

DATED

1st July 2016

2016

TESCO STORES LIMITED

as Owner

**THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF RICHMOND UPON THAMES**
as Council

**AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

in relation to the development at Tesco, 29 George Street, Richmond TW9 1HY



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Appendix Name

Plan

DATED

1st July

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PARTIES

- (1) **TESCO STORES LIMITED** (company number 519500) whose registered office is at Tesco House Shire Park Kestrel Way Welwyn Garden City AL7 1GA (the "Owner")
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES** of Civic Centre 44 York Street Twickenham Middlesex TW1 3BZ (the "Council")

BACKGROUND

- (A) The Council is the local planning authority for its administrative area within which the Property is situate for the purposes of the Town and Country Planning Act 1990 and for the purposes of Section 106(9) of the 1990 Act is the local planning authority by whom the planning obligations contained within this Agreement are enforceable.
- (B) The Owner is registered at the Land Registry with absolute title under title number SGL37727 as the proprietor of the freehold interest in the Property.
- (C) The Council supports the Development and the Council has resolved to grant the Permission subject to the completion of this Agreement which makes provision for regulating the Development and securing the matters referred to herein.
- (D) Policy CP 15 of the LDF Core Strategy and policy DM HO 6 of the LDF Development Management Plan provides that the Council may consider a financial contribution to its Affordable Housing Fund as an alternative to on site provision.
- (E) Policies DM TP2 and DM TP8 of the LDF Development Management Plan 2011 provide that the Council will only approve new development where the transport infrastructure can accommodate it or be adapted to it and new development should be acceptable in terms of traffic generation and traffic impact in the road.
- (F) In December 2006 the Council adopted as Supplementary Planning Guidance a Car Club Strategy which provides inter alia that the Council will encourage new car club provision in the locality of a development through the Council's preferred Accredited Car Club Provider or, where appropriate and where capacity exists, affiliation to the preferred Accredited Car Club Providers Car Club.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"**1990 Act**" means the Town & Country Planning Act 1990.

"**Accredited Car Club Provider**" means an organisation accredited in the United Kingdom by Car Plus which provides cars for use by members of a Car Club in consideration of payment therefor.

"**Affordable Housing Contribution**" means the sum £620,000 Indexed.

"Car Club" means a local club operated and managed by an Accredited Car Club Provider in which members can book cars owned by the Accredited Car Club Provider and parked in specifically reserved car club spaces and use them for the period of the booking and the term **"Car Clubs"** shall be construed accordingly.

"Car Club Provider Plan" means details of the name of and correspondence with an Accredited Car Club Provider indicating an intention of the Owner to establish that occupiers of the Units shall have membership of that Car Club including a proposed establishment date of the Car Club.

"Car Plus" means the national charity promoting responsible car use and which operates an accreditation scheme for Car Clubs.

"DCM" the Council's Development Control Manager for the time being or such other person as may be appointed from time to time to carry out that function.

"Development" means the development described in the Planning Application.

"End Date" means the date being the fifth anniversary of the Start Date.

"Indexed" increased in accordance with the formula whereby the Affordable Housing Contribution is multiplied by the fraction A divided by B where B represents the value of the Retail Prices Index (All Items) as at the date of this Agreement and A represents the value of the same index as at the date of payment of the relevant contribution to the Council.

"LDF" the adopted policies of the Richmond upon Thames Local Development Framework Core Strategy 2009 and Development Management Plan 2011.

"Material Start" means the carrying out in relation to the Development of a material operation as defined in section 56(4) of the 1990 Act save that such shall not include works of demolition; works of site clearance; ground investigations site survey works; laying of services and service media; construction of temporary accesses; archaeological investigation; landscaping works off the public highway; and noise attenuation works.

"Monitoring Fee" means the sum of £31,000 being 5% of the Affordable Housing Contribution.

