

SEALED COPY

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ORIGINAL IN  
STRONG ROOM

DATED 23<sup>rd</sup> November 2011

- (1) ROSSENDALE BOROUGH COUNCIL
- (2) VENUS WORLD LIMITED
- (3) JAMES HARGREAVES (BACUP) LIMITED
- (4) BRIDGE PROPERTIES LIMITED
- (5) OPTIMISATION DEVELOPMENTS LIMITED

## **AGREEMENT**

under section 106 Town and Country Planning Act 1990  
relating to Land off Lee Street, Bacup

CLB/Z12/286

Stuart Sugarman  
Director of Business  
Rossendale Borough Council  
The Business Centre,  
Futures Park,  
Bacup. OL13 0BB

THIS AGREEMENT is made on the 23<sup>rd</sup> day of November 2011

**BETWEEN:**

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Newchurch Road, Bacup, Lancashire, OL13 0BB ("The Council")
- (2) **VENUS WORLD LIMITED** of 11-13 Upton Lane, Forest Gate, London, E7 9PA ("The First Owner")
- (3) **JAMES HARGREAVES (BACUP) LIMITED** of Irwell Mill, Gas Street, Bacup OL13 0AG ("The Second Owner")
- (4) **BRIDGE PROPERTIES LIMITED** (Company No. 03639047) of 1 Worsley Court, High Street, Walkden, Worsley, Manchester M28 3NJ ("The Developer")
- (5) **OPTIMISATION DEVELOPMENTS LIMITED** (Company No. 06653349) of Hilmore House, Gain Lane, Bradford BD3 7DL ("The Applicant")

**BACKGROUND**

- (A) For the purposes of the 1990 Act, the Council is the Local Planning Authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement
- (B) The First Owner is registered at H. M. Land Registry as the freehold proprietor of the part of the Site described in the First Schedule under Title Number LA488264
- (C) The Second Owner is registered at H. M. Land Registry as the freehold proprietor of the part of the Site described in the First Schedule under Title Number LA685360 subject to a Legal Charge dated 24<sup>th</sup> January 2005 in favour of the Mortgagee National Westminster Bank PLC

- (D) The Developer has an option to acquire Land registered under title LA685360 dated 31<sup>st</sup> March 2006 and an option to acquire land registered under title number LA934726 dated 10<sup>th</sup> October 2006 and on 21<sup>st</sup> July 2006 entered into a conditional contract to purchase the land registered under title number LA488264.
- (E) The Applicant has by application reference 2010/692 ("The Application") applied to the Council for permission to develop the Site in the manner and for the uses set out in the Application and in the plans specifications and particulars deposited with the Council and forming part of the Application more particularly set out in the Second Schedule ("The Development")
- (F) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the First and Second Owner, the Developer, the Applicant and their successors in title as hereinafter provided and where the First and Second Owners, Developer and Applicant are more than one legal entity all of the obligations herein can be enforced against all of them jointly and against each individually
- (G) The Council has decided to grant planning permission for the Development in accordance with the Application subject to the making of this Agreement without which planning permission for the Development would not have been granted
- (H) The First and Second Owners, the Developer and the Applicant agree:-
- (i) To notify the Council of its intention to commence the Superstore part of the Development and to pay the sum of £98,500 "the Transport, Heritage and Improvements Sum" to the Council in accordance with

Schedule 3

- (ii) Four months prior to first opening to provide to agree in writing with the Council a Car Park Management Plan and implement the Car Park Management Plan

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

1.1 In this Agreement, the following words and expressions have the following meanings:

**“1990 Act”** the Town and Country Planning Act 1990

**“Application”** means an application for full planning permission for the development of the Site made by the Applicant carrying the reference 2010/692

**“Commencement Date”** means the date specified in a written notice served upon the Council as the date upon which the Superstore part of the Development is to be commenced or if no such notice is served the actual date upon which the Superstore part of the Development was begun within the meaning of Section 56 of the Act

**“Commencement of Development”** the date on which any material operation as defined in Section 56(4) of the Act forming part of the Development is to be carried out

<b>“Development”</b>	the development of the Site in accordance with the Permission and described in the Second Schedule
<b>“Car Park Management Plan”</b>	a management plan to be agreed in writing with the Council for use of the Car Parking Areas of the Development as public short stay parking for members of the public both visiting the Superstore and not visiting the said store and instead visiting Bacup town centre
<b>“Permission”</b>	the planning permission to be granted in pursuance of the Application
<b>“Plan 1”</b>	Plan 1 attached to this Agreement
<b>“Site”</b>	the land described in the First Schedule and illustrated on the red edged plan attached to the Application
<b>“Transport, Heritage and Improvements Sum”</b>	the sum of ninety eight thousand five hundred pounds (£98,500) towards transport to include Traffic Regulation Orders and heritage initiatives in the vicinity to include but not limited to funding towards improvement of external spaces beyond the boundaries of the Site and/or face-lifting to elevations of prominently located buildings in Bacup Town Centre Conservation Area.

