



23 September 2024

Rossendale Borough Council
and
Aldi Stores Limited

Deed of variation to a Section 106 Agreement dated 27
September 2021 relating to land at the former Forest Mill,
Henrietta Street, Bacup, Lancashire

Hyland Legal
76 St George's Road
Bolton
Greater Manchester
BL1 2DD

t: 0845 625 0312
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THIS DEED is made the 23 day of September 2024

BETWEEN:

- (1) **ROSSENDALE BOROUGH COUNCIL** of the Business Centre, Futures Park, Bacup, OL13 0BB (the **Council**);
- (2) **ALDI STORES LIMITED** (company number 02321869) a whose registered office is at Holly Lane, Atherstone, Warwickshire, CV9 2SQ (the **Owner**);

WHEREAS:

- (A) The Site is situated within the Administrative Boundaries of Rossendale.
- (B) The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable.
- (C) On 27 September 2021 the Council, the Trustees of the J&J Ormerod Plc Retirement Benefit Scheme (as landowner) and the Owner (as developer) entered into the Original Agreement. The Owner has subsequently acquired the Site from the J&J Ormerod Plc Retirement Benefit Scheme
- (D) The Planning Permission was granted on 30 September 2021.
- (E) The Owner is the freehold owner of the Site (title number LA551404) and also owns the leasehold title to the Site (title number LA442007).
- (F) The Commencement Date has arisen and the Development is under construction.
- (G) The Council has received payment of £13,449 (£11,000 indexed) to satisfy the obligation set out in paragraph 3 of the Fourth Schedule of the Original Agreement as varied by this Deed.
- (H) This Deed is supplemental and collateral to the Original Agreement.
- (I) The Council and the Owner have agreed to vary the Original Agreement on the terms set out in this Deed.

THE PARTIES AGREE as follows:

1. **Interpretation**

The following definitions and rules of interpretation apply in this Deed.

1.1 Definitions:

Deed: this deed.

Original Agreement: the agreement made under section 106 of the Town and Country Planning Act 1990 dated 27 September 2021 between the Council, the J&J Ormerod Plc Retirement Benefit Scheme and the Owner, a copy of which can be found at Appendix 1 to this Deed;

- 1.2 As a result of the Owner's acquisition of the Site, the obligations of each of the First Owner, the Second Owner, the Owners and the Developer in the Original Agreement are now all obligations of the Owner named herein.
- 1.3 This Deed shall be read in conjunction with the Original Agreement.
- 1.4 A reference to the Original Agreement includes any deed, licence, consent, approval or other instrument supplemental to them.
- 1.5 Unless otherwise specified, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.7 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.8 The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.
- 1.9 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.10 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 Clause, Schedule and paragraph headings shall not affect the interpretation of this Deed.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this Deed, the definitions and interpretations in the definitions sections of the Original Agreement shall apply to this Deed.
2. **Planning Obligation**
- 2.1 This Deed is made pursuant to section 106 and section 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling legislation.
- 2.2 This Deed creates planning obligations which bind the Site and are enforceable by the Council as local planning authority for the purposes of Section 106 of the Act.

3. **Variations to the Original Agreement**

3.1 From and including the date of this Deed the Original Agreement shall be read and construed as varied by the provisions set out in the Schedule.

3.2 The Original Agreement shall remain fully effective as varied by this Deed and the terms of the Original Agreement shall have effect as though the provisions contained in this Deed had been originally contained in the Original Agreement.

3.3 The Council acknowledge receipt of the first instalment of £11,000 of the Contribution in accordance with paragraph 3 of the Fourth Schedule (as varied by this Deed) (indexed in accordance with paragraph 5 of the Fourth Schedule)

4. **Registration of this Deed**

This Deed shall be registered as a local land charge by the Council.

5. **Governing law**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

6. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

7. **Third party rights**

This Deed does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

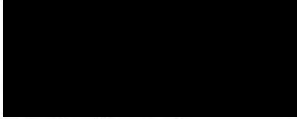
Schedule 1 - Variations to the Original Agreement

Part 1

- 1 In the definition of *“the Application”* the word *“outline”* shall be replaced with the word *“full”*.
- 2 The following definitions shall be deleted from the Original Agreement:
- “Contributions”*
- “Shared Cycle Contribution”*
- “Step Contribution”*
- “Way Marker Contribution”*
- 3 The following definitions shall be inserted into the Original Agreement:
- “Contribution” means the sum of £48,800 to be spent by the Council on either, all, each and/or any (in such proportions as the Council deems appropriate) of:*
- (i) the cost of construction and provision of a shared bicycle and pedestrian route between the Site and Bacup town centre; and/or*
 - (ii) the cost of construction and provision of a handrail, three x lighting columns and power to the steps located between Henrietta Street and Rochdale Road; and/or*
 - (iii) the cost of provision of way marker signs at and/or in the vicinity of the Site.”*
- 4 Any references in the Original Agreement to the *“Contributions”* shall become a reference to the *“Contribution”*.
- 5 Paragraph 3 of the Fourth Schedule shall be deleted and replaced with the following words:
- “3. The Owners will pay £11,000 of the Contribution (indexed in accordance with paragraph 5 of the Fourth Schedule) prior to Commencement of Development and the Owners shall not commence Development or cause or permit the Commencement of Development until such sum has been paid to the Council.”*
- 6 Paragraph 4 of the Fourth Schedule shall be deleted and replaced with the following words:
- “4. The Owners will pay the balance of the Contribution (being £37,800) (indexed in accordance with paragraph 5 of the Fourth Schedule) by no later than the date of Opening and the Owners shall not open the Store for trading or cause or permit the Opening Date to arise the said balance of the Contribution has been paid to the Council.”*

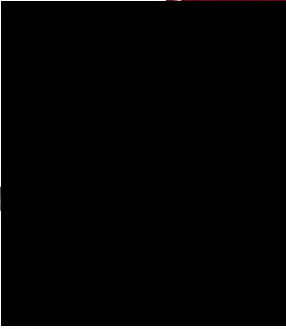
IN WITNESS whereof the parties have executed this document as their Deed the day and year first above written.