"Occupation" means the full and beneficial occupation of the Units (but this expression shall not include occupation for the purposes of construction or fitting out or for marketing or security purposes) and **"Occupied"** and **"Occupy"** shall be construed accordingly.

"Occupation Date" means the first Occupation of a Unit for residential purposes within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) which constitutes Material Operation under section 56(4) (e) of the 1990 Act.

"Parking Permit" means a parking permit (whether for residential, visitor or business use) for a Permit Parking Bay.

"Permit Parking Bay" means a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation).

"Planning Application" means a planning application submitted by the Owner on 8 January 2016 to the Council bearing reference number 16/0058/FUL for the change of use of second floor and third floor level from ancillary retail to nine one bedroom flats (C3 use) with external alterations and enclosure of walkway at first floor, new residential access, bin store, bicycle storage, replacement of plant, new stairs to roof access and reconfiguration of food store at ground floor level.

"Planning Permission" means the planning permission that may be granted in respect of the Planning Application.

"Property" means land known as land at Tesco 29 George Street Richmond TW9 1HY under title number SGL37727 and shown delineated in red on the plan attached at Appendix 1 to this Agreement.

"Sale" means the sale of the freehold or the grant of a lease for a period of not less than 21 years at a nominal rent.

"Sale Date" means the completion date of the first Sale of a Unit.

"Start Date" means the date being six months from the first Occupation of a Unit

"Units" means the residential units to be created pursuant to the Development and the term **"Unit"** shall be construed accordingly.

1.2 Reference to the masculine feminine and neuter genders shall include the other genders and reference to the singular shall include the plural and *vice versa*.

1.3 A reference to a Clause or paragraph is a reference to a clause or paragraph contained in this Agreement.

1.4 The expressions **"the Council"** and **"the Owner"** shall include their respective successors in title and assigns.

1.5 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force.

2 **CONDITIONALITY**

This Agreement is entered into by deed and made pursuant to Section 106 of the 1990 Act and the obligations contained in this Agreement are planning obligations for the purposes of that section insofar as they fall within the terms of Section 106 of the 1990 Act and this Agreement is conditional upon the grant of planning permission pursuant to the Planning Application by the Council and the subsequent implementation of the Planning Permission by the Owner carrying out a Material Start.

3 **OWNER'S COVENANTS**

The Owner covenants with the Council that it will observe and perform the covenants on its part contained in Schedule 2 (*Covenants by the Council*).

4 **COUNCIL'S COVENANTS**

The Council covenants with the Owner that it will observe and perform the covenants on its part contained in Schedule 2 (*Covenants by the Council*).

(save those in para (b) Part 3 of Schedule 2)

(W)

the obligations in

and the subsequent implementation of the Planning Permission by the Owner carrying out a

Material Start.

Bernon Leighton Partner LLP on behalf of Tesco Stores Limited.

5 **GENERAL**

5.1 **Local land charge provisions**

This Agreement is a local land charge and shall be registered in the Council's Register of Local Land Charges immediately on completion thereof.

5.2 **English law applicable**

The construction validity and performance of this Agreement shall be governed by English law.

5.3 **Release and lapse**

5.3.1 In the event of the Planning Permission being revoked by the Council or any other authority having powers in relation to planning matters or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or their successors in title the obligations of the Owner under this Agreement shall thereupon cease absolutely.

5.3.2 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

5.4 **Liability of subsequent owners and release of former owners**

The provisions hereof shall be enforceable by the Council against the Owner and all persons who shall have derived title through or under it in respect of the Property (but so that no person shall be liable to the Council for any breach of the provisions committed after such a person has parted with all of its freehold interest in such land).

5.5 **Effect of covenant**

Any covenant contained herein whereby the relevant party is not to do an act or thing shall be construed as if it were a covenant not to do or permit or suffer such act or thing to be done and any covenant whereby the relevant party is not to omit to do an act or thing shall be construed as if it were a covenant not to omit or permit or suffer such act or thing to be omitted to be done.

