

08/1144

DATED 26<sup>th</sup> October 2009

**THE RYEDALE DISTRICT COUNCIL**

and

**WM MORRISON SUPERMARKETS Plc**

and

**SAFEWAY STORES LIMITED**

**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 Castlegate, Malton in  
the County of North Yorkshire

K A Winship  
Council Solicitor  
MALTON

**THIS DEED** is made the *26<sup>th</sup>* day of *October* 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 **WM MORRISON SUPERMARKETS Plc (Company Registration Number 358949)** Registered Office Hilmore House, Gain Lane, Bradford, BD3 7DL; and  
**SAFEWAY STORES LIMITED (Company Registration Number 746956)** Registered Office Hilmore House, Gain Lane, Bradford BD3 7DL (together "the Owner")

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 (4) 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 08/01144/MFUL
- 1.3 "Proposed Development" means the erection of two storey and single storey extensions to the south and east elevations of the existing retail store, use of existing staff accommodation as an extension to the warehouse and alterations to the layout of parking spaces as more particularly described in the Planning Application
- 1.4 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

*storey*  
*08/01144/MFUL*  
*kmw*  
*Drumhead*

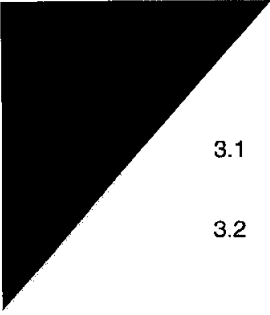
- 1.5 "Strategic Transport Contribution " The sum of £187,500 (One Hundred and Eighty Seven Thousand Five Hundred Pounds) towards the proposed improvements to the A64 Brambling Fields junction pursuant to the Malton and Norton Transportation Strategy as outlined in the Draft Supplementary Planning Document: Developer Contributions towards Strategic Transport Improvements at Malton and Norton (Interim Version) July 2007 and for no other purpose.
- 1.6 "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 Council is satisfied that the performance by the Owners 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
- (4) The Owners 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** Owner (subject to clause 3.8 below) hereby covenants with the Council that the Land shall be bound by the planning obligations specified in the Second Schedule hereto which shall be enforceable by the Council against the Owner and their successors in title.
- 3 **IT** is agreed and declared as follows:-

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- 3.1 The expressions "the Council" and "the Owner" 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 Owner shall on execution of this Agreement pay to the Council a fee of £300 plus VAT cover the Council's 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 paragraphs 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 Owner" covenants expressed to be made by or with the Owner or the 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 Owner 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
- 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 Morrisons Supermarket, Castlegate Malton, North Yorkshire YO17 7DT shown for the purposes of identification edged in red on the Plan and registered at HM Land Registry under title numbers NYK230010, NYK114347, NYK166896.

**THE SECOND SCHEDULE**  
**Owner's Obligations**

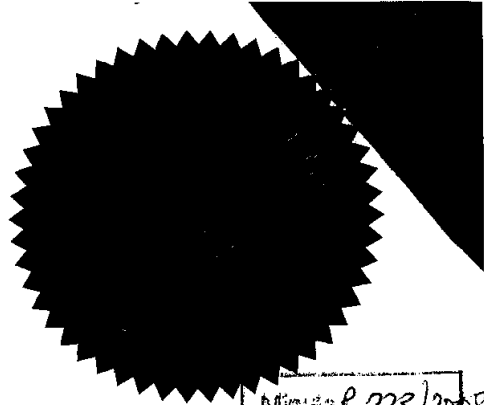
**Strategic Transport Contribution**

- 1 The Owner covenants to pay the Strategic Transport Contribution to the Council on Commencement of Development

**THE THIRD SCHEDULE**  
**Council's Obligations**

1. The Council hereby covenants with the Owner to use the Strategic Transport Contribution for the sole purposes specified in this Agreement
2. The Council covenants with the Owner that it will repay such amount of any payment made by the Owner 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 Owner such evidence, as they shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Agreement.