The Common Seal of **ROSSENDALE**
BOROUGH COUNCIL was
Hereunto affixed in the presence of:



Solicitor to the Council

No. IN SEAL
REGISTER
115255



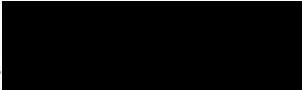
EXECUTED as a DEED by [..... **Lisa Gilligan**]

Signature:

as Attorney for **ALDI STORES LIMITED** appointed

under a Power of Attorney dated the 22 day of April 2021

in the presence of:-

Witness Signature: 

Name (In Capitals): JULIA HEDLEY

Address:

..... Julia Hedley
..... Freeths LLP
..... Two Colton Square
..... Leicester LE1 1QH

Occupation: RECEPTIONIST

Appendix 1
Original Agreement

THIS AGREEMENT is made the 27 day of September / 2021 DO NOT DATE

BETWEEN

(1) ROSSENDALE BOROUGH COUNCIL of Futures Park, Bacup. OL13 0BB ("the Council")

(2) STEPHEN ELLIS GREENHALGH of Higher Barn Farm, Moor Road, Holcombe, Bury, BL8 4NY, GILLIAN BURKE of 1 Royal Gardens, Ramsbottom, Bury, BL0 9SB, LEE GREENHALGH of Sunnyside, 929 Edenfield Road, Rochdale, OL12 7TW and PENSIONS PARTNERSHIP SSAS TRUSTEES LIMITED (Company number 05762695) whose registered office is at 33 Park Square West, Leeds, LS1 2PF as trustees of the J & J Ormerod PLC Retirement Benefit Scheme ("the First Owner")

(3) STEPHEN ELLIS GREENHALGH of Higher Barn Farm, Moor Road, Holcombe, Bury, BL8 4NY, GILLIAN BURKE of 1 Royal Gardens, Ramsbottom, Bury, BL0 9SB, LEE GREENHALGH of Sunnyside, 929 Edenfield Road, Rochdale, OL12 7TW ("the Second Owner")

(4) ALDI STORES LIMITED (Company Number 02321869) whose registered office is at Holly Lane, Atherstone, Warwickshire, CV9 2SQ ("the Developer")

1. Recitals

1.1 The Council is the local planning authority for the purposes of the Act for the area within which the Site is located.

1.2 The Developer has applied to the Council pursuant to the Act for permission to develop the Site under the Application reference 2020/0363 and enters into this Agreement with the intention that it is bound by the obligations contained herein.

1.3 The First Owner is the freehold owner of part of the Site and leasehold owner of the remainder which is registered at the Land Registry under title numbers LA442007, LA551404, and LAN163122 with title absolute. The Second Owner is freehold owner of part of the Site which is registered at the Land Registry under title number LA804927.

1.4 The covenants, restrictions and requirements imposed upon the Owners under this Agreement create planning obligations pursuant to Section 106 of the Act and the Owners are the persons against whom such obligations are enforceable in respect of the Site.

1.5 The Owners have agreed to enter into this Agreement so as to create planning obligations in favour of the Council pursuant to Section 106 of the Act and to be bound and to observe and perform the covenants hereinafter contained.

2. Definitions and Interpretation

2.1

"the Act"	means the Town & Country Planning Act 1990 (as amended) or any statute amending or modifying repealing or re-enacting the same for the time being in force.
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"the Application"	means the application for outline planning permission numbered 2020/0363 validated on 19.08.2020 for the erection of a foodstore with new vehicular access and egress to Henrietta Street, a new internal vehicular access road, car parking, servicing area and hard and soft landscaping and road widening works to Henrietta Street
"Commence"	means the carrying out of a material operation as defined by section 56 (4) of the Act (excluding for the purposes of this Agreement and for no other purpose any Preparatory Operation) in accordance with the Planning Permission and the expressions "Commencement" shall have a corresponding meaning.
"Commencement Date"	means the date of the Commencement of the Development authorised by the Planning Permission.
"Contributions"	means each of the Shared Cycle Route Contribution, the Step Contribution and the Way Marker Contribution.
"Development"	means the development proposed in the Application and described at the Second Schedule.
"Interest"	means interest at the rate of 3 per cent above the base lending rate of the Bank of England from time to time unless where otherwise expressly stated herein.
"Opening Date"	the date that the Store is first opened to the public for the purchase of goods.
"Owners"	together the First Owner and the Second Owner
"Plan"	means the Plan annexed hereto in the First Schedule
"Planning Permission"	means the full planning permission (and any subsequent permission granted under section 73 of the Town and Country Planning Act 1990) granted pursuant to the Application in the form of and subject to the conditions set out in the draft in the Third Schedule.
"Preparatory Operation"	means a material operation as specified in Section 56(4) of the Act provided that the term "material operation" in Section 56(4) shall not for the purposes of this Agreement include operations in connection with site clearance, demolition, ground stabilisation, archaeological investigation, investigation for the purpose of assessing contamination, removal of contamination, diversion and laying of Services, earthworks and the erection of means of enclosure for the purposes of site security and/or display of notices or advertisements, exploratory boreholes and any dug works, matters and operations to enable any of the foregoing to take place.

