably incurred by the Council in connection with such testing shall be payable by the Developer.
- 3.2 The Developer shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found not in accordance with the Specification and the Drawings with such as are so in accordance.
- 3.3 Subject to compliance with the Developer's reasonable health and safety requirements the Executive Director shall for the purpose of this paragraph 3 be allowed reasonable access and admission to the places where materials or plant for the Works may be stored or are in the course of preparation manufacture or use.
- 3.4 The Developer shall as soon as is reasonably practicable remove such materials plant and workmanship as are rejected by the Executive Director pursuant to paragraph 3.1 above which are not capable of repair or remedy from the site of the Works and if the Developer shall wish to continue to store any rejected irreparable materials plant or workmanship on the Site they shall be stored separately from those materials plant and workmanship which have not been so rejected or which the Developer shall wish in future to use in execution of the Works.
- 3.5 The Developer shall pay for or reimburse the Executive Director for all costs incurred in testing of materials and in the carrying out of Stage 2 and Stage 3 Safety Audits.

4. **Opening of the Works**

4.1 (Subject to the provisions of paragraph 4.2 below) during the construction of the Works and prior to the issue of any Provisional Certificate:-

4.1.1 the Executive Director may issue instructions to the Developer to open up or expose any of the Works which may have been covered up without previously being inspected by the Executive Director;

4.1.2 should the Developer fail within a reasonable time to comply with any such instructions the Council may so take up or expose the relevant part of the Works causing as little damage or inconvenience as is possible to or in respect of any other part or parts of the Works and the reasonable and proper costs of such taking up exposure and reinstatement shall be met by the Developer.

4.2 If the Works or any part or parts thereof are covered up by the Developer after giving the notice or in accordance with any direction referred to in paragraph 2.2 and the Executive Director shall have failed to inspect in the period referred to in the said paragraph 2 and the Executive Director shall subsequently require the Works or any part of them to be uncovered for the purposes of inspection:-

4.2.1 if inspection reveals the relevant part or parts of the Works to have been completed in accordance with the Drawings and the Specification all reasonable and proper costs in respect of such uncovering and inspection and of reinstating the part or parts of the Works uncovered shall be borne by the Council;

4.2.2 if inspection reveals the relevant part or parts of the Works not to have been completed in accordance with the Specification and the Drawings all reasonable and proper costs in respect of uncovering and inspection and of

reinstating the part or parts of the Works uncovered shall be borne by the Developer.

5. **Statutory Undertakers**

- 5.1 During the construction of the Works prior to the issue of any Provisional Certificate the Developer shall at no cost to the Council carry out or procure the carrying out of such works of protection or alteration as are necessary as a result of the construction of the Works to the plant equipment and other apparatus of statutory undertakers on the site of the Works.
- 5.2 The Developer shall cause all new highway or other drains or sewers gas and water mains pipes electric cables (if any) or telecommunication cables and ducts (if any) or other apparatus which are to be laid by the Developer under the Works together with all necessary connections from them to the boundary of the Works to be laid insofar as is reasonably practicable under the Works before the foundation of the Works are laid and shall also insofar as is practicable cause the connections from electric cables to street lamps to be laid before the paving of any footways comprised in the Works is carried out.
- 5.3 The Developer shall pay the energy costs of any street lighting provided as part of the Works from the date of commissioning/switching on of such street lighting until the issue of the Final Certificate.

6. **Prevention of Mud being Carried onto Highway Maintainable at Public Expense**

- 6.1 The Developer shall make provision to be approved by the Executive Director at no cost to the Council at the site of the Works and on the adjoining highway maintainable at public expense to limit insofar as is practicable the amount of mud, dust and other materials carried onto

the highway maintainable at public expense by vehicles and plant leaving the site of the Works

7. **Traffic Control**

7.1 During the period when the Works are being constructed the Developer shall provide at its own expense measures approved by the Executive Director to maintain the flow of traffic on highway maintainable at public expense in the vicinity of the site of the Works

7.2 The Executive Director shall except in the case of any emergency be given five working days notice of any intention by the Developer to change the layout of any traffic system

8. **Road Safety**

8.1 During the period over which the Works are being executed the Developer shall comply with the provisions of the Council's Code of Practice for Safety at Roadworks and the provisions of Chapter Eight of the Traffic Signs Manual 1991 (published by the Department of Transport) and any amendment thereto.

8.2 Without prejudice to the provisions of Section 174 of the 1980 Act until the issue of the Final Certificate the Developer shall keep the Works safe and in a good state of repair.

9. **Remedial Works**

9.1 If the Works or any part or parts thereof are not carried out or completed to the reasonable satisfaction of the Executive Director in accordance with the Drawings the Specification and the terms of this Agreement the Council may after giving to the Developer 28 days written notice or (in the event of there being a danger to users of highway maintainable at public expense) such shorter period of notice as the Council shall in the circumstances consider reasonable execute and/or complete the relevant part or parts of the Works in accordance with the provisions of this Agreement by its own employees or by

contractors and recover its costs as properly and reasonably certified by the Executive Director from the Guarantor up to the maximum of the Bond Figure and from the Developer.

