

DATED

2024

WELCOME BREAK SERVICES LIMITED

TO:

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

**PLANNING OBLIGATION BY WAY OF UNILATERAL
UNDERTAKING UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 (AS AMENDED)**

Relating to

**Land east of Stretton Croft, Wolvey Road,
Burbage, Hinckley Leicestershire
(application reference 23/01023/HYB)**

THIS DEED OF UNILATERAL UNDERTAKING is made this day of
2024

BY

- (1) **WELCOME BREAK SERVICES LIMITED** (company no. 04099292) whose registered office address is 2 Vantage Court, Tickford Street, Newport Pagnell, Buckinghamshire, MK16 9EZ ("the Developer")

TO:

- (2) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley, Leicestershire LE10 0FR ("the Council")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Application Site is situated.
- (B) The Developer is the owner of the Application Site which forms the land registered at the Land Registry with freehold title absolute under Title Numbers LT155479 and LT155912.
- (C) The Developer has submitted the Application to the Council for planning permission for the Development of the Application Site
- (D) The Developer enters into this Deed to regulate the Development and the use of the Application Site.
- (E) The Council and the Developer are satisfied that the planning obligations provided in this Deed meet the tests set out in regulation 122 of the Community Infrastructure Regulations 2010(as amended).

NOW THIS DEED WITNESSES

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

For the purposes of this Deed (including the Recitals) the following expressions shall have the following meanings:

Act	the Town and Country Planning Act 1990 (as amended)
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Application	the application for planning permission submitted to the Council for the Development and allocated reference number 23/01023/HYB
Application Site	the land at which for the purposes of identification only is shown edged red on the Plan and comprising part of the land registered at the Land Registry under title numbers LT155479 and LT155912
Commencement Date	the date on which the Commencement of Development occurs
Commencement of Development	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins but for the purposes of this Deed and no other purpose following operations shall not be treated as material operations for the purposes of this Deed only: (i) operations consisting of archaeological investigations, (ii) investigations for the purpose of assessing ground conditions, (iii) investigations for the purpose of assessing ground water conditions (iv) remedial work in respect of any contamination or other adverse ground conditions, (v) the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly

Development	the construction of a motorway service area comprising vehicular and pedestrian access from the A5, petrol filling station for domestic vehicles, HGV filling station, main PFS/Services building, drive thru unit, EV charging spaces, customer parking spaces including HGV, coach and caravan provision, landscaping including picnic and dog walking areas, electric substations and retaining walls at south/western boundary fronting the M69 (cross boundary application with Rugby Borough Council)
Interest	interest at 4% above the base lending rate of the Bank of England from time to time
Occupation	The occupation of the Development or any part thereof solely for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “ Occupied ” and “ Occupy ” shall be construed accordingly
Plan	the plan drawing reference 1415-24a attached to this Deed labelled “Site Location Plan”
Planning Permission	the planning permission for the Development granted by the Council pursuant to the Application

1.2 Interpretation

- 1.2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed;
- 1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner;

- 1.2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise;
- 1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act of Parliament for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act of Parliament or deriving validity from it;
- 1.2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions;
- 1.2.7 The headings and contents list are for reference only and shall not affect construction;
- 1.2.8 The words “including” and “include” shall be deemed to be followed by the words “without limitation”.

2. LEGAL BASIS

- 2.1 This Deed is made pursuant to Section 106 of the Act. To the extent that the obligations fall within the terms of Section 106 of the Act, the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council against the Developer;
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.

3. CONDITIONALITY

- 3.1 This Deed is conditional upon
 - 3.1.1 the grant of the Planning Permission; and
 - 3.1.2 the Commencement of Development; and

4. MISCELLANEOUS

- 4.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999;

- 4.2 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 4.3 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development;
- 4.4 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Application Site or the part of the Application Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Deed occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Application Site in any transfer of the Application Site will constitute an interest for the purposes of this clause;
- 4.5 This Deed shall not be enforceable against any service companies or statutory undertakings who purchase or take a lease or otherwise become proprietor of any land on the Application Site for the purpose of providing services or facilities in connection with the Development nor against individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Planning Permission or their mortgagees;
- 4.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed;
- 4.7 Any agreement, obligation, covenant or undertaking contained herein by the Developer which comprise more than one person or entity shall be joint and several. Where any agreement, obligation, covenant or undertaking is made with or undertaken towards any of the parties to this Deed which comprise more than one person it shall be construed as having been made with or undertaken towards each such person separately;
- 4.8 No variation to this Deed shall be effective unless made by Deed;
- 4.9 If any provision of this Deed is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Deed without illegality provided that any party may seek the consent of the other or others to the termination of this Deed on such terms as may in all the circumstances be

reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Deed;

5. OBLIGATIONS OF THE DEVELOPER

- 5.1 The Developer so as to bind its interest in the Application Site, undertakes to comply with its obligations set out in the Schedule to this Deed.
- 5.2 The Developer shall provide the Council with no less than 10 working days written notice of its intended date of Occupation of the Development.
- 5.3 The Developer shall further provide the Council with written notification of the date of first Occupation of the Development within 10 working days of such event taking place.

6. WAIVER

No waiver (whether expressly or implied) by the Council (or the Developer) of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the Developer) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

7. CHANGE IN OWNERSHIP

Otherwise than in relation transfers or grant of easements, leases, wayleave agreements or otherwise become a proprietor of any land on the Application Site for the purposes of providing services or facilities in connection with the Development to the utility companies the Developer shall give to the Council within one (1) month of the Developer disposing of any part of the Application Site written notice of the name and address of the person to whom the Application Site or any part has been transferred.

8. INTEREST

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment.

9. INDEXATION

Any sum required to paid in accordance with the terms of this Deed shall be Index Linked by reference to the relevant index specified in the Schedule to this Deed.

10. **VAT**

All contributions paid in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

11. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

12. **DELIVERY**

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

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

EXECUTED as a
DEED by

**WELCOME BREAK
SERVICES LIMITED**

Acting by one director

Signature (Director)

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

SCHEDULE

TRAVEL PLAN MONITORING FEE

Approved Travel Plan	the Travel Plan submitted to the County Council by the Developer in accordance with the conditions of the Planning Permission and approved by the said County Council in writing
County Council	Leicestershire County Council of County Hall, Glenfield, Leicester LE3 8RA or its successor in statutory function as highway authority
Index	the Retail Price Index (or if such index ceases to be published such other replacement index that the County Council agrees with the Developer);
Index Linked	the Travel Plan Monitoring Fee increased by an amount equivalent to the Index from the date of the grant of the Planning Permission until the date on which the said fee is paid;
Travel Plan Monitoring Fee	means the sum of SIX THOUSAND POUNDS (£6000) to be applied by the County Council towards the monitoring of the Approved Travel Plan for the Development such sum to be Index Linked.

1. The Developer undertakes to pay the Travel Plan Monitoring Fee in full to the County Council prior to Occupation of the Development
2. The Developer shall not Occupy or permit the Occupation of the Development unless and until the Travel Plan Monitoring Fee has been paid in full to the County Council.