"RPIX"	means the Retail Prices Index excluding Mortgage Interest Payments (RPIX) published by the Office for National Statistics each month and if such index ceases to exist such other similar index as the Council shall specify to the Owners In writing.
"Services"	means all the media and apparatus for the supply and removal of water, sewerage, gas and electricity.
"Shared Cycle Contribution"	means the sum of £37,800 (thirty seven thousand and eight hundred pounds) as a contribution to the cost of construction and provision of a shared bicycle and pedestrian route in a northerly direction from Henrietta Street towards Lee Street on land between the existing Morrisons store and the River Irwell.
"Site"	means the land against which this Agreement may be enforced shown for illustrative purposes only edged red on the Plan and as more particularly described in the First Schedule.
"Step Contribution"	means the sum of £7,000 (seven thousand pounds) as a contribution to the cost of the construction and provision of a handrail, three x lighting columns and power to the steps located between Henrietta Street and Rochdale Road.
"Store"	the foodstore to be erected on the Site as part of the Development.
"Way Marker Contribution"	means the sum of £4,000 (four thousand pounds) as a contribution to the cost of provision of way marker signs at and/or in the vicinity of the Site.
"Working Day"	means any day on which the clearing banks in the City of London are (or would be but for strike, lockout, or other stoppage affecting such banks generally) open during banking hours Monday to Friday (inclusive) excluding national holidays and the period 24 December - 1 January inclusive and excluding Saturdays, Sundays and bank holidays.

2.2 The expressions "the Council" "the Owners" and "the Developer" shall where the context admits includes their successors in title and assigns (and in the case of the Council the successor to its statutory functions) and those deriving title under each of them.

2.3 Words importing one gender shall be construed as including any gender and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Words importing the singular shall be construed as importing the plural and vice versa.

2.5 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.

2.6 The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Agreement and shall not be taken into account in its construction or interpretation.

2.7 Reference made to any clause paragraph or schedule or recital context is a reference to a clause paragraph or schedule or recital in this Agreement.

2.8 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 or deriving validity from it.

2.9 References to any party to this Agreement 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 their respective statutory functions.

3. Legal Effect

3.1 This Agreement is a planning obligation and is made pursuant to Section 106 of the Act and the obligations contained in this Agreement are planning obligations enforceable by the Council in the case of covenants made to it for the purposes of that section insofar as they fall within the terms of sub-section 106(1) and with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.

3.2 Insofar as any of the covenants contained in this Agreement 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 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other enabling powers with the intention that the obligations contained herein are planning obligations for the purposes of the provisions in respect of the Site which may be enforced by the Council against the Owners.

3.3 The parties agree that the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) relating to planning obligations and all other relevant regulations thereunder are satisfied.

4. Commencement

4.1 This Agreement is conditional upon the grant of the Planning Permission and shall not take effect until the Commencement Date save for:

(a) the provisions of clause 7 (agreements and declarations) and 8 (Disputes) and 9 (Legal Costs) 7.3 (Notices) 10 (Notices of Change in Ownership) which shall come into effect immediately upon completion of this Agreement; and

(b) Paragraph 1 of the Fourth Schedule (notice of intended Commencement of Development) which shall come into effect upon the grant of the Planning Permission.

5. The Covenant of the Owners

5.1 The Owners hereby covenant so as to bind their interest in the Site with the Council to perform the obligations on its part specified in the Fourth Schedule.

6. The Covenants of the Council

6.1 The Council hereby covenants with the Owners to perform the obligations on its part specified in the Fifth Schedule.

7. Agreements and Declarations

It is hereby agreed and declared as follows:

- 7.1 Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 7.2 This Agreement is governed by and interpreted in accordance with the Law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.
- 7.3 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid first class or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for this purpose by notice served under this Agreement and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face value it is signed on behalf of the Council by an officer or duly authorised signatory thereof.
- 7.4 Where any certificate, consent, permission, nomination or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the decision of the same shall not be unreasonably be delayed or withheld and if refused written reasons for the refusal shall be provided and any such certificate, consent, permission, nomination or other approval shall be given on behalf of the Council by the Head of Planning.
- 7.5 No person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with all interest in the Site or that part of the Site in respect of which such breach occurred but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 7.6 Nothing in this Agreement restricts or is intended to restrict the exercise at any time by the Council of any of their statutory functions or discretions, rights, powers, duties or obligations in relation to any part of the Site or otherwise.
- 7.7 If the Planning Permission shall expire before the Commencement Date or shall at any time be quashed, revoked, otherwise withdrawn or it is, without the consent of the Owners, modified by any statutory procedure the provisions of this Agreement shall forthwith determine and cease to have effect (insofar only as they have not already been complied with) and any Local Land Charge registered pursuant to clause 7.9 shall be cancelled as soon as reasonably practicable.
- 7.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 7.9 This Agreement shall upon completion be registered by the Council as a Local Land Charge.
- 7.10 If any sum due under this Agreement shall remain unpaid after the same has become due (without prejudice to any other right of the parties to this Agreement) interest shall be paid thereon by the defaulting party to the other party from the date the sum becomes due to the date of actual receipt of the payment by the receiving party.

