

Dated

9th July

2020

- (1) WEST SUFFOLK COUNCIL
- (2) SUFFOLK COUNTY COUNCIL
- (3) ALDI STORES LIMITED
- (4) ANCHOR LIFESTYLE DEVELOPMENTS LIMITED

**DEED OF VARIATION**

made pursuant to S106 and S106A of the Town and Country Planning Act 1990 (as amended) in respect of development at Exning Road, Newmarket, Suffolk

**THIS DEED OF VARIATION** is made the 9<sup>th</sup> day of July 2020

**THE PARTIES:**

- (1) **WEST SUFFOLK COUNCIL (formally Forest Heath District Council)** of West Suffolk House, Western Way, Bury St. Edmunds, Suffolk IP33 3YU ("the Council").
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council").
- (3) **ALDI STORES LIMITED** (Registration No. 2321869) of Holly Lane, Atherstone, Warwickshire, CV9 2SQ ("the Owner").
- (4) **ANCHOR LIFESTYLE DEVELOPMENTS LIMITED** (Registration No. 06266113) of The Heals Building, 22-24 Torrington Place, London WC1E 7HJ ("the Developer").

**WHEREAS**

- A. This a Deed of Variation of a planning agreement dated 1<sup>st</sup> June 2018 made between the Council, the County Council, the Owner and the Developer (referred to hereafter as "the Principal Agreement") in respect of planning permission with reference DC/17/1881/FUL(referred to hereafter as "the Principal Consent").
- B. The Council is the local planning authority for the purpose of Section 106 of the Act (as amended) for the area within which the Site is situated and is the successor local planning authority to Forest Heath District Council..
- C. The County Council is the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area within which the Site is situated.
- D. The Owner is the freehold owner of the Site which is registered at the Land Registry under title numbers SK212623 and SK358789.
- E. The Developer entered into an agreement with the Owner on 13 July 2017 to purchase the Site.

F. The Developer has submitted an application pursuant to section 73 of the Act to vary condition 25 of the Principal Consent. The reference number for this application is DC/20/0174/VAR.

G. The Parties hereto are now desirous of varying the terms of the Principal Agreement as hereinafter provided.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**DEFINITIONS AND INTERPRETATIONS**

1. Clause headings shall not affect the interpretation of this Deed.
2. 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.
3. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
4. Words of the masculine gender include any other genders and words denoting actual persons including companies, corporations and firms and all such words shall be construed as being interchangeable in that manner.
5. Where in this Deed 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.
6. Where in this Deed there is any reference to an Act of Parliament such reference 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.
7. 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 or its successors to its statutory functions.



8. Unless separately defined in this Deed words and expressions used in this Deed shall have the same meanings as given to them in the Principal Agreement.

#### **LEGAL EFFECT**

9. This Deed is made pursuant to Sections 106 (as amended) and 106A of the Act, Section 111 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 and all other powers enabling so as to vary the Principal Agreement in the manner set out in this Deed and the Owners obligations and covenants contained in this Deed:

- a. are covenants and planning obligations to which these statutory provisions apply; and
- b. relate to the Site in the manner set out in this Deed; and
- c. are enforceable by the Council and the County Council as the local planning authorities.

#### **VARIATION OF THE PRINCIPAL AGREEMENT**

10. It is the intention of the Parties that the entire agreement between the Parties shall be in the terms of the Principal Agreement as varied by this Deed, and this Deed shall be read and construed as if the terms of the Principal Agreement were repeated in this Deed subject to the variations referred to in Clause 11 of this Deed.

11. The Principal Agreement shall be varied as follows:

- 11.1 The definition of "Planning Application" shall be substituted as follows:

"means any of the applications for planning permission submitted to the Council for the Development with reference numbers DC/17/1881/FUL and DC/20/0174/VAR"

## OTHER PROVISIONS

12. This Deed shall take effect immediately upon completion of this Deed;
13. Except as varied by Clauses 11 of this Deed the Principal Agreement is otherwise confirmed and remains in full force and effect.
14. Unless otherwise specified in this Deed, nothing in the Deed shall prohibit or limit the right to develop the Site or any part of it in accordance with an alternative planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
15. No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
16. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed in respect of part or the whole of the Site after it shall have parted with its interest in that part of the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
17. This Deed shall be registered as a Local Land Charge in the Register of Local Land Charges maintained by the Council.
18. This Deed is governed by and interpreted in accordance with the law of England and Wales and shall be determined by the courts of England.
19. No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the obligations terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any such obligations terms or conditions or from acting upon any subsequent breach or default in respect of the Owner.

## LEGAL COSTS

20. The Owner hereby covenants to pay to the Council its reasonable and proper legal costs incurred in the preparation of this Deed limited to a maximum sum of £1,250.00 (one thousand two hundred and fifty pounds) (no VAT) prior to or on completion of this Deed of Variation.

21. The Owner hereby covenants to pay to the County Council its reasonable and proper legal costs incurred in the preparation of this Deed limited to a maximum sum of £1,000.00 (one thousand pounds) (no VAT) prior to or on completion of this Deed of Variation.

## DELIVERY

22. 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 INSTRUMENT AS A DEED ON THE DAY AND YEAR FIRST BEFORE WRITTEN**

**EXECUTED as a DEED AFFIXING  
THE COMMON SEAL OF WEST  
SUFFOLK COUNCIL in the  
presence of:**



\_\_\_\_\_  
Authorised Officer



EXECUTED as a DEED AFFIXING  
THE COMMON SEAL OF SUFFOLK  
COUNTY COUNCIL in the presence  
of:



Authorised Officer

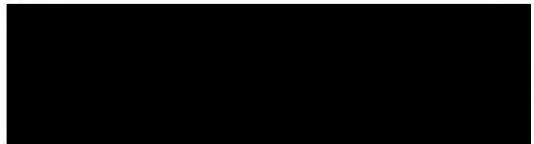
EXECUTED as a DEED by



as attorney for

**ALDI STORES LIMITED**

under a power of attorney dated 20 July 2009  
in the presence of:

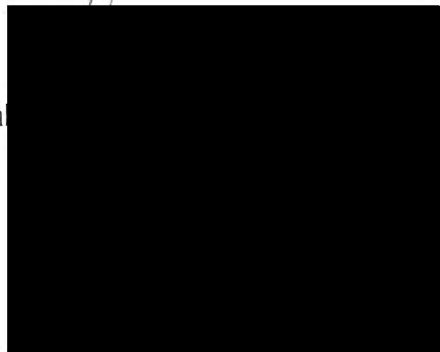


Attorney

Witness' signature:

Name (in block capital)

Address:



**SIGNED** as a deed )  
By )  
**ANCHOR LIFESTYLE** )  
**DEVELOPMENTS LIMITED** )  
Acting by two Directors or a Director and )  
Company Secretary :- )

Director



Director/Company Secretary

