

08/1096

DATED 13 NOVEMBER

2009

THE RYEDALE DISTRICT COUNCIL

and

LEONARD BARRY CONING AND ALMA MARIE CONING

KENNETH MICHAEL BARKER AND MARGARET JEAN BARKER

ROBSONS MOTOR SERVICES LTD

T E BETEILIGUNGS GMBH

LIDL UK GmbH

AGREEMENT

pursuant to Section 106 of the
Town and Country Planning Act 1990 as amended
and Section 111 of the Local Government Act 1972
in respect of land at Norton, Malton in
the County of North Yorkshire

K A Winship
Council Solicitor
MALTON

THIS DEED is made the _____ day of _____ 2009

BETWEEN

- 1 **THE RYEDALE DISTRICT COUNCIL** whose principal office is at Ryedale House Malton in the County of North Yorkshire YO17 7HH ("the Council")
- 2 **LEONARD BARRY CONING AND ALMA MARIE CONING** both of 7B Welham Road, Norton, Malton, North Yorkshire YO17 9DP
KENNETH MICHAEL BARKER AND MARGARET JEAN BARKER both of Castlegate Garage, Sheepfoot Hill, Malton, North Yorkshire YO17 7DU
ROBSONS MOTOR SERVICES LTD Company Number 1595017 whose registered office is at 4A Welham Road, Norton, Malton, North Yorkshire YO17 9DR
T E BETEILIGUNGS GMBH of 19 Worple Road, Wimbledon, London SW19 4JS ("the Owners")
- 3 **LIDL UK GmbH** (Company Number FC017929) of 19 Worple Road, Wimbledon, London SW19 4JS ("the Developer")

1. DEFINITIONS

- | | | |
|-----|--------------------------------|---|
| 1.1 | "Commencement of Development": | the carrying out on the Land of a material operation pursuant to the Planning Permission as defined in Section 56 (i) of the Act save for the purpose of this Agreement when of determining whether or not a material operation has been carried out there shall be disregarded the following operations marking out surveying ground investigations archaeological investigations demolition site clearance site preparation, provision of security fencing and "Commence" and "Commencement" shall be construed accordingly |
| 1.2 | "Planning Application" | Application Number 08/01096/MFUL |
| 1.3 | Section 151 Officer | means the Section 151 Officer for Ryedale District Council or such other Officer as may from time to time be nominated by him or carry out the functions at the date hereof carried out by him |

- 1.4 "Strategic Transport Contribution " The sum of £165,000 towards the proposed improvements to the A64 Brambling Fields junction pursuant to the Malton and Norton Transportation Strategy as outlined in the Draft Supplementary Planning Document: Developer Contributions towards Strategic Transport Improvements at Malton and Norton (Interim Version) July 2007 and for no other purpose.
- 1.5 "the Land": The land as described in the First Schedule to this Agreement

RECITALS

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within the Land is situated
- (2) The Owners are the Owners in fee simple in possession of the Land (subject as hereinafter mentioned) but otherwise free from encumbrances
- (3) The Developer has applied to the Council for permission to develop the Land in the manner and for the uses set out in Second Schedule hereto ("the Proposed Development")
- (4) The Council is satisfied that the performance by the Owners and Developer of the covenants herein will remove certain arguments against or objections to the Proposed Development which would without the execution of this Agreement have led to the refusal of consent for the Planning Application
- (5) The Owners and the Developer have agreed to enter into this Agreement with the Council and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and his part to be observed and performed

NOW THIS DEED WITNESSES as follows:-

1 THIS Agreement is made pursuant to Section 106 of the Town & Country Planning Act 1990 as amended ("the 1990 Act") Section 111 of the Local Government Act 1972 and all other enabling powers the parties hereunto enabling and the covenants in this Agreement are planning obligations for the purpose of the 1990 Act which are enforceable by the Council

2 THE Owners subject to clause 3.10 below) hereby covenant with the Council that the Land shall be bound by the planning obligations specified in the Third Schedule hereto which shall be enforceable by the Council against the Owners and their successors in title.

3 IT is agreed and declared as follows:-

3.1 The expressions "the Council" and "the Owners" and "the Developer" shall include their respective successors in title and assigns

3.2 For the purpose of such parts of this Agreement as may be subject to the Rule against Perpetuities that part of the Agreement shall remain in force for the period of eighty years from the date hereof which shall be the Perpetuity Period applicable to this Agreement

3.3 The Developer shall on execution of this Agreement pay to the Council a fee to cover the Council's reasonable legal costs in connection with the negotiation and completion of this Agreement

3.4 In this Agreement:

3.4.1 the clause headings do not affect its interpretation

3.4.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a paragraph are to paragraph of that Schedule;

3.4.3 references to any statute or statutory provision include references to:

3.4.3.1 All Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement; and

3.4.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision; and

3.4.3.3 includes any amendment extension or re-enactment of it for the time being in force

3.4.4 references to the Land include any part of it;

3.4.5 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected

3.4.6 words importing the masculine gender shall include the feminine gender and vice versa and words importing the singular number shall include the plural number and where there are two or more persons included in the expression "the Owners" or the "Developer" covenants expressed to be made by or with the Owners or the Developer shall be deemed joint and several

3.5 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or to enforce any of the obligations in this Agreement

3.6 This Agreement is a local land charge and shall be registered as such and shall come into full force and effect when the Proposed Development is commenced and not otherwise

3.7 No party to this Agreement shall be liable for the performance or observance of the covenants on his its or their part contained in this Agreement after he she or they shall have parted with all interest in his her or their part of the Land. Neither the reservation of any

rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause 3.7

3.8 This Agreement shall cease to have effect, in so far only as it has not already been complied with if:

3.8.1 subject to clause 3.9, the Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