- 7.11 Obligations entered into by any party which comprises of more than one person shall be deemed to be joint and several.
- 7.12 This Agreement is binding on successors in titles and assigns.
- 7.13 No waiver (whether express or implied) by the Council or the Owners of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default.
- 7.14 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.
- 7.15 Nothing in this Agreement shall be construed as granting planning permission or any other approval consent or permission required from the Council in exercise of any other statutory function.
- 7.16 The provisions of this Agreement shall not be enforceable against any statutory body acquiring any part of the Development or the Site to be held for public purposes, any owner of any electricity sub-station and/or gas governor site and/or pumping station or other supply installation nor those deriving title from them

8. Disputes

- 8.1 Unless and to the extent not specified otherwise in this Agreement any dispute (save for any disputes as to matters of law) shall be referred at any appropriate time by any party hereto to a person having appropriate professional qualifications and experience in such matters ("the Expert") appointed jointly by the parties or in default of agreement within 10 Working Days after either party has given to the other a written request requiring the appointment of the expert by the President for the time being of the Royal Institution of Chartered Surveyors or the President of such other professional body as shall be relevant for the nature of the dispute in question (as appropriate) (or on his behalf) on the application of either party and such reference shall be deemed to be submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.
- 8.2 The Expert shall have at least 10 years post qualification experience in the area of the dispute in question.
- 8.3 The Expert shall act as an expert and not as an arbitrator and the decision of the Expert shall be final and binding upon the parties (except where there is a manifest error and/or on a matter of law) and the following provisions shall apply to the Expert.
- 8.4 The charges and expenses of the Expert shall be borne between the parties in such proportions as the Expert may direct.

- 8.5 The Expert shall give each of the parties an opportunity to make representations to him before making his decision which he shall make available to the other parties on request.
- 8.6 The Expert shall be entitled to obtain opinions from others if he so wishes.
- 8.7 The Expert shall make his decision on valuation matters within the range of any representations made by the parties.
- 8.8 The Expert shall comply with any time limits or other directions agreed by the parties on or before his appointment.
- 8.9 If the Expert is unable or unwilling to accept his appointment or to carry out his functions then either party may apply for a replacement to be appointed in his place and this procedure may be repeated as often as necessary.
- 8.10 The decision of the Expert must be given in writing setting out the reasons behind such decision.
- 8.11 If the parties fail to agree as to the nature of the difference or question then a decision as to the nature of such difference or question shall be referred to a solicitor of at least ten (10) years post qualification experience in the same manner and the same terms as set out in clauses 8.1 to 8.1 inclusive who shall determine which type of professional should be appointed in relation to such matter.
- 8.12 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Agreement and consequential and interim orders and relief.
- 9. Legal Costs**
- 9.1 The Developer agrees to pay to the Council on the date hereof the sum of £1,400 (one thousand four hundred pounds) as a contribution towards the reasonable legal costs incurred by the Council in the negotiation preparation and execution of this Agreement.
- 10. Notice of Change in Ownership**
- 10.1 The Owners agree with the Council that until all obligations under this Agreement have been discharged to give the Council notice of any change in ownership of any of their legal interests in the Site and the creation of any new legal interests by them on the Site within 15 Working Days of the occurrence of such change or creation and such notice shall give details of the transferee's full name and registered office (if a company) or usual address and in the event that the change of ownership is only of part of their legal interests in the Site then such notice shall be accompanied by a plan showing the area of the Site or relevant unit of occupation that has been disposed of.
- 11. Indexation**
- 11.1 Any sum referred to in the Fourth Schedule shall be increased by an amount equivalent to the increase in the RPIX from the date hereof until the date on which such sum is payable.

12. VAT

12.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

13. Delivery

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

14. Developers Consent

14.1 The Developer consents to its interest in the Site being bound hereby and covenants with the Council that upon acquiring a freehold or leasehold interest in the Site it will be subject to the obligations in this Agreement as a person deriving title thereto PROVIDED THAT it shall have no liability unless (save in respect of clause 9 above) and until it acquires the freehold or a leasehold interest in the Site

15. Limitation of Liability

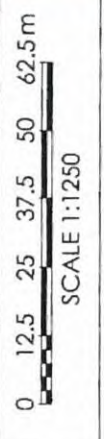
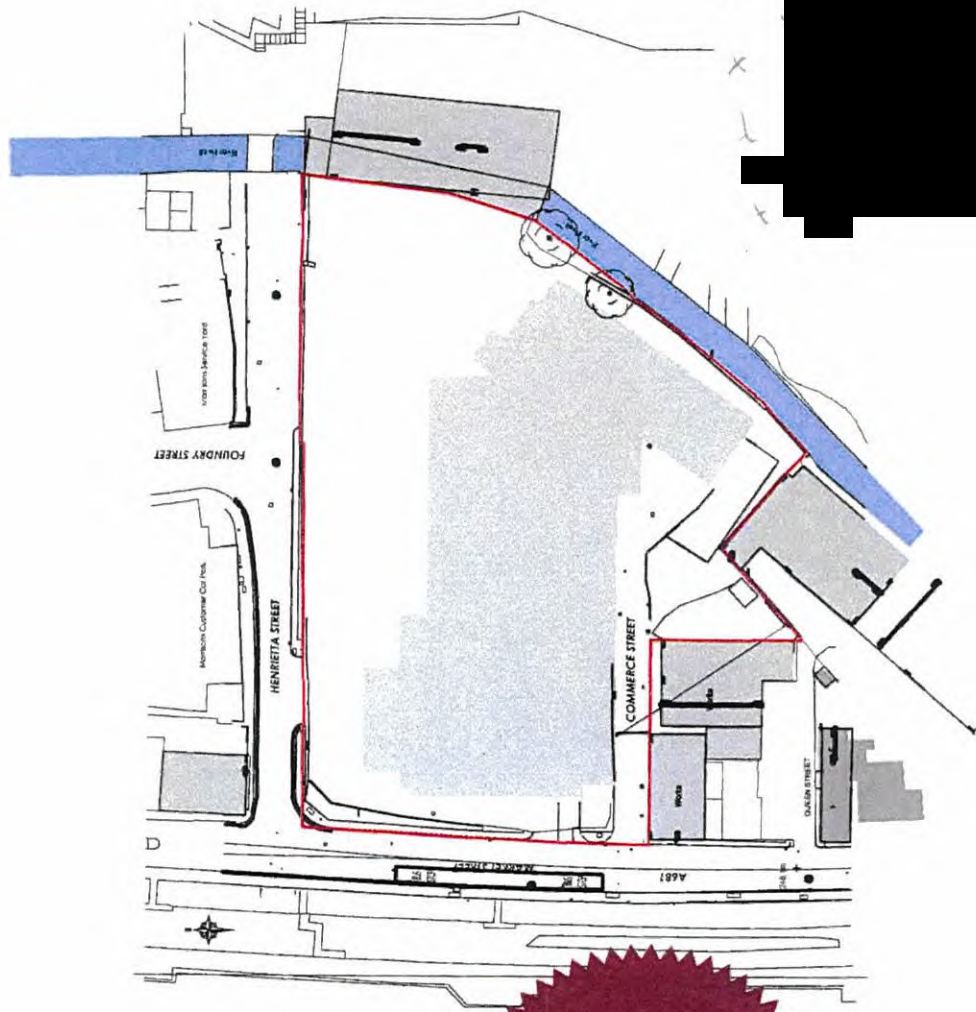
15.1 Any liability of the Pensions Partnership SSAS Trustees Limited arising out of or in connection with this Agreement shall not be personal and shall be limited at all times to the extent of the assets of the J & J Ormerod Retirement Benefits Scheme

