00/00211/FUL

DATED 25 MARCH 2002

(1) KNOWSLEY METROPOLITAN BOROUGH COUNCIL

- and -

(2) McLAGAN INVESTMENTS LIMITED

AGREEMENT

relating to

Land at Lathom Road, Huyton pursuant to section 106 of the Town & Country Planning Act 1990

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THIS AGREEMENT is made on 25 March 2002

BETWEEN

(1) **KNOWSLEY METROPOLITAN BOROUGH COUNCIL** of Municipal Buildings, Archway Road, Huyton which is the local planning authority for the area in which the Property is situated for the purposes of the Act (**"Council"**);

(2) **McLAGAN INVESTMENTS LIMITED** whose registered office is at Asda House, Southbank, Great Wilson Street, Leeds LS11 5AD who is interested in the Property for the purposes of section 106 of the Act (**"Developer"**).

1. DEFINITIONS

In this agreement the terms set out in the particulars at clause 1 shall have the respective meanings given to them there and unless the context otherwise requires:

"Act" means the Town and Country Planning Act 1990;

"Car Park" The car park to be constructed as part of the Development which is shown shaded green on plan 2 annexed at schedule 1;

"Development" means the development of a 114,000 ft^2 superstore within class A1 of the Town and Country Planning (Use Classes) Order 1987 together with associated landscaping, car parking, new access, highway improvement works, erection of feature signage tower and site for potential doctors surgery on the Property to be permitted by the Planning Permission;

"Implementation" means the implementation of the Development by the carrying out on behalf of the Developer pursuant to the Planning Permission of a material operation as defined in section 56(4) of the Act which is not a Preparatory Operation;

"Minimum Spend" means the amount of five pounds (£5) spent at the Asda Store to be built as part of the Development on one visit to be evidenced by a till receipt, or such other sum whether more or less than five pounds (£5) as shall be notified by the Developer to the Council;

"Planning Permission" means the planning permission to be granted for the Development in accordance with the application for full planning permission submitted by Asda Stores

Limited under given reference 00/00211/FUL and in the form of the draft planning permission annexed as schedule 3;

"Preparatory Operation" means:

(a) an operation or item of work or ancillary to:

(i) archaeological investigations or

(ii) demolition or

(iii) site clearance not including any building, engineering or mining operations or

(iv) site or soil investigations or

(v) site re-mediation works not including any building, engineering or mining operations

(b) temporary works including without prejudice to the generality of the term the erection of temporary fencing and hoardings.

"Property" means all that freehold property known as land at Lathom Road being:

(a) registered at HM Land Registry under title numbers MS53110;

(b) land in which the Developer is interested for the purposes of section 106 of the Act by virtue of a Contract for the sale and purchase of the Property between the Developer and the Council dated 20 March 2000 as amended by a Deed of Variation dated 18 October 2000;

(c) shown edged red for identification only on plan 1 annexed at schedule 1.

"SCOOT System" means the split-cycle-offset-optimisation-technique traffic signal control strategy for roads in the vicinity of the application site within Huyton town centre;

"Superstore" means the retail store to be constructed as part of the Development;

2. INTERPRETATION

In this agreement (unless the context otherwise requires):

2.1 Excepting clause 7.4 references to any party shall include the successors in title of that party and those deriving title through that party and in case of the Council the successors to its functions as local planning authority.

2.2 Obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally.

2.3 Words importing persons including firms, companies and bodies corporate and vice versa.

2.4 Words importing the single shall include the plural and vice versa.

2.5 Words importing any one gender shall include either other gender.

2.6 Construction of this agreement shall ignore the headings, contents, list and front sheet all of which are for reference only.

2.7 References to a numbered clause, schedule, paragraph, plan or appendix are references to the clause, schedule, paragraph, plan or appendix 1 or 2 in this agreement so numbered.

2.8 An obligation to do something includes an obligation to procure it to be done.

2.9 An obligation not to do something includes an obligation not to allow it to be done.

3. ENABLING PROVISIONS

This agreement:

3.1 Is a planning obligation made by agreement pursuant to provisions of section 106 of the Act and all of the enabling powers with the intention of binding the Property and every part of the Property in accordance with that section.