2. **NOW THIS DEED** is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and WITNESSES as follows:-
  - 2.1 It is agreed and declared as follows:-
  - 2.2 The expressions "the Council", "the First Owner", "the Second Owner", "the Developer" and "the Applicant" shall include their successors in title and assigns
  - 2.3 This Agreement is a local land charge and shall be registered as such but only against the Site, and in respect of that site
  - 2.4 The Applicant agrees to pay the Council's reasonable legal fees of £1000 relating to the preparation of the Agreement on execution of this Agreement
  - 2.5 **THE FIRST AND SECOND OWNER, THE DEVELOPER AND THE APPLICANT** for itself and its successors in title and assigns of the Site hereby jointly and severally covenants with the Council
    - 2.5.1 to pay the Transport, Heritage and Improvements Sum to the Council increased with inflation in accordance with Clause 2.6.2 until the date payment is due under the terms of this Agreement
    - 2.5.2 to pay to the Council interest in accordance with Clause 2.6.3 on any sum due under this Agreement which remains unpaid after the same has become due
  - 2.6 **IT IS HEREBY AGREED AND DECLARED** as follows:-
    - 2.6.1 the covenants contained in this Agreement shall only come into effect on the Commencement Date unless specifically indicated in this Agreement
    - 2.6.2 the Transport, Heritage and Improvements Sum or any part thereof shall

# PLAN 1

Item	Code	Description	Quantity	Unit
1	100	100mm x 100mm x 100mm	100	m <sup>3</sup>
2	200	200mm x 200mm x 200mm	200	m <sup>3</sup>
3	300	300mm x 300mm x 300mm	300	m <sup>3</sup>
4	400	400mm x 400mm x 400mm	400	m <sup>3</sup>
5	500	500mm x 500mm x 500mm	500	m <sup>3</sup>
6	600	600mm x 600mm x 600mm	600	m <sup>3</sup>
7	700	700mm x 700mm x 700mm	700	m <sup>3</sup>
8	800	800mm x 800mm x 800mm	800	m <sup>3</sup>
9	900	900mm x 900mm x 900mm	900	m <sup>3</sup>
10	1000	1000mm x 1000mm x 1000mm	1000	m <sup>3</sup>



Red line indicates the development site boundary.

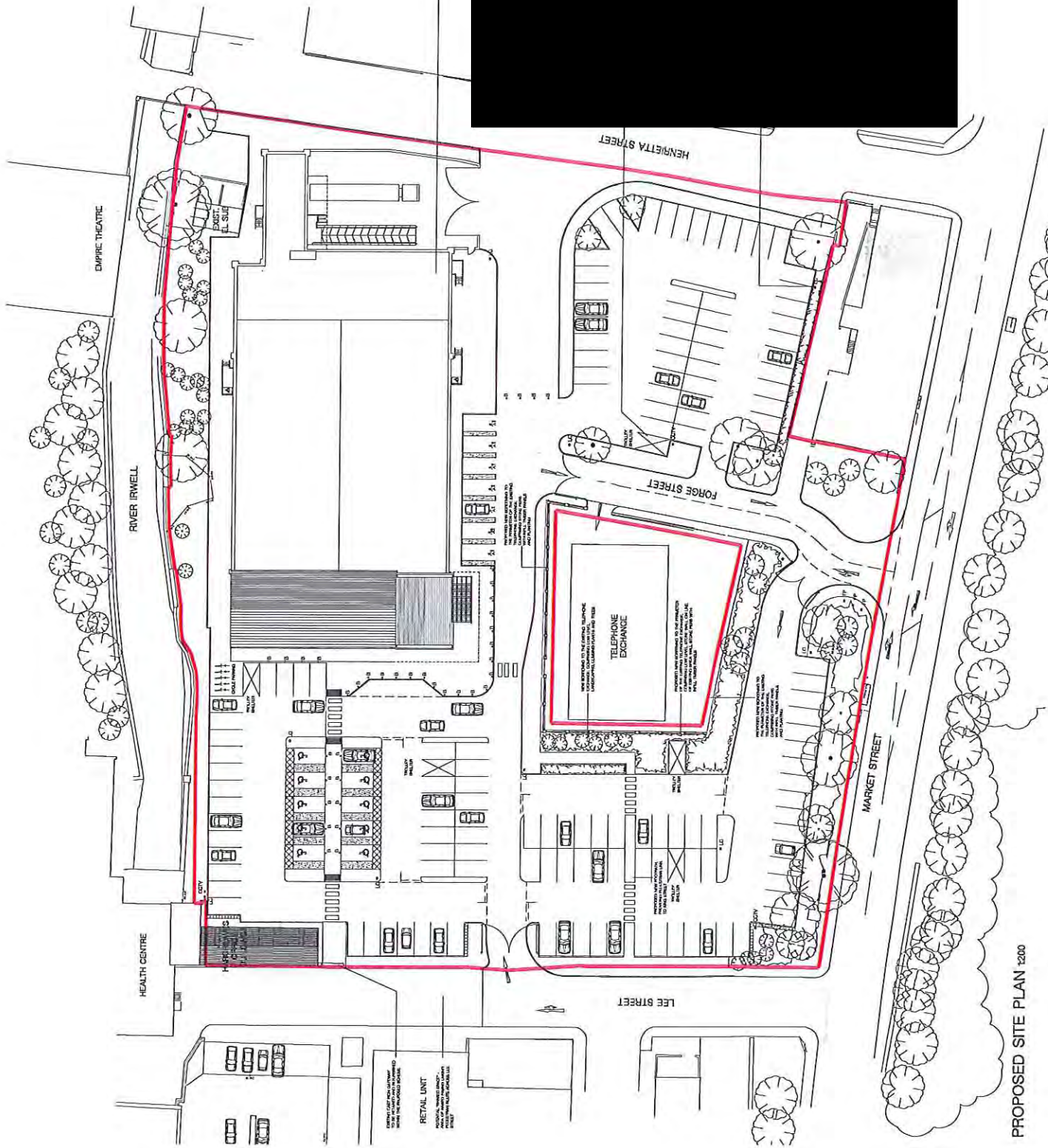
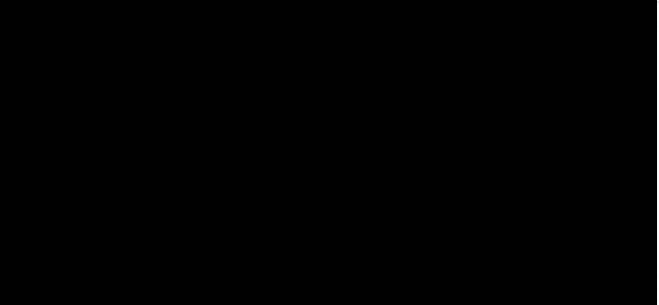
**KEY**