IN WITNESS whereof the parties hereto have executed this Agreement on the day and year first before written.

THE FIRST SCHEDULE

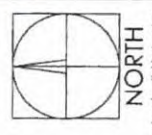
THE SITE

The registered freehold and leasehold land at the former Forest Mill, Henrietta Street, Bacup, Lancashire, being all of the land registered at the Land Registry under title numbers LA442007, LA551404, LA804927 and LAN163122 and for the purposes of identification only shown edged red on the attached Plan





Location Plan
Scale 1:1250 @ A4

Total Application Boundary
8,206m² (2.02 Acres)



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Rev	Date	Description	Rev By	Checked By
A	29.07.20	Redline updated	LEEB	
				
Project Title				
PROPOSED ALDI FOODSTORE				
HENRIETTA STREET				
MARKET STREET				
BACUP				
Client				
ALDI STORES LTD				
Status				
PLANNING				
Scale				
1:1250				
Drawing Size				
A4				
Date				
DEC 19				
Drawn by				
KJ				
Checked by				
LB				
Drawing Title				
LOCATION PLAN				
Job-Dwg No				
2768BOL - 100				
Rev				
A				
2.31, Jongs North, Sca 1, 01924 29 1800 1, 0161 2308355 New Old Factory, 29 High Street, 1, 01958 21377 101 London Road, 1, 0118 4073307 10 Green Circle, 81 Cheltenham Place, London, W11 1J 1, 007 401215				
				
A B C H I L E C T S www.abchilects.com				

CAD File Reference CAD FILE REFERENCE

**THE THIRD SCHEDULE
DRAFT PLANNING PERMISSION**

DRAFT CONDITIONS 2020/0363 – ALDI FOODSTORE

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Title	Drawing Reference	Received date
Proposed Site Plan	102 Rev H	11/02/2021
Proposed Roof Plan	105 Rev A	07/08/2020
Proposed GA Plan	103 Rev C	29/01/2021
Proposed Elevations	104 Rev B	29/01/2021
Proposed Roller Shutter Details	107 Rev C	29/01/2021
Tree Pit Detail	D01	29/01/2021
Tree Pit Detail Hard	D02	29/01/2021
Landscape Plan	L01 Rev E	11/02/2021
Site Location Plan	100 Rev A	07/08/2020
Design and Access Statement	Issue 2 – January 2021	29/01/2021
Flood Risk Assessment		07/08/2020
Ecological Walkover Survey		07/08/2020
Noise Impact Assessment		07/08/2020
Transport Assessment and Travel Plan		27/08/2020
Planning and Retail Statement		27/08/2020

Reason: To define the permission and in the interests of the proper development of the site.

Retail conditions

3. The sales area as shown on the approved Proposed GA Plan as listed at Condition 2 shall not exceed 1,315 square metres. The sales area shall be used primarily for the sale of convenience goods, with a maximum of 300 square metres used for the sale of comparison goods.

Reason: A greater area used for the sale of comparison goods has not been assessed. There is the potential for a retail use of the development with a

different character to that assessed to harm investment in Bacup Town Centre and/or to harm the vitality and viability of the Town Centre.

Contaminated Land

4. Notwithstanding any information submitted with the application, no development shall take place until an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority. The submitted report shall include:
- 1) A Preliminary Risk Assessment report (phase 1), including a conceptual model and a site walk over survey;
 - 2) Where potential risks are identified by the Preliminary Risk Assessment, a Phase 2 Site Investigation report shall also be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. The investigation shall address the nature, degree and distribution of land contamination on site and shall include an identification and assessment of the risk to receptors focusing primarily on risks to human health, groundwater and the wider environment; and
 - 3) Should unacceptable risks be identified the applicant shall also submit and agree with the Local Planning Authority in writing a contaminated land remediation strategy prior to commencement of development.

The development shall thereafter be carried out in full accordance with the duly approved remediation strategy or such varied remediation strategy as may be agreed in writing with the Local Planning Authority.

