|  |
| --- |
|  |
| 7 December 2022CHS/DANL/019793.10348/85862491.1 |
| Deed of variationof a lease of Hythe Riverside Park, Colchester |
| Dated  |
| Drury Trustee 1 Limited and Drury Trustee 2 Limited(the Landlord)Sainsbury's Supermarkets Ltd(the Tenant) |
| Dentons UK and Middle East LLPOne Fleet PlaceLondon EC4M 7WSUnited Kingdom |  |

Contents

[Contents i](#_Toc116070652)

[Deed of variation 2](#_Toc116070653)

[1 Definitions 2](#_Toc116070654)

[2 Interpretation 2](#_Toc116070655)

[3 Variation 3](#_Toc116070656)

[4 Provisos 3](#_Toc116070657)

[5 Effect of this Deed 3](#_Toc116070658)

[6 HM Land Registry 3](#_Toc116070659)

[7 Third parties 3](#_Toc116070660)

[8 Trustee Limitation 3](#_Toc116070661)

[Schedule - Variations to the Lease 5](#_Toc116070662)

Deed of variation

1. Dated
2. Between
	1. **Drury Trustee 1 Limited and Drury Trustee 2 Limited** a corporation organised and existing under the laws of Jersey whose principal place of business is at 47 Esplanade, St Helier, Jersey JE1 0BD (the **Landlord**).
	2. **Sainsbury's Supermarkets Ltd** company registration number 3261722 whose registered office is at 33 Holborn, London EC1N 2HT (the **Tenant**).
3. Recitals
	* + 1. This Deed is made supplemental to the Lease.
			2. The reversion immediately expectant on the determination of the Term is vested in the Landlord and registered at HM Land Registry under title number EX624826. The residue of the Term is vested in the Tenant.
4. It is agreed:
5. Definitions

In this Deed the following definitions apply.

1. 1995 Act means the Landlord and Tenant (Covenants) Act 1995.
2. Effective Date means the date of this Deed.

Lease means the lease of the Premises dated 20 May 2019 and made between (1) British Overseas Bank Nominees Limited and W.G.T.C Nominees Limited and (2) Sainsbury's Supermarkets Ltd registered at HM Land Registry under title number EX990584 as varied or supplemented by any document (whether or not expressed to be supplemental).

1. New Lease means the form of lease attached at Appendix 2 of the Lease.
2. Premises means the premises demised by the Lease and known as Hythe Riverside Park, Colchester.

Term has the same meaning as in the Lease.

1. Interpretation

In this Deed, unless otherwise specified:

* + - 1. the Landlord includes the person in whom the reversion immediately expectant on the determination of the Term is for the time being vested;
			2. the Tenant includes his her its or their respective successors in title and assigns and includes the survivor or the survivors of those persons and also includes the personal representatives of a sole individual or last surviving individual Tenant;
			3. the neuter gender includes the masculine and the feminine;
			4. any reference to a person is a reference to any type of legal entity;
			5. the singular includes the plural;
			6. headings are for ease of reference only and shall not be taken into account in construing this Deed;
			7. references to Clauses, Sub-Clauses, Paragraphs and Schedules are references to those contained in this Deed;
			8. if any party to this Deed is more than one person its obligations are joint and several.
1. Variation

It is agreed and declared that the Lease and the New Lease are varied from and including the Effective Date and shall from the Effective Date be read and construed as varied by the provisions set out in the Schedule.

1. Provisos

It is further agreed and declared that:

* + - 1. save as varied by this Deed the provisions of the Lease shall remain in full force and effect and the terms of the Lease shall have effect as though the variations effected by this Deed had been contained in the Lease with effect from the Effective Date;
			2. nothing contained in this Deed shall release or in any way lessen the liability of the Tenant to the Landlord under the covenants and conditions contained in the Lease or constitute a waiver of any outstanding breach of the Lease.
1. Effect of this Deed

The provisions of this Deed (other than those contained in this Clause) shall not have any effect until this Deed has been dated.

1. HM Land Registry
	1. The Tenant covenants with the Landlord to register this Deed at HM Land Registry as soon as reasonably practicable after the Effective Date and, as soon as reasonably practicable after registration, shall provide the Landlord with official copies of the register showing that the registration requirements necessary to give effect to the variations contained in this Deed have been properly complied with.
2. Third parties

The parties do not intend that any term of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed.