5.6 **Contracts (Rights of Third Parties) Act 1999**

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement is to have the benefit of or be capable of enforcing any term in this Agreement and no party is to have any rights to enforce this Agreement other than those falling within the definition of the Council and the Owner.

5.7 **VAT clauses**

5.7.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof.

5.7.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply

shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

5.8 **Interest on late payment**

If any of the Affordable Housing Contribution due under Schedule 1, Part 3 (*Payments*), paragraph (a) is not paid to the Council within the timescales stipulated therein, then interest shall be paid on such contribution at the rate of 2% the Bank of England base rate from time to time in force from the date that the contribution became due to the date of actual payment.

5.9 **Dispute Resolution**

- 5.9.1 In the event of any dispute or difference arising between the parties arising out of this Agreement such dispute or difference may be referred to an expert, being an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.
- 5.9.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the expert to be appointed pursuant to Clause 5.9.1, or as to the appropriate professional body, within ten working days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the expert to be appointed pursuant to Clause 5.9.1 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference. Such solicitor shall act as an expert and his decision as to the professional qualifications of such person, or as to the appropriate professional body, shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.
- 5.9.3 The expert shall act as an expert and not as an arbitrator.
- 5.9.4 The expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than forty-six working days from the date of his appointment to act.
- 5.9.5 The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten working days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further fifteen working days in respect of any such submission and material and the expert's decision shall be given in writing within twenty working days from receipt of any counter submissions or in the event that there are no counter submissions within twenty-one working days of receipt of the written submissions and supporting material with reasons and in the absence of manifest material error the expert's decision shall be final and binding on the said parties.
- 5.9.6 The expert may award the costs of the dispute resolution in such proportions as he see fit but in the absence of an express award to this effect the costs of the dispute resolution shall be borne by the parties to the dispute in equal shares.

Delivered as a deed on the date of this document.

**Schedule 1
Covenants by the Owner**

**Part 1
Car Club**

Prior to the Occupation of the Units, to submit the Car Club Provider Plan to the DCM and thereafter:

- (a) not to Occupy any Unit unless and until the Car Club Submission has been approved by the DCM pursuant to paragraph 2 of Schedule 2 (*Covenants by the Council*) of this Agreement;
- (b) On the Start Date to provide/fund one free annual membership of five years (or in the event that the relevant purchaser/occupier vacates a Unit within said five year period until the expiry of the annual membership for the year in which they vacate the Unit) of the approved Car Club for the first purchaser/occupier of the Unit;
- (c) upon the first sale and Occupation of a Unit to notify in writing the purchaser/occupier of the availability of the free membership referred to in paragraph (b) and how the purchaser/occupier may apply to the Owner and the Car Club for said membership;
- (d) In the event that the first Occupier of a Unit vacates the said Unit the entitlement to have an annual membership of a Car Club shall transfer to all future occupiers of the said Unit until the End Date; and
- (e) in the event that the Car Club Provider approved pursuant to the Car Club Provider Plan is no longer able to provide the Car Club for the Units the Owner shall then use all reasonable endeavours to secure another Accredited Car Club Provider for the Development and shall take out replacement memberships for any purchasers/occupiers of the Units whose five year Car Club membership entitlement (as referred to in paragraph (b)) has not at that date expired for such duration of the said five year period as remains unexpired.

**Part 2
Car Parking Permits**

Not to dispose of to any person or occupy or allow any person to occupy the Units unless a notice has been served on such person that pursuant to the Council's policies to which reference is made in the Background (paragraph (E)) or any other policy replacing the same such person shall not be entitled (unless such person is or becomes entitled to be a holder of a Disabled Persons' Badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons' Act 1970) to be granted a Parking Permit, to park a vehicle in any Permit Parking Bay or other place within a CPZ within the Council's area nor will the Council enter into a contract (other than individual contracts for one occasion) with such person to park in any car park controlled by the Council.