Reason: In the interests of mitigating any hazards posed by contaminated land, and in the interests of reducing pollution.

5. Pursuant to condition 4 and prior to first use or occupation a verification report, which validates that all remedial works undertaken on site were completed in accordance with those agreed with the Local Planning Authority, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of mitigating any hazards posed by contaminated land, and in the interests of reducing pollution.

6. During the period of construction, should contamination be found on site that has not been previously identified, no further works shall be undertaken in the affected area. Prior to further works being carried out in the affected area, the contamination shall be reported to the Local Planning Authority within a maximum of 5 days from the discovery, a further contaminated land assessment shall be carried out, appropriate mitigation identified and agreed in writing by the Local Planning Authority who shall respond within 21 days from receipt. The development shall be undertaken in accordance with the agreed mitigation scheme.

Reason: In the interests of mitigating any hazards posed by contaminated land, and in the interests of reducing pollution.

Materials

7. No above ground construction shall take place until full details, including physical samples displayed on the site, of the following have been submitted to and approved in writing by the Local Planning Authority:
- Natural pitched dark stone (1m x 1m panel)
 - Natural pitched light stone (1m x 1m panel)
 - Powder coated aluminium sheeting in RAL 7016
 - Kingspan cladding in RAL 7012
 - Composite cladding laid vertically in RAL 7012
 - Service doors and fire escapes and shelter in RAL 7016
 - Ribbon glazing and aluminium frame in RAL 7016

The development shall thereafter be implemented in strict accordance with the approved details.

Reason: In the interests of securing a high quality finish to the development.

8. Notwithstanding the details shown on Proposed Elevations Plan (as listed at Condition 2), prior to installation, full details of all boundary treatment, plant enclosures, and railings, shall be submitted to and approved in writing by the Local Planning Authority. All railings, cycle loops and trolley bay rails shall have a black finish. The development shall then be constructed in accordance with approved details and they shall be retained or replaced with the same materials thereafter.

Reason: Insufficient details have been provided, and to ensure that the development will be of a satisfactory appearance in this gateway location.

Ecology and landscaping

9. No works to trees or shrubs shall occur between the 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present, which has been submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of protecting nesting birds.

10. Prior to any earthworks taking place, a survey for invasive plant species including japanese knotweed and himalayan balsam shall be undertaken, and the findings submitted to and approved in writing by the Local Planning Authority. If any invasive species are present, a method statement detailing avoidance, control and eradication measures shall also be supplied to and agreed in writing by the Local Planning Authority, prior to any earthworks

taking place. The development shall then be carried out in accordance with the method statement.

Reason: Derelict sites adjacent to watercourses are high risk for such species. No mention is made of the presence of either species in the ecological report, but photographs in the ecological report, appear to show that himalayan balsam at least is present.

11. No development, site clearance or earth moving shall take place or material or machinery brought on site until a method statement to protect the River Irwell from accidental spillages, dust and debris has been submitted to and agreed in writing by the Local Planning Authority. All approved measures will be implemented and maintained for the duration of the construction period in accordance with the approved details.

Reason: In the interests of protecting the nearby watercourse from pollution.

12. No development shall take place until it has been demonstrated that there will be no negative impacts on the ecological status / potential of the River Irwell resulting from the disposal of foul water and surface water post-development, through the submission of an appropriate report and its subsequent agreement in writing by the Local Planning Authority. The details, as approved, shall be implemented in full in accordance with a timetable which has first been agreed in writing by the Local Planning Authority.

Reason: In the interests of protecting the ecological potential of the nearby watercourse.

13. During the first planting season following the commencement of development, the approved Landscaping Plan and Tree Pit Plans listed at Condition 2, shall be carried out to the satisfaction of the Local Planning Authority, in so far as they relate to the soft landscaping / planting and ecological features (bird nesting boxes).

Any trees, plants or shrubs so planted which die or are felled, uprooted, wilfully damaged or destroyed within ten years of the date of planting shall be replaced by the applicants or their successors in title.

Reason: The soft landscaping / planting details are approved, however the hard landscaping details e.g. paving materials, are not. To ensure a satisfactory form of development and to enhance the visual amenities of the locality.

14. Notwithstanding the submitted details, full details of all materials for external hard-surfaces ~~across the site~~ related to the development, including the proposed shared pedestrian / cycle route on Henrietta Street, shall be submitted to (including physical samples displayed on the site) and approved

in writing by the Local Planning Authority. The details shall include the delineation of the shared pedestrian / cycle route.

The works development shall then be constructed in accordance with approved details, which shall be complete prior to opening, and shall be retained or replaced with the same materials thereafter.

Reason: Insufficient details have been submitted, and to ensure a satisfactory form of development and to enhance the visual amenities of the locality, and in the interests of improving accessibility to the site for pedestrians and cyclists.

Sustainability

15. Prior to first opening, confirmation that the 'Measures for Sustainability' identified within the Design and Access Statement paragraph 7.7 have been incorporated into the development, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of minimising energy consumption and achieving sustainable development.

Noise

16. No construction works shall take place outside of the hours of Monday to Friday 08:00 to 18:00 and Saturday 08:00 to 13:00. There shall be no working on Sundays or Bank or Public Holidays.

Construction deliveries shall not take place outside of the hours of 09:30 to ~~14:30~~16:00 Monday to Friday.

Reason: To protect neighbouring residents from loss of amenity and to avoid peak traffic on the surrounding highway network in the interests of highway safety.

17. The food store hereby permitted shall only open for use by customers between 07:00 and 23:00 hours Monday to Saturday and 09:00 and 17:00 hours on Sunday.

Reason: To protect the residential amenity of neighbouring properties.