1. Trustee Limitation
	1. In this Clause 8, the following definitions apply:

**"Trust"** means the Drury Jersey Property Unit Trust;

**"Trust Assets"** means the assets from time to time of the Trust;

**"Trustee 1"** means Drury Trustee 1 Limited;

**"Trustee 2"** means Drury Trustee 2 Limited; and

**"Trustees"** means Trustee 1 and Trustee 2 acting only in their capacity as trustees of the Trust.

* 1. The Trustees are entering into this Deed as trustees of the Trust and, as such, despite any other provision of this Deed, the parties to this Deed acknowledge and agree that:
		1. references in this Deed and the Lease to the "Trustees" are references to the Trustees in their capacity as trustees of the Trust only and not to their corporate, or any other, capacity;
		2. subject to Clause 8.3 and to the fullest extent permitted by law, any claim against, or liability of, the Trustees pursuant to this Deed or the Lease whether in contract, negligence or other tort, under statute or otherwise is limited to the Trust Assets; and
		3. subject to Clause 8.3, the Trustees have no obligation to meet any claim or liability under this Deed or the Lease except out of the Trust Assets.
	2. If any act or omission of the Trustees:
		1. in their performance of their obligations under this Deed or the Lease constitutes wilful misconduct or gross negligence in the discharge of their powers or duties as Trustees and results in a loss to the Tenant, the Trustees will be liable to the Tenant for any direct loss suffered by the Tenant in connection with that act or omission except that, but without prejudice to Clause 8.3.2, the Trustees will not be liable under this Clause 8.3.1 to the Tenant only because the Trust Assets are illiquid or are insufficient to enable the Trustees to meet in full their obligations to the Tenant under this Deed or the Lease; or
		2. constitutes fraud or breach of trust in relation to their powers or duties as Trustees and the Trustees have not made whole the Trust Assets in respect of that fraud or breach of trust in accordance with the requirements of the Trusts (Jersey) Law 1984 such that the Trust Assets are insufficient to enable the Trustees to meet in full any claim or liability arising directly to the Tenant under this Deed or the Lease out of the Trust Assets, the Trustees will be liable to the Tenant for the unsatisfied part of any such claim or liability to the extent that the Trustees would be required to make whole the Trust Assets in respect of such fraud or breach of trust in accordance with the requirements of the Trusts (Jersey) Law 1984.

**Executed** as a deed and delivered on the date appearing at the beginning of this Deed.

Schedule - Variations to the Lease

1. The following words shall be added at the end of clause 3.16.1 of the Lease:

*and up to 40,000 square feet of the Building for uses within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as at 30 August 2020.*

2. The following words shall be added at the end of clause 3.16.1 in the New Lease:

*and up to 40,000 square feet of the Building for uses within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as at 30 August 2020.*

3. The definition of "New Lease" in Schedule 7, Part 1 of the New Lease shall be deleted and replaced with the following:

"New Lease" a lease on the same terms as this lease, save as set out in paragraphs 2.5 to 2.8 (inclusive) below).

4. The words, 'and be in the form of the New Lease at Appendix 2,' shall be deleted from Schedule 7, Part 1, paragraph 2.5 of the New Lease.[[1]](#footnote-1)

**EXECUTED** as a deed by )

**DRURY TRUSTEE 1 LIMITED,** )

a company incorporated in Jersey )

in its capacity as trustee of )

Drury Jersey Property Unit Trust )

acting by )

and )

who, in accordance with the laws of that )

territory, are acting under the authority of )

the company )

………………………………………....

Signature in the name of the Company

………………………………………....

Signature of authorised signatory

………………………………………....

Signature in the name of the Company

………………………………………....

Signature of authorised signatory

**EXECUTED** as a deed by )

**DRURY TRUSTEE 2 LIMITED**, )

a company incorporated in Jersey )

in its capacity as trustee of )

Drury Jersey Property Unit Trust )

acting by )

and )

who, in accordance with the laws of that )

territory, are acting under the authority of )

the company )

………………………………………....

Signature in the name of the Company

………………………………………....

Signature of authorised signatory

………………………………………....

Signature in the name of the Company

………………………………………....

|  |  |  |
| --- | --- | --- |
| **Executed** as a deed by those named below as attorneys for **Sainsbury's Supermarkets Ltd** both in the presence of: | ))) |  |
|  |  | Signature of authorised signatory |
|  |  | Name of authorised signatory |
|  |  | Signature of authorised signatory |
|  |  | Name of authorised signatory |
| Signature of witness:     ........................................................... Name of witness:          ........................................................... Address:                       ...........................................................                                     ...........................................................  |

1. HSF: Your proposed drafting doesn't work because there is no Appendix 2 attached to the New Lease. Furthermore, even if there were an Appendix 2 to the New Lease, no variations would have been made to it: the variations are to the Lease and New Lease. [↑](#footnote-ref-1)