- CCTV
- L.C.
- B
- P.P.

8m CCTV Column  
10m Lighting Column  
Ballard  
9m Flag Pole

NEW EXISTENCE REFER TO THE EXISTING DRAWINGS AND PLANS. THE NEW PLAN IS TO BE SUBMITTED TO THE LOCAL AUTHORITY FOR APPROVAL.

EXISTING REFER TO THE FOLLOWING DRAWINGS:



ALL CCTV COLUMNS REFER TO THE FOLLOWING DRAWINGS: W.A.S. / C.C.T.V. CONNECTION. DRAWINGS ARE BASED ON PRIMARY DRAWINGS PROVIDED BY THE CLIENT. THE DRAWINGS ARE SUBJECT TO A. UNLESS OTHERWISE STATED, ALL DIMENSIONS ARE IN METERS.

Client:	Wm Morrison Supermarkets PLC
Project:	PROPOSED NEW STORE
Site:	DALEP
Scale:	200:150 (PL03)
Sheet:	C
Drawn by:	RACE
Checked by:	COTTAM
Approved by:	ASSOCIATES

PROPOSED SITE PLAN 1200

be uplifted by the amount which the all items figure of the Index of Retail Prices published by the Department of Employment or any successor Ministry or Department for the month at the date of payment or part payment exceeds the index figure of the said Index at the date of this Agreement

2.6.3 if any sum shall remain unpaid after the same has become due the First Owners and Second Owners, the Developer and the Applicant shall pay interest thereon calculated in accordance with Clause 2.6.4 from the date the said sum becomes due to the date of payment thereof to the Council

2.6.4 any interest which becomes payable in accordance with Clause 2.6.3 shall:-

- (a) be at the rate 3% above the base lending rate of National Westminster Bank plc from time to time.
- (b) be capitalised and added to the sum outstanding at the expiry of each period of twelve months from the date the said sum became payable
- (c) accrue from day to day up to the date payment is made to the Council or earlier capitalisation under sub-clause (b) of this Clause and be calculated on the basis of the actual number of days elapsed and a 365 day year

2.7 This Deed is conditional upon;

- (i) the grant of planning permission and
- (ii) commencement of development save for clause 2.3, 2.4 and 6 and any other relevant conditions which shall come into effect immediately



on completion of this Deed.