10. **The Provisional Certificate**

10.1 Subject to paragraph 10.2 below when the Executive Director is notified by the Developer that the Works have been substantially completed which shall mean that the Works can be permanently used for the purpose and operate in the manner for which they were designed and traffic management measures have been removed from the site of the Works he shall inspect the Works and undertake a Stage 3 Safety Audit ("the Audit") of the Works as soon as reasonably practicable.

10.2 The Developer shall comply in full to the Executive Director's satisfaction with all requirements identified by the Executive Director both as a result of the inspection and the Audit referred to in paragraph 10.1 above.

10.3 The Developer shall thereafter notify the Executive Director that the Works are ready for a further inspection and the Executive Director shall (subject to paragraph 10.4 below) as soon as reasonably practicable following such further inspection issue a certificate ("the Provisional Certificate") to that effect on behalf of the Council to the Developer if the works are found to be satisfactory to the Executive Director.

10.4 The Executive Director shall be under no obligation whatsoever to issue any Provisional Certificate before:-

10.4.1 the Developer shall (if necessary) have secured to the Council's satisfaction a Deed of Easement (at no cost whatsoever to the Council) relating to and securing the drainage of the Works; and

- 10.4.2 the Works to which any Provisional Certificate would relate connect directly with a highway maintainable at public expense; and
- 10.4.3 the Developer shall have produced to the Council's satisfaction evidence that all land needed for the construction of the Works is owned by or under the control of the Developer; and
- 10.4.4 the Developer shall have complied in full to the Executive Director's satisfaction with all requirements arising as a result of the Audit; and
- 10.4.5 the Developer shall have paid the Commuted Sum to the Council; and
- 10.4.6 the Executive Director shall have issued all approvals in principle for all highway structures to be constructed as part of or in connection with the Works

11. The Maintenance Period

- 11.1 When the Executive Director is notified by the Developer that twelve months have expired since the issue of the Provisional Certificate he shall inspect the Works and undertake a Stage 4 Safety Audit ("the Stage 4 Audit") of the Works as soon as reasonably practicable. The Developer shall comply in full to the Executive Director's satisfaction with all requirements identified by the Executive Director both as a result of the inspection and the Stage 4 Audit referred to in paragraph 10.1 above and shall at no cost whatsoever to the Council from the date of issue of the Provisional Certificate reinstate and make good any damage or defect in the Works so certified (i.e. including all requirements of the Audit) ("the defects") including those which in the reasonable and proper opinion of the Executive Director shall have arisen out of any defect in the design of the Works or the use of defective workmanship or materials not in accordance with the Drawings and the Specification during the construction of the Works or

shall have been caused by contractors engaged in carrying out the Development which shall become apparent during the period following the issue of the Provisional Certificate ("the Maintenance Period").

11.2 The Developer shall thereafter notify the Executive Director that the Works are ready for a further inspection.

12. The Final Certificate

12.1 If after the expiration of the Maintenance Period referred to in paragraph 11 and if following the further inspection referred to in paragraph 11.2 the Works have been shown to be satisfactory and the defects have been remedied and the Works reinstated and otherwise made good to the satisfaction of the Executive Director he shall as soon as reasonably practicable issue a certificate to the Developer ("the Final Certificate") and from the date of the Final Certificate the Works shall (subject to clauses 3.1 and 3.2 hereof) in all respects be maintained by and at the cost of the Council.

12.2 If upon the expiration of the Maintenance Period referred to in paragraph 11 of this Third Schedule the Developer fails to reinstate remedy and otherwise make good the defects to the satisfaction of the Executive Director the Council after giving not less than 20 working days written notice of its intention to the Developer may execute and/or complete the relevant work and recover its reasonable and proper costs from the Guarantor up to the amount of 50% of the Bond Figure and from the Developer.

13. Site Clearance

13.1 On completion of the Works the Developer shall clear away and remove from the site of the Works all constructional plant and temporary works of every kind and leave the site of the Works and the Works in a workmanlike condition and fully suitable for use as public highway to the satisfaction of the Executive Director.

14. **Construction (Design and Management) Regulations 2009, Dedication Plan and As-Built Drawings**

14.1 On practical completion of the Highway Works the Developer shall provide to the Engineer (i) a plan showing the land over which the Works have been constructed together with any other land dedicated as public highway by the Developer and (ii) a complete set of as-built drawings for the whole of the Highway Works showing (inter alia) undertakers' plant and equipment such drawings to be to such scale or scales as the Executive Director may reasonably require for the purpose of subsequent maintenance and further works.

14.2 Before requesting the issue of the Final Certificate the Developer shall provide to the Executive Director both the plans and drawings aforesaid and a complete and correctly maintained Health and Safety File conforming in all respects with the Construction (Design and Management) Regulations 2009.

15. **Definition**

For the purposes of this Third Schedule a working day shall be any day which is not a Saturday a Sunday or a bank or public holiday.