3.2 Has been entered into by the Council pursuant to its planning committee's resolution of 12 October 2000.

4. COMMENCEMENT

All obligations contained in this agreement shall come into effect and bind the Developer only from Implementation.

5. COVENANTS WITH THE COUNCIL

The Developer:

5.1 Covenants with the Council with the intention of binding the Property and every part of the Property:

5.1.1 to observe and perform the obligations set out in schedule 2; and

5.1.2 not to make any claim for compensation in respect of any condition restriction or provisions imposed by this agreement;

5.2 Agrees with Council that:

5.2.1 the obligations in this clause 5 and in schedule 2 constitute planning obligations for the purposes of section 106 of the Act;

5.2.2 the Council, is the local planning authority by whom the obligations in this clause 5 and schedule 2 are enforceable for the purposes of section 106 of the Act.

6. COVENANTS BY THE COUNCIL

The Council covenants with the Developer:

6.1 Forthwith to determine the planning application number 00/00211/FUL in respect of the Development and forthwith upon the determination of the application to issue the Planning Permission.

6.2 Upon written request of the Developer at any time after the obligations of the Developer under this agreement have been performed or otherwise discharged to issue written confirmation thereof.

6.3 The Council covenants to spend the sum received pursuant to schedule 2, clause 4 in connection with the SCOOT System.

7. DATE CESSATION AND LIABILITY

7.1 This agreement shall cease to be effective if the planning permission:

7.1.1 is quashed as a result of any legal proceedings;

7.1.2 expires before Implementation;

7.1.3 is revoked;

7.1.4 is modified by any statutory procedure without the consent of the Developer.

7.2 The cessation of this agreement shall not affect the liability of any party for any earlier breach.

7.3 Upon cessation of this agreement the Council shall forthwith procure the removal (or in the case of a cessation affecting part of the Property modification) of entries relating to this agreement from the register of local land charges.

7.4 The Developer shall not be liable for any breach of this agreement unless it is interested in the part of the Property in which the breach occurs for the purposes of section 106 of the Act and shall not be liable for any breach after it has parted with its interest in any part of the Property in respect of which the breach occurs.

8. LOCAL AUTHORITY POWERS

Nothing in this agreement fetters or restricts the exercise by the Council of its powers.

9. NOTICES

Any notice required or authorised to be given under this agreement shall be given in accordance with section 329 of the Act provided that:

9.1 Notices to the Council shall be marked for the attention of the Chief Executive reference DCCS/BSOL/KWP and copied to the Director of Planning and Development under reference PS/JG/00/00211/FUL.

9.2 Notices to the Developer shall be served at the Developer's registered office and also at such other address for the service as the Developer shall specify to the Council.

10. LOCAL LAND CHARGE

10.1 This agreement will be registered by the Council as a local land charge under the Local Land Charges Act 1975.

10.2 Upon compliance by the Developer with its obligations under clause 5 and Schedule 2 of this agreement the Council shall upon the request of the Developer remove any entry in the local land charges register for the land relating to this agreement.

11. DISPUTE RESOLUTION

11.1 Any dispute or difference arising between the parties to this agreement shall be referred to the decision of a single arbitrator to be agreed upon by the parties so effected or in default of such agreement to be nominated (on the application of one of the parties) by the President for the time being of the Royal Town & Planning Institute.

11.2 Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996.

12. RIGHTS OF THIRD PARTIES

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not effect any right or remedy of any person which exists or is available otherwise than pursuant to that act.