**Part 3
Payments**

To pay to the Council:

- (a) the Affordable Housing Contribution and the Monitoring Fee prior to or on the Occupation Date or the Sale Date (whichever is the sooner) and not to

permit the Occupation of either Unit until the Affordable Housing Contribution has been paid to the Council; and

- (b) the Council's reasonable and proper legal costs in the preparation and completion of this Agreement in the sum of £1,000.

Part 4
Notifications

To provide seven days' prior written notice to the DCM:

- (a) of its intention to commence the Development before making a Material Start; and
- (b) of the Occupation Date or the Sale Date (whichever is sooner).

**Schedule 2
Covenants by the Council**

- 1 The Council will at all times act reasonably and in particular (without prejudice to generality) where any approval or expression of satisfaction is required by this Agreement it will not be unreasonably withheld or delayed.
- 2 Without limiting the generality of paragraph 1 of Schedule 2 of this Agreement, following the submission of the Car Club Provider Plan to the DCM, the DCM shall consider the Car Club Provider Plan and respond in writing within 8 weeks of such submission either approving or refusing it. ~~If the DCM has not approved or refused the Car Club Provider Plan in writing within 8 weeks, then the Car Club Provider Plan submitted to the DCM shall be deemed to be approved.~~ (c)
- 3 The Council covenants with the Owner:
 - (a) not to use the Affordable Housing Contribution or Monitoring Fee and any interest received thereon other than as set out in this Agreement;
 - (b) upon a written request from the Owner to provide a written statement detailing what the Affordable Housing Contribution and Monitoring Fee have been spent on and detailing any sums remaining unexpended within 14 days of such request;
 - (c) in the event that Affordable Housing Contribution or Monitoring Fee or any part thereof remain unspent within 5 years from the date of payment to repay the Affordable Housing Contribution or Monitoring Fee or any remaining part thereof to the Owner together with any accrued interest.

EXECUTION PAGE

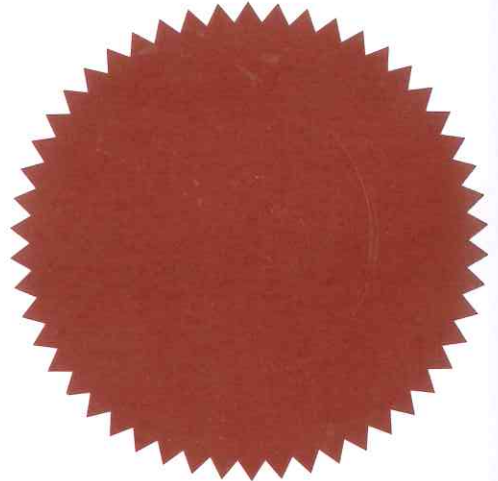
EXECUTED as a Deed by **MARCUS VINNICOMBE**)
as attorney for)
TESCO STORES LIMITED under a power)
of attorney:)



Name of Witness: **MATTHEW PRICE**)
Signature of Witness: **M. Price**)
Address: **PLUS BUILDING, SHIRE PARK, WELWYN GARDEN CITY, HERTS.**)
Occupation: **CHARTERED SURVEYOR .**) **ACT 1GB**

THE COMMON SEAL of the MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND UPON THAMES was hereunto affixed in the presence of:-)

Authorised Officer **C. W**
Seal Reg. No **28407/03**



Appendix
Plan

[Handwritten signature]

H.M. LAND REGISTRY		TITLE NUMBER		
		SGL 37727		
ORDNANCE SURVEY PLAN REFERENCE ©	COUNTY	SHEET	NATIONAL GRID	SECTION
	GREATER LONDON		TQ 1874	A

Scale: 1/1250

© Crown copyright 1986
Old Reference SURREY VI 4 T

BOROUGH OF RICHMOND UPON THAMES

28407/03 *[Handwritten]*