FOURTH SCHEDULE

Approved Drawings 3/12/2013

Part 1: Key Drawings Approved for Inclusion in Agreement

Drawing Title	Document No.	Revision.
1. Land Dedication Legal Agreement Plan	1301-76.002	E
2. General Arrangement Drawing (1 of 2)	1301-76.101	D
3. General Arrangement Drawing (2 of 2)	1301-76.102	F
4. Construction Drawing (1 of 2)	1301-76.701	D
5. Construction Drawing (2 of 2)	1301-76.702	F
6. Standard Construction Details 1	1301-76.801	B
7. Lining & Signing Drawing (1 of 2)	1301-76.1201	E
8. Lining & Signing Drawing (2 of 2)	1301-76.1202	E
9. Traffic Signal Design	AT13012-01	B
10. Street Lighting Design	7400 - 0071	A
11. Existing Layout – Site Location Plan	1301-76.001	

Part 2: Drawings Approved for Construction

12. Site Clearance Drawing (1 of 2)	1301-76.201	D
13. Site Clearance Drawing (2 of 2)	1301-76.202	D
14. Setting Out Details Drawing (1 of 2)	1301-76.301	C
15. Setting Out Details Drawing (2 of 2)	1301-76.302	E
16. Contours Layout (1 of 2)	1301-76.303	B
17. Contours Layout (2 of 2)	1301-76.304	B
18. Longitudinal Sections (1 of 2)	1301-76.305	B
19. Longitudinal Sections (2 of 2)	1301-76.306	B
20. Cross Sections (1 of 2)	1301-76.307	B
21. Cross Sections (2 of 2)	1301-76.308	D

22. Drainage Drawing (1 of 4)	1301-76.501	C
23. Drainage Drawing (2 of 4)	1301-76.502	D
24. Drainage Drawing (3 of 4)	1301-76.503	B
25. Drainage Drawing (3 of 4)	1301-76.504	B
26. Standard Construction Details 2	1301-76.802	
27. Standard Construction Details 3	1301-76.803	
28. Sign Schedule	1301-76.RS01	B
29. Sign Schedule	1301-76.RS02	B
30. Sign Schedule	1301-76.RS03	B
31. Sign Schedule	1301-76.RS04	A
32. Sign Schedule	1301-76.RS05	
33. Drainage/ General Arrangement	C110701_221_	P1

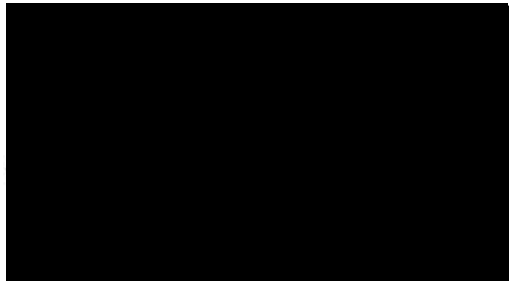
THE COMMON SEAL of)
CAMBRIDGESHIRE COUNTY COUNCIL)
was hereunto affixed)
in the presence of:)



secretary

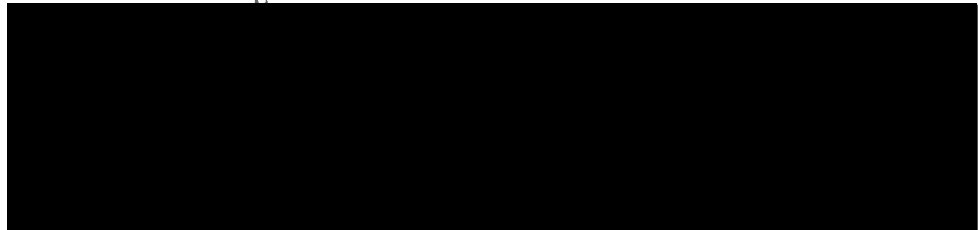


EXECUTED as a DEED by *Marcus Vinnicombe*)
as attorney for TESCO STORES LIMITED)
under a power of attorney)



Print Name: *MARCUS VINNICOMBE* Signature:

Name of witness: *Edward Heppell*



Signature of witness:

Address of witness:

Occupation of witness: *Chartered Surveyor*

A1
ORIGINAL
PLOT SIZE

NOTES:

- Extent of Development land
- Land to be adopted as highway
- Adopted highway land
- Elements required for access to signal apparatus (where applicable)



REVISIONS

NO.	DATE	BY	DESCRIPTION
1	21/03/13	RSC	Issue for client approval
2	21/03/13	RSC	Issue for client approval
3	21/03/13	RSC	Issue for client approval
4	21/03/13	RSC	Issue for client approval
5	21/03/13	RSC	Issue for client approval

tpa
Transport Planning Associates

CLIENT: TESCO

PROJECT: Cromwell Road Retail Park Wisbech

TITLE: New Bridge Lane / Cromwell Road - Land Dedication Plan

STATUS: LEGAL AGREEMENT

NO.	DATE	BY	DESCRIPTION
1	21/03/13	RSC	Issue for client approval
2	21/03/13	RSC	Issue for client approval
3	21/03/13	RSC	Issue for client approval
4	21/03/13	RSC	Issue for client approval
5	21/03/13	RSC	Issue for client approval

SCALE: 1:500

JOB NO: 130176

DATE: 21/03/13

BY: RSC

CHECKED: MM

APPROVED: JH

REVISION: E

INDICATIVE