18. Once operational, no deliveries (including waste collections) shall be taken at or despatched from the site outside the hours of Monday to Saturday 06.30 to 23.00 hours and Sundays 08.00 to 17.00 hours.

Reason: To protect the residential amenity of neighbouring properties.

19. Prior to installation, full details for the arrangements for any external lighting on the rear of the building shall be submitted to and approved in writing by the

Local Planning Authority. Thereafter the lighting shall be installed in accordance with the approved details.

Reason: To protect the residential amenity of neighbouring properties and in the interests of the visual amenities of the area.

Highways

20. No development shall take place (including investigation work, demolition, siting of site compound/welfare facilities) until a survey of the condition of the adopted highway has been submitted to and approved in writing by the Local Planning Authority. The extent of the area to be surveyed must be agreed by the Highways Authority prior to the survey being undertaken. The survey must consist of:

- A plan to a scale of 1:1000 showing the location of all defects identified; and
- A written and photographic record of all defects with corresponding location references accompanied by a description of the extent of the assessed area and a record of the date, time and weather conditions at the time of the survey.

Any damage to the adopted highway shall be made good to the satisfaction of the Highway Authority prior to first opening of the food store.

Reason: To ensure that any damage to the adopted highway sustained throughout the development process can be identified and subsequently remedied at the expense of the developer.

21. No development shall take place, including any works of demolition or site clearance, until a Construction Management Plan (CMP) or Construction Method Statement (CMS) has been submitted to, and approved in writing by the Local Planning Authority. The approved plan / statement shall provide:

- 24 Hour emergency contact number;
- Details of the parking of vehicles of site operatives and visitors;
- Details of loading and unloading of plant and materials;
- Arrangements for turning of vehicles within the site;
- Swept path analysis showing access for the largest vehicles regularly accessing the site and measures to ensure adequate space is available and maintained, including any necessary temporary traffic management measures;
- Measures to protect vulnerable road users (pedestrians and cyclists);
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- Wheel washing facilities;
- Measures to deal with dirt, debris, mud or loose material deposited on the highway as a result of construction;
- Measures to control the emission of dust and dirt during construction;
- Details of a scheme for recycling/disposing of waste resulting from demolition and construction works;

- Construction vehicle routing;
- Delivery, demolition and construction working hours.

The approved Construction Management Plan or Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason: In the interests of the safe operation of the adopted highway during the demolition and construction phases, and residential amenity.

22. For the full period of construction, facilities shall be available on site for the cleaning of the wheels of vehicles leaving the site and such equipment shall be used as necessary to prevent mud, stones and debris being carried onto the highway. Provision to sweep the surrounding highway network by mechanical means shall be available as required, and the roads adjacent to the site shall be mechanically swept as required during the full construction period.

Reason: To prevent stones, mud and debris being carried onto the public highway to the detriment of road safety.

23. No development shall commence until the area of existing adopted highway at the junction of Commerce Street and Market Street as detailed on plan ref 190-01/SUO-03 shall be stopped up under the appropriate legal process (Section 247 of the Town & Country Planning Act) in consultation with the Local Planning Authority and the Highway Authority.

Reason: To prevent the adopted highway from being subsumed into the development.

24. Prior to first use of the food store, the footway (and/or verge) shall be reinstated to full kerb height, where any vehicle 5 crossover(s) are redundant, in accordance with the approved plans and the Lancashire County Council Specification for Construction of Estate Roads, to be retained in that form thereafter for the lifetime of the development.

Reason: To maintain the proper construction of the highway and in the interest of pedestrian safety.

25. Prior to occupation, the following shall be submitted to and approved in writing by the Local Planning Authority:
- a scheme for the construction of the site access; and
 - full details of the off-site highway works, subject to detailed design.

Such details shall demonstrate no encroachment or narrowing of the footway on the east side of Market Street, to the north of Henrietta Street.

The development shall not be open for trade until the works have been completed in accordance with the approved details.

Reason: For reasons of highway safety in relation to construction traffic and customer traffic.

26. Prior to first occupation of the foodstore, the cycle parking (which shall be finished in black) shall be installed as detailed on the approved Site Layout Plan. The area shall thereafter be kept free of obstruction and available for the parking of cycles only at all times.

Reason: To ensure the provision and availability of adequate cycle parking and the promotion of sustainable forms of transport.

27. Prior to first trading, the car park shall be surfaced / paved and marked out, and the cycling, motorbike facilities and EV charging points shall be provided in accordance with approved plans listed in Condition 2.

Reason: To allow for the effective use of the parking areas.

28. Prior to first trading, and pursuant to Condition 14, the proposed pedestrian / cycle link as shown on the approved plans, shall be implemented and thereafter retained as such.

Reason: In the interests of improving accessibility to the site for pedestrians and cyclists.

Drainage and flood risk

29. The drainage for the development hereby approved, shall be carried out in accordance with principles set out in the submitted Flood Risk and Surface Water Drainage Assessment, Ref: No.: 3148-FRA, Rev: A, Dated: July 2020, By: Integra Consulting.

No surface water will be permitted to drain directly or indirectly into the public sewer. Any variation to the discharge of foul shall be agreed in writing by the Local Planning Authority prior to the commencement of the development.

The measures shall be fully implemented prior to first occupation and evidence of which submitted to the Local Planning Authority (in consultation with the Lead Local Flood Authority) prior to first occupation.

Reason: To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding.

30. No development shall commence in any phase until a detailed, final surface water sustainable drainage strategy for the site has been submitted to, and approved in writing by, the local planning authority.