THE COMMON SEAL of THE  
RYEDALE DISTRICT COUNCIL  
was hereunto affixed and  
is authenticated by: )  
)  
)  
)



Chairman

*Duan Keal*

Council Solicitor

*K. W. M. M. P.*

Minutes P. 223/2008  
Reg No. 6236  
Initialed CW

EXECUTED as a deed by  
WM MORRISON SUPERMARKETS Plc )  
)

*[Signature]*

*[Signature]*

EXECUTED as a deed by  
SAFeway STORES LIMITED

*[Signature]*

*[Signature]*

**Prisons, Castlegate, MALTON**

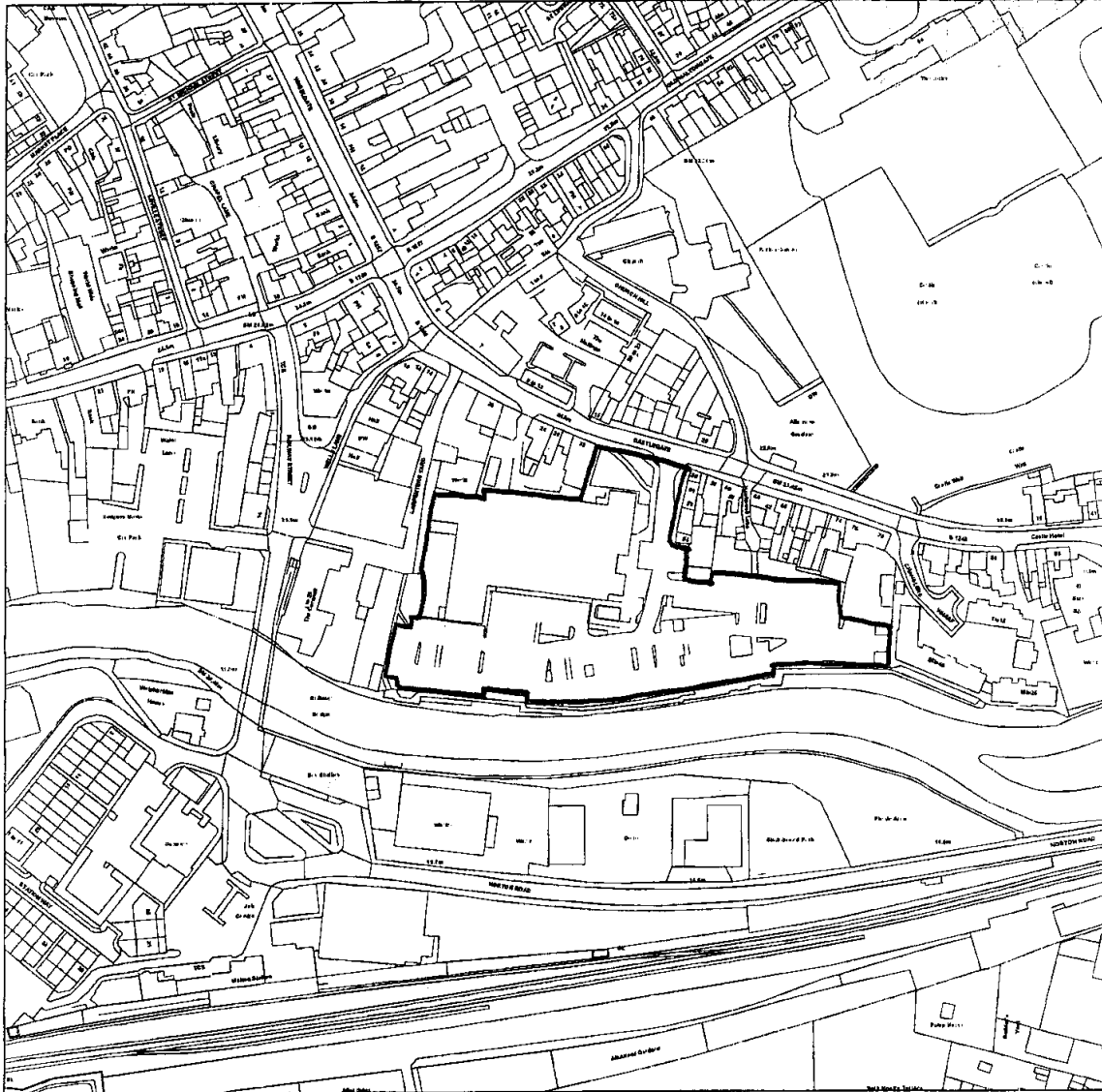
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GIS by ESRI (UK)



Scale : 1:2500

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Organisation	Not Set
Department	Not Set
Comments	Not Set
Date	18 June 2009
SLA Number	Not Set

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