13. CONSENTS

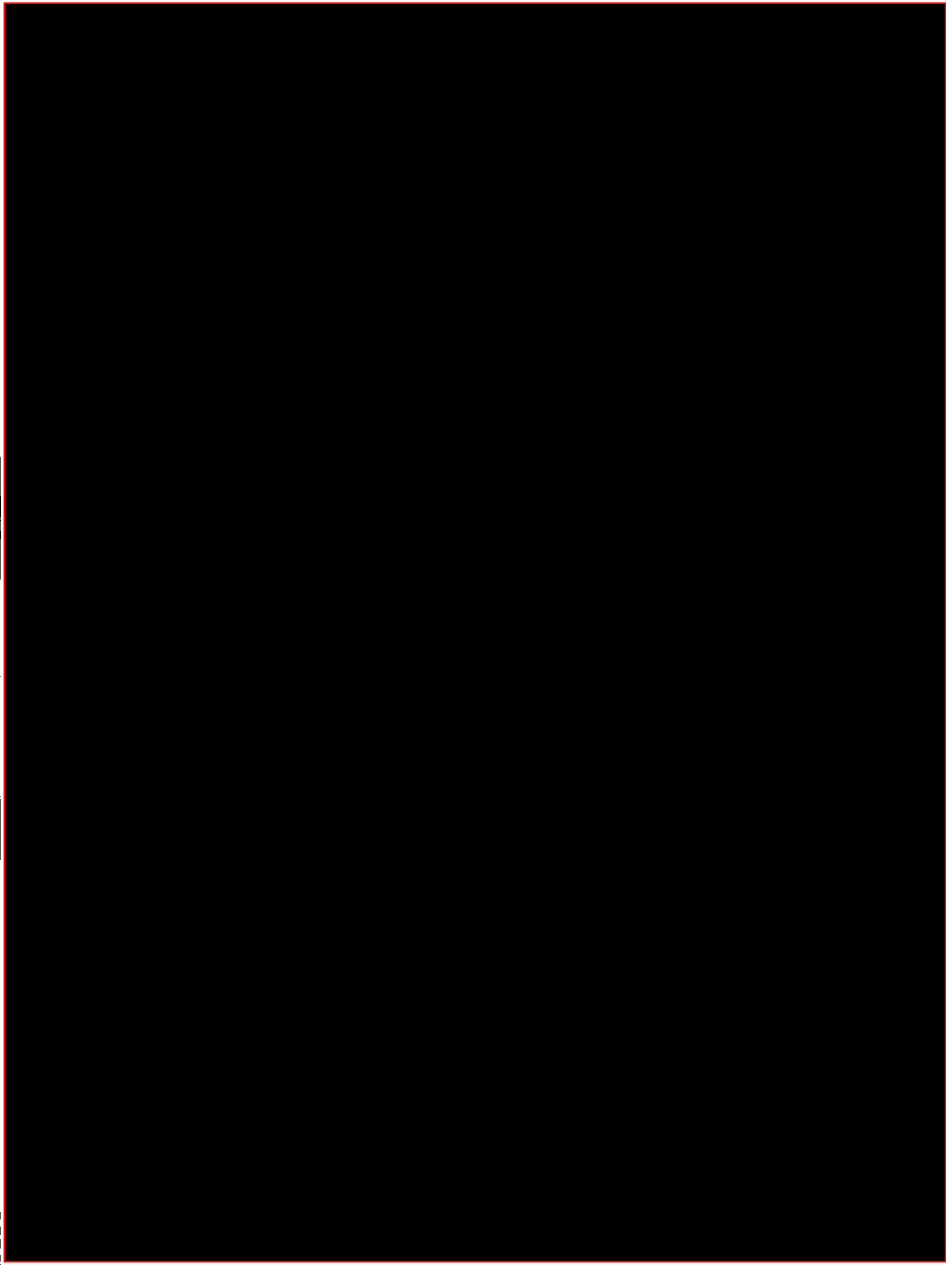
Any consent or approval required of or by any party under this agreement:

13.1 Must be obtained before the act or event to which it applies carried out or done.

13.2 Is to be effective only when such consent or approval is given in writing.

13.3 Shall not be unreasonably withheld or delayed.

IN WITNESS whereof the parties have caused their respective common seals to be affixed the day and year first above written.



SCHEDULE 1

Plans

SCHEDULE 2

The Developer's covenants with the Council

1. The Car Park shall be operated in accordance with the following management scheme:

   1.1 There shall be no charge for the parking in the Car Park for up to one hour.

   1.2 Subject to a user of the Car Park having spent the Minimum Spend in the Superstore on that visit there shall be no charge for parking in the Car Park for up to three hours.

