DATED 16th May 2002

(1) TESCO STORES LIMITED

(2) BROOKHOUSE GROUP LIMITED

(3) BROOKHOUSE PROPERTY INVESTMENTS LIMITED

(4) THE ROYAL BANK OF SCOTLAND PLC

to

(4) KNOWSLEY METROPOLITAN BOROUGH COUNCIL

PLANNING OBLIGATION BY WAY OF UNDERTAKING PURSUANT TO SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO THE DEVELOPMENT OF THE TESCO STORE AT CABLES RETAIL PARK, SEWELL STREET PRESCOT, MERSEYSIDE

THIS DEED OF UNDERTAKING is given this 16th day of May 2002

BY:

TESCO STORES LIMITED whose registered office is at Tesco House Delamare Road Cheshunt Waltham Cross Hertfordshire ("the Developer")

to

KNOWSLEY METROPOLITAN BOROUGH COUNCIL of Municipal Buildings, Archway Road, Huyton, Knowsley, L36 9YU ("the Council")

with the concurrence

BROOKHOUSE GROUP LIMITED and **BROOKHOUSE PROPERTY INVESTMENTS LIMITED** having their registered office at Mercury Park Mercury Way Manchester M41 7LY ("the Owners") and **THE ROYAL BANK OF SCOTLAND PLC** having its registered office at 36 St Andrew Square Edinburgh EH2 2YB ("the Mortgagee")

RECITALS

A Words and Phrases used in this Deed are defined in Clause 2.1

B The Developer is the leasehold owner of the Site under title number MS435375

C The Council is a Local Planning Authority for the purposes of Section 106 of the Act for the area within which the Site is situated and is the party by whom the obligations in this Deed are enforceable

D The Developer submitted the Application to the Council for the Permission in respect of the Site

E The Developer has agreed with the Council to make the Contribution towards the provision of CCTV on the following terms

F The Owners are the registered proprietors of the freehold land comprised in Title Numbers MS410059 MS392945 and MS405437 which comprise the Site and other land

G The Mortgagee is the registered proprietor of a charge over land comprised in Title Number MS410059

1 **OPERATIVE PART**

1.1 This Deed is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of that Section of the Act

1.2 Subject to the Conditions Precedent the Obligations shall be enforceable by the Council as local planning authority as is provided in this Deed against the Developer and its successors in title in respect of the Site

2 **INTERPRETATION**

2.1 In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

"the Act"

the Town & Country Planning Act 1990 (as amended)

"the Application"

the application submitted by the Developer to the Council on 30 July 2001 and given reference number 01/00516/FUL

"the Conditions Precedent"

the conditions precedent set out in Clause 3

"the Contribution"

the sum of Twenty Five Thousand Pounds (£25,000)

"the Development"

the erection of 2,488 square metres extension to the existing retail store on the Site to provide an additional 1,813 square metres of retail floorspace and storage, together with reconfiguration of car parking area and construction of new exit from existing petrol filling station at the Site

"Implementation"

commencement of development by the carrying out of a "material operation" as defined in Section 56 of the Act save that the definition shall not include works of demolition site

clearance ground investigations site surveys laying of services and service media construction of boundary fencing or hoardings or archaeological investigation works (and "Implement" and "Implemented" shall be construed accordingly)

"the Obligation"

the covenants on the part of the Developer in Clause 4 of this Deed

"the Permission"

planning permission for the Development which is to be granted by the Council pursuant to the Application

"the Site"

all that land shown for the purposes of identification only edged in red on the Site Plan

"the Site Plan"

the plan annexed hereto and marked "the Site Plan"

"Working Days"

any day(s) upon which banks in the City of London are open to the general public

2.2 Where in this Deed reference is made to a Clause it is a reference to a Clause in this Deed

2.3 Where reference is made in this Deed to:

2.3.1 the Developer it shall (unless the context otherwise requires) include its successors in title; and

2.3.2 the Council it shall include any successor as Local Planning Authority

3 **CONDITIONALITY**

The Obligation is conditional upon:

3.1 the grant of the Permission; and

3.2 Implementation of the Permission

4 **THE OBLIGATION**

4.1 Subject to satisfaction of the Conditions Precedent the Developer covenants with the Council that it will on Implementation of the Permission pay to the Council the Contribution **ON CONDITION THAT** the Contribution shall only be used by the Council towards general environmental improvements in the vicinity of the Site including one or more of the following activities:

4.1.1 the provision of CCTV equipment in the close vicinity of the Site as part of the Council's Prescot CCTV programme; and/or

4.1.2 such other purposes as may be agreed between the Developer and the Council

4.2 If any part of the Contribution is unexpended at the date five years after the date on which it has been paid it shall be repaid to the Developer by the District Council within twenty-one Working Days together with any accrued interest

5 **RELEASE AND REVOCATION**

5.1 The Developer shall on parting with the whole of its interest in the Site be released from all liability under the terms of this Deed (save in respect of antecedent breaches)

5.2 This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of either the Council or the Developer) if the Conditions Precedent shall not have been satisfied within 5 years after the date of this Deed

6 **GENERAL**

6.1 Unless the right of enforcement is expressly granted it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999

6.2 The parties may agree to rescind or vary this Deed without the consent of a third party to whom an express right to enforce any of its terms has been provided

6.3 Any notice or other written communication to be served by one party upon another under this Deed shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered or recorded delivery post or using the Document Exchange service or sent by facsimile transmission (provided in the latter case a hard copy of the

notice or written communication is sent by first class post or Document Exchange the same day and the sender has received and produced if required the facsimile transmission report indicating that all pages of the notice or other written communication have been sent) and that :

6.3.1 in the case of the Council they are addressed to the Head of Planning and Building Control Services;

6.3.2 in the case of the Developer they are addressed to the Developer marked for the attention of the Company Secretary bearing the reference "Prescot – Unilateral Undertaking"

6.4 nothing in this Deed shall require the performance of any obligation whatsoever in upon or under land outside the ownership of the party to perform the obligation unless such land shall be within the public highway

7 **THE OWNERS AND MORTGAGEE**

7.1 The Owners and Mortgagee have joined in this Deed for the purposes only of giving effect to its provisions

7.2 The Developer shall assume liability in respect of and indemnify and keep indemnified the Owners against all actions suits costs claims demands or expenses arising from this Undertaking **PROVIDED THAT:**

7.2.1 the Owners shall promptly notify the Developer of any such claim which it receives;

7.2.2 the Owners shall not compromise any such claim without the consent of the Developer; and

7.2.3 this indemnity shall not extend to any liability arising out of any deliberate act of or negligence of the Owners

EXECUTED AS A DEED by the Developer the Owners and the Mortgagee on the date written above

EXECUTED AS A DEED by **TESCO**)

STORES LIMITED in the presence of)

Director

Secretary

EXECUTED AS A DEED by **BROOKHOUSE**)

GROUP LIMITED in the presence of)



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EXECUTED AS A DEED by **BROOKHOUSE**)

PROPERTY INVESTMENTS LIMITED)

in the presence of)



EXECUTED AS A DEED by **THE ROYAL BANK**)

OF SCOTLAND PLC in the presence of)

[redacted]