The detailed sustainable drainage strategy shall be based upon the site-specific flood risk assessment submitted and sustainable drainage principles and requirements set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage

Systems and no surface water shall be allowed to discharge to the public foul sewer(s), directly or indirectly.

Those details shall include, as a minimum:

- a) Sustainable drainage calculations for peak flow control and volume control (agreed Qbar rate of 12.15l/s), with allowance for urban creep.
- b) Final sustainable drainage plans appropriately labelled to include, as a minimum:
 - i. Plan identifying areas contributing to the drainage network, including surface water flows from outside the curtilage as necessary;
 - ii. Sustainable drainage system layout showing all pipe and structure references, dimensions, design levels;
 - iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
 - iv. Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;
 - v. Finished Floor Level (FFL) in AOD, to be a minimum of +247.7 (EA 1/100 year flood risk level), with adjacent ground levels for all sides of each plot to confirm minimum 150mm+ difference for FFL;
 - vi. Details of proposals to collect and mitigate surface water runoff from the development boundary;
 - vii. Measures taken to manage the quality of the surface water runoff to prevent pollution, protects groundwater and surface waters, and delivers suitably clean water to sustainable drainage components;
- c) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates and groundwater levels in accordance with industry guidance.

The sustainable drainage strategy shall be implemented in accordance with the approved details.

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site.

31. Prior to occupation, a requisite Flood Action Plan shall be submitted to, and approved in writing by the Local Planning Authority. The Flood Action Plan must include details of flood evacuation procedures including emergency vehicular and pedestrian routes. Thereafter, the approved Flood Action Plan shall be implemented in accordance with the approved details.

Reason: To provide details of access/egress and how users of the development would remain safe during a flood.

32. Foul and surface water shall be drained on separate systems.

Reason: To secure proper drainage and to manage the risk of flooding and pollution.

33. Prior to first use, a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning

authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- a. Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and
- b. Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

Reason: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development.

Litter

34. Prior to the first opening, a regime to include, but not limited to, the management of litter picking, provision of waste bins in suitable locations close to pedestrian / cyclist access and egress points, and arrangements for emptying the bins on a regular basis, for that unit shall be submitted to and approved in writing by the Local Planning Authority. The approved regime shall be adhered to at all times whilst the unit is in operation.

Reason: In the interests of the character and appearance of the area.

35. No development shall commence until details of how surface water and pollution prevention will be managed during each construction phase have been submitted to and approved in writing by the local planning authority.

Those details shall include for each phase, as a minimum:

- a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and, if surface water flows are to be discharged they are done so at a restricted rate to be agreed with the Lancashire County Council LLFA.
- b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.

Reasons 1. To ensure the development is served by satisfactory arrangements for the disposal of surface water during each construction phase(s) so it does not pose an undue flood risk on site or elsewhere; 2. To ensure that any pollution arising from the development as a result of the construction works does not adversely impact on existing or proposed ecological or geomorphic condition of water bodies.

36. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of Paragraph 165 of the National Planning Policy Framework.

THE FOURTH SCHEDULE

Owner's Covenants

The Owners covenant with the Council as follows:

1. the Owners shall give notice in writing to the Council (Head of Planning) of its intention to commence the Development fourteen (14) calendar days prior to Commencement of the Development;
2. the Owners shall give notice in writing to the Council (Head of Planning) of their intention to open the Store fourteen (14) calendar days prior to the Opening Date;
3. the Owners will pay the Step Contribution and the Way Marker Contribution to the Council prior to Commencement of Development and the Owners shall not Commence Development or cause or permit the Commencement of Development until each of the Step Contribution and the Way Marker Contribution have been paid to the Council;
4. the Owners will pay the Shared Cycle Route Contribution to the Council by no later than the date of Opening and the Owners shall not open the Store for trading or cause or permit the Opening Date to arise until all of the Contributions have been paid to the Council (but without prejudice to paragraph 3 above);
5. to pay to the Council Indexation on the Contributions in accordance with clause 11;
6. unless otherwise agreed in writing with the Council from the Opening Date and in perpetuity, the car park within the Site shall be open to use by customers of the Store and those who wish to use the wider district centre shopping facilities for up to three hours per day at no charge (save any charges that may be introduced in respect of the use of electric vehicle charging points)

THE FIFTH SCHEDULE

The Council's Covenants

The Council covenants with the Owners as follows:

1. to use the Contributions received from the Owners under the terms of this Agreement for the purposes referred to in the relevant definition and for no other purpose;
2. that it will refund any Contributions to the person who paid the relevant Contribution to the extent that such Contribution has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the Council of such sum;
3. when requested in writing the Council shall provide written confirmation of the discharge of obligations to the Council contained in this Agreement once the Council is satisfied (acting reasonably) that such obligations have been performed;

IN WITNESS whereof the Council, the First Owner, the Second Owner and the Developer have executed this Agreement as a deed the date and year first before written.

EXECUTED AS A DEED by the

ROSENDALE BOROUGH COUNCIL

By affixing its common seal in the

Presence of

CLARE BIRTWISTRE
MONITORING OFFICER



SIGNED as a DEED by

Lisa Gilligan

as attorney

for

ALDI STORES LIMITED

under a power of attorney dated ~~20 July 2009~~ ^{22 April 2021}

in the presence of:

Attorney

Witness' signature:

Name (in block capitals):

Address:

Julia Hedley
Freeths LLP
One Colton Square
Leicester LE1 1QH

EXECUTED as a DEED by

PENSIONS PARTNERSHIP

SSAS TRUSTEES LIMITED



acting by a single Director in the presence of:

Witness' Signature: X 

Witness' Name: X EMILY DUONG

Witness' Address: X 