   1.3 Any person not falling within paragraph 1.1 or 1.2 shall be required to pay 75 pence per hour for parking on the Car Park, or such other sum whether lesser or greater than this that the Developer shall notify the Council. The Developer shall give the Council at least 21 days notice in writing of its intention to alter the charge for parking on the Car Park and shall have regard to any representations made by the Council in fixing the revised charge level.

   1.4 Any person using the Car Park for in excess of three hours shall be required to pay £1.50 per hour for every hour of parking on the Car Park over three hours, or such other sum whether lesser or greater than this that the Developer shall notify to the Council. The Developer shall give the Council at least 21 days notice in writing of its intention to change the charge for parking on the Car Park and shall have regard to any representations made by the Council in fixing the revised charge level.

2. The Property shall be managed in accordance with a Green Travel Plan encompassing the principles set out in schedule 4 which shall be a scheme proposing arrangements and incentives to encourage those employed on the Property to access the Property by means of transport other than the car.

3. To commission, in consultation with the Council, a competition or an artist, to provide a design for new art work to be integrated within the Development to an approximate value of £7,500 including VAT (with a tolerance of 5% either way) including all the costs of commissioning the art work and any competition costs. The installation of such art work to be completed within 12 months of the date of opening of the Superstore.

4. The Developer covenants to pay the sum of £65,000 to the Council upon the implementation of the planning permission as a contribution to the proposed Scoot system.

SCHEDULE 3

Draft planning permission

SCHEDULE 4

Green Transport Plan

1. Appointment of Green Travel Plan Co-ordinator

Asda Stores Limited shall appoint a Green Travel Plan Co-ordinator to be responsible for developing initiatives internally and externally, and co-ordinating the monitoring and review process.

The name of the appointee shall be notified to the Council within three months of the first opening of the store. Asda Stores Limited shall notify the Council of any change in the appointed Green Travel Plan Co-ordinator.

2. Undertaking of travel surveys and preparation of Green Travel Plan

The Green Travel Plan Co-ordinator shall be responsible for undertaking travel surveys to establish employee travel patterns and the reason why particular modes are preferred, the first such survey to be undertaken within six months of the opening of the store.

The information derived from the surveys shall be made available to the Council and shall be used by the Travel Plan Co-ordinator as the basis for the first Green Travel Plan, which shall be completed and presented to the Council within nine months of the opening of the store.

The Green Travel Plan shall incorporate targets and associated timescales for the meeting of such targets, and its principal aim shall be to promote and encourage non-car modes of travel to/from the store.

The Green Travel Plan shall be reviewed on an annual basis or in accordance with longer timescales as agreed in writing by the Council, and the targets set out in the Plan shall be monitored on a continual basis, and refined as and when necessary.

The Green Travel Plan Co-ordinator shall liaise with Knowsley MBC, the local community and public transport operators as part of the monitoring and review process of the Green Travel Plan.

The Green Travel Plan shall incorporate the following:

2.1 Measures to encourage cycling to include:

2.1.1 the provision of information to employees on cycle routes;

2.1.2 discounts to employees to encourage the purchase of bicycles sold through the company;

2.1.3 a ride home facility in the event of emergencies; and

2.1.4 promotion of cycling as an aid to fitness.

2.2 Measures to encourage public transport use to include:

2.2.1 consideration of offering interest free loans to colleagues for the purchase of public transport season tickets.

2.2.2 seeking to negotiate discounts for colleagues with public transport operators;

2.2.3 provision of updated public transport information and the display of this in a prominent position within the store and in staff areas: and

2.2.4 consideration of offering incentives to colleagues to use public transport - eg promotion voucher scheme

2.3 Measures to reduce car travel to include:

2.3.1 incentives to encourage car sharing for colleagues;

2.3.2 encouragement of car share clubs by helping to match colleagues who travel from similar areas; and

2.3.3 a ride home facility in the event of emergencies.