- 2.8 Unless expressly stated nothing in this Agreement shall create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto
- 2.9 All notices served pursuant to this Agreement shall be in writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:-
- 2.9.1 In the case of a notice to be served on the Council addressed to its Chief Executive at the above address
- 2.9.2 In the case of a notice to be served on the Developer or the Applicant to the Developer's or the Applicant's Registered Office addressed to the Group Solicitor.
- 2.9.3 In the case of the First and Second Owner to the Registered Office address or last known address
- 2.10 No person shall be liable for any breach of the covenant restrictions or contained in this Agreement (a) on the part of the Site outside his ownership or (b) after he has parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 2.11 This Agreement shall cease to have effect if (a) the Permission shall be quashed revoked or otherwise withdrawn prior to the Commencement Date or (b) the permission shall expire prior to the Commencement Date or (c) the Council or any competent authority shall at any time after the date hereof grant a new permission under which development is initiated for the purposes of section 56 of the 1990 Act

3. Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute ("the President")

3.1 The Expert shall act as an expert and make his determination within twenty (20) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties

3.2 If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place

3.3 It is hereby agreed and declared that:-

(a) the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each

party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations

- (b) the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit
- (c) the Expert shall have an unfettered discretion to determine the reference to him
- (d) the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

4. **THE COUNCIL** hereby covenants with the First and Second Owners and the Developer and the Applicant

- 4.1 to use the Transport, Heritage and Improvements Sum for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the First and Second Owners and the Developer and the Applicant and the Council shall agree.
- 4.2 to repay such amount of the Transport, Heritage and Improvements Sum paid under this Deed to the Council which has not been

expended in accordance with the provisions hereof within 5 years of the date of the receipt by the Council of such monies together with interest at 1/8 below the base rate from time to time of the National Westminster Bank Plc for the period from the date of payment to the date of refund.

- 4.2 to provide such evidence as shall reasonably be required in order to confirm the expenditure of the Transport, Heritage and Improvements Sum under this Deed.

5. **MORTGAGEE'S CONSENT**

- 5.1 The Mortgagee acknowledge and declare that this Deed has been entered into by with their consent and that the Site shall be bound by the obligations contained in this Deed and that the Mortgagees shall have no liability under this Deed unless it takes possession of the said Site in which case it too would be bound by the obligations as if it were a person deriving title from the Owner.

6. The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed is dated

**IN WITNESS** whereof these presents have been duly executed as a **DEED** by the parties hereto the date and year first before written

**SCHEDULE 1**

ALL that plot of land off Lee Street, Bacup and shown edged red on Plan 1

## SCHEDULE 2

The Development consisting of the demolition of existing buildings, erection of a Superstore and associated service yard, car park, trolley shelters and landscaping including the stopping up of Gas Street.

## SCHEDULE 3

The First and Second Owners and the Developer and the Applicant covenant with the Council as follows:

- (1) Seven days prior to the Commencement Date to notify the Council in writing of its intention to commence the Superstore part of the Development and to pay to the Council the "Transport, Heritage and Improvements Sum"
- (2) Four months prior to the date of first opening for trade of the Superstore to be built on the Site to agree in writing with the Council the Car Park Management Plan

2.1 Within 56 days of the Council receiving the draft Car Park Management Plan the Council will notify the Developer in writing of its approval of the draft Car Park Management Plan or will acting reasonably provide in writing its proposed amendments to the draft Car Park Management Plan pursuant to which the First and Second Owner, the Developer and the Applicant shall submit a revised draft Car Park Management Plan incorporating those amendments as are reasonable PROVIDED THAT if the Council does not notify the First and Second Owner, the Developer and the Applicant of its decision within 56 days referred to above (or such other period as may be agreed in writing) it shall be deemed that the Council has approved the Car Park Management Plan submitted to it.

2.2 From the date of first opening for trade to the public of the Superstore on the Site, the Car Park Management Plan as approved by the Council, or as deemed approved, shall be implemented.

Ms. M. J. J. J.  
114995

THE COMMON SEAL of ROSSENDALE )  
BOROUGH COUNCIL was affixed to this )  
DEED in the presence of: [REDACTED] )



-Mayor/Director of Business

EXECUTED as a DEED by )  
VENUS WORLD LIMITED )  
acting by: [REDACTED] )

Director/Secretary

EXECUTED as a DEED by )  
JAMES HARGREAVES (BACUP) LIMITED )  
acting by: [REDACTED] )

Director/Secretary

EXECUTED as a DEED by )  
BRIDGE PROPERTIES LIMITED )  
acting by: [REDACTED] )

Director/Secretary

EXECUTED as a DEED (but not delivered )  
until the date hereof) by Terence Hartwell )  
as attorney for OPTIMISATION )  
DEVELOPMENTS LIMITED under a power )  
of attorney dated 9 October 2009 )



Terence Hartwell as attorney for  
Optimisation Developments  
Limited [REDACTED]

in the presence of

[REDACTED]  
.....  
(Signature of witness)