3.8.2 the Planning Permission is modified by any statutory procedure without the consent of the Owners and Developer; or

3.8.3 the Planning Permission expires before the Commencement of Development occurs

3.9 Where the Agreement comes to an end under clause 3.8:

3.9.1 the Council is to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Land ;and

3.9.2 any monies paid under this Agreement to the Council , with the exception of fees paid under clause 3.3, are to be returned to the party that made the payment within one month of the Agreement coming to an end together with interest accrued on the monies from and including the date of payment to and including the date of repayment at the base rate form time to time of the organisation providing banking services to the Council

3.10 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

THE FIRST SCHEDULE
The Land

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at and known as land at 4A Welham Road, Norton, Malton, North Yorkshire YO17 9DR shown for the purposes of identification edged in red on the Plan

THE SECOND SCHEDULE
Particulars of the Proposed Development

Erection of food store with associated parking and erection of car dealership with associated vehicle service centre, external vehicle display area and parking and formation of joint vehicular access.

THE THIRD SCHEDULE
Owners' and Developer's Obligations

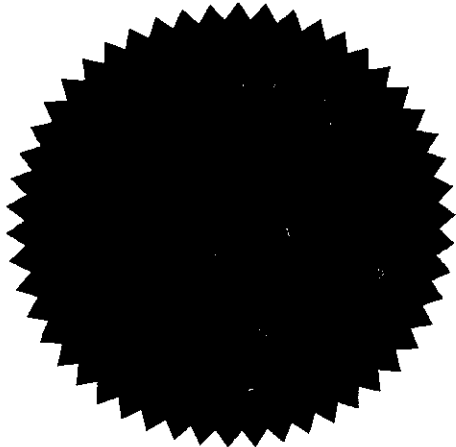
Strategic Transport Contribution

- 1 The Owners and the Developer covenant to pay to the Council prior to the opening to the general public of the food store as is permitted by the Planning Permission the Strategic Transport Contribution

THE FOURTH SCHEDULE
Council's Obligations

1. The Council hereby covenants with the Owners and the Developer to use the Strategic Transport Contribution for the sole purposes specified in this Agreement
2. The Council covenants with the Owners and the Developer that it will repay to the party that paid the Strategic Transport Contribution such amount of any payment made by the Owners or Developer to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement within Ten (10) years of the date of receipt by the Council of such payment. The date of receipt to be certified by the Council's Section 151 Officer
3. The Council shall provide to the Owners or Developer such evidence, as they shall reasonably require in order to confirm the expenditure of the sums paid by the Owners or Developer under this Agreement.

EXECUTED AS A DEED BY
AFFIXING
THE COMMON SEAL of THE)
RYEDALE DISTRICT COUNCIL)
is authenticated by:)



Chairman

Dinah Hall

Council Solicitor

KW Martin

Minute P. 223-11
2008
Reg No. 6240
Initials *JB*

EXECUTED as a deed by)
LIDL UK GMBH)
acting by two directors)

Director

[Signature]

Director

EXECUTED as a deed by)
T E BETEILIGUNGS GMBH)
acting by two directors)

Director

[Signature]

Director

EXECUTED as a DEED by LEONARD BARRY CONING in the presence of:

Witness Signature

Witness Signature

Witness Name (Print in Block Capitals): ~~LEONARD BARRY CONING~~ *x*

Witness Occupation: ~~DIESEL ENGINEER,~~

Witness Address: ~~13, WELHAM ROAD~~
NORTON,
MALTON
YO17 9DP.

[Signature] *x*
DAVID MURPHY
DEVELOPMENT EXECUTIVE
LIDL UK GMBH
MOORDALE ROAD
NEWTON Aycliffe
WS 6BA

EXECUTED as a DEED by ALMA MARIE CONING in the presence of:

~~Witness Signature~~ *A. M. Coning* x
~~Witness Signature~~ x
Witness Name (Print in Block Capitals): ~~A. M. Coning~~ DAVID MURPHY x
Witness Occupation: N/A DEVELOPMENT EXECUTIVE
Witness Address: 73 WELHAM ROAD LIDL UK CUMRU
NORTHON, MALTON MOORDALE ROAD, DL5 6BA
YO17 9DP.

EXECUTED as a DEED by KENNETH MICHAEL BARKER in the presence of:

~~Witness Signature~~ *K. M. Barker* x
~~Witness Signature~~ x
Witness Name (Print in Block Capitals): ~~K. M. BARKER~~ DAVID MURPHY x
Witness Occupation: ~~CARAGE PROP.~~ DEVELOPMENT EXECUTIVE
Witness Address: ~~STONE GABLES CASTLE HOWARD RD MALTON YO17 7AY~~ LIDL UK CUMRU
MOORDALE ROAD
DL5 6BA

EXECUTED as a DEED by MARGARET JEAN BARKER in the presence of:

~~Witness Signature~~ *M. J. Barker* x
~~Witness Signature~~ x
Witness Name (Print in Block Capitals): ~~M. J. BARKER~~ DAVID MURPHY x
Witness Occupation: N/A DEVELOPMENT EXECUTIVE
Witness Address: ~~Stone Gables Castle Howard Rd Malton YO17 7AY~~ LIDL UK CUMRU
MOORDALE ROAD
DL5 6BA

EXECUTED as a deed by)
ROBSONS MOTOR SERVICES LTD)
acting by:)

Director/Secretary B Daley

Director *H. J. Daley*

Information for the user:
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CHRONICLE
Dwain Keal
COUNCIL ENGINEER
W. Keal

[Signature]

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