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| 4 October 2022CHS/DANL/019793.10348/85862631.1 |
| Agreement to vary relating to property at Hythe Riverside Park, Colchester Annexures : Deed of Variation  |
| 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 |  |

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Agreement for lease

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. It is agreed
4. Definitions and interpretation

Definitions

In this Agreement the following definitions apply.

1. Completion Date means the date fifteen working days after the date on which the Condition has been satisfied.
2. Condition means the grant of a Satisfactory Change of Use Permission (as defined in Part 1 of Schedule 1).
3. Deed of Variation means the deed of variation of the Lease in the form of the draft annexed to this Agreement to be entered into by the Landlord and the Tenant pursuant to this Agreement.
4. Dispute Party means the Landlord or the Tenant.
5. Expert means an independent expert appointed or to be appointed in accordance with clause 7.8.
6. Further Lease means a lease of the Property for a further term of 25 years to be granted pursuant to the New Lease.
7. Landlord's Property means the property known as land lying to the south east of Colne Causeway, Colchester and registered at HM Land Registry with title number EX624826.
8. Landlord's Solicitors means Herbert Smith Freehills LLP (ref. 21920/31054034) or such other firm as the Landlord may nominate by notice in writing to the Tenant or the Tenant's Solicitors for the purposes of this Agreement.
9. Lease means the lease of the Property dated 20 May 2019 made between (1) British Overseas Bank Nominees Limited and W.G.T.C Nominees Limited and (2) Sainsbury's Supermarkets Ltd as varied or supplemented from time to time.
10. Longstop Date means [\*\* ].
11. New Lease has the meaning given to it in the Lease.
12. Price means three million pounds (£3,000,000) (exclusive of VAT).
13. Property means the premises demised by the Lease and known as Hythe Riverside Park Colchester.
14. Quarter Days means 25 March 24 June 29 September and 25 December in any year and Quarter Day shall be construed accordingly.
15. Tenant's Solicitors means Dentons UK and Middle East LLP of The Pinnacle, 170 Midsummer Boulevard, Milton Keynes MK9 1FE (ref: 019793.10348/CHS) or such other firm as the Tenant may nominate by notice in writing to the Landlord or the Landlord's Solicitors for the purposes of this Agreement.
16. Value Added Tax means value added tax charged under the Value Added Tax Act 1994 and shall include any interest fine penalty or surcharge in respect of value added tax charged.
17. Variation means the variation effected by the Deed of Variation.

Statutes

References to laws statutes bye‑laws regulations orders and delegated legislation shall include any law statute bye‑law regulation order or delegated legislation modifying amending re‑enacting consolidating or made pursuant to the same and in all cases as applicable in England and Wales from time to time

Headings

Headings are for ease of reference only and shall not affect the construction of this Agreement

Construction

In this Agreement:

* + - 1. References to clauses and schedules shall be references respectively to the clauses of and schedules to this Agreement.
			2. References to this Agreement include any schedules.
			3. The expression this Agreement used in this Agreement shall include any document or the terms of any document which are incorporated by reference into this Agreement.
			4. The expressions including and in particular shall be construed as being by way of illustration or emphasis only and shall not limit the generality of the preceding words.
1. Conditionality

Condition

The completion of the Deed of Variation is conditional upon the Condition being satisfied and Clauses 3.1 and 4 shall not come into effect until the Condition has been satisfied.

Satisfaction of the Condition

The rights and obligations of the parties with regard to the satisfaction of the Condition are set out in Part 1 of the Schedule.

Termination

* + 1. If the Longstop Date occurs before the Condition has been satisfied then either the Landlord or the Tenant may, at any time before the Condition is satisfied, give notice to the other terminating this Agreement.
		2. Subject to clause 2.3.3 on the giving of the notice referred to in clause 2.3.1 this Agreement shall terminate.
		3. The party seeking to terminate this Agreement may only terminate this Agreement pursuant to clause 2.3.1 if it has complied with its obligations set out in Part 1 of the Schedule in all material respects.
		4. Termination of this Agreement shall be without prejudice to any rights which the parties may have against one another in respect of prior breaches of this Agreement.
		5. On termination the Tenant shall at its own expense remove any HM Land Registry or Land Charges Registry entry made against the Property or the Landlord's Property in respect of this Agreement.
1. Completion of the Deed of Variation

Completion

The Landlord and the Tenant shall enter into the Deed of Variation on the Completion Date.

Value Added Tax

Any amount payable or consideration given by the Tenant for any supply made (or deemed to be made) by the Landlord under this Agreement is stated exclusive of any Value Added Tax or similar tax duty or imposition which is or becomes chargeable on it and if any such sum or consideration is or becomes so chargeable the Tenant shall upon demand pay the same to the Landlord, in addition to such sum or the consideration payable.

1. Completion

Time

* + 1. Completion of the Deed of Variation shall take place on the Completion Date.
		2. On completion the Price (and any VAT thereon) shall be paid to the Landlord's Solicitors' client account or as the Landlord's Solicitors shall reasonably direct.
1. Notices
	1. Any notice under this Agreement:
		1. must be in writing, addressed to the relevant party at a correct address; and
		2. may be served by:
			1. post or personal delivery (but not by facsimile, e-mail, other electronic means of transmission, any document exchange nor by any other means);
			2. an agent of the serving party but not on an agent of the party to be served.
	2. An addressee's correct address is any of:
		1. the registered office of a corporate addressee;
		2. an address for service within the United Kingdom as last notified by a foreign party to the serving party, if the addressee is a foreign party; and
		3. any postal address in the United Kingdom which appears, on the date the notice is dispatched by post or delivered by personal delivery, as the Tenant's address on the proprietorship register of the Lease if it comprises a registered estate.
	3. For the purpose of calculating any notice period associated with the service of a notice, the period begins on the date the notice is given to the party to be served.
		1. A notice is given:
			1. by post, on the date of the second (or, if earlier receipt is proved, the first) day after the date when the notice is posted; and
			2. by personal delivery, on the date when the notice is delivered,

to a correct address of the party to be served.

1. Costs

On the date of this Agreement, the Tenant shall pay the Landlord's costs of entering into and performing its obligations in this Agreement and the Deed of Variation in the sum of £100,000 plus VAT.

1. General

Continuing effect

* + 1. This Agreement shall remain in full force and effect after completion in respect of any matters agreements or conditions which have not been done observed or performed before completion.
		2. All representations or warranties indemnities undertakings and obligations of the parties shall (except for any obligations fully performed on completion) continue in full force and effect notwithstanding completion.

Severance

If any provision of this Agreement is or becomes illegal invalid or unenforceable in any jurisdiction, that shall not affect:

* + - 1. the legality validity or enforceability in that jurisdiction of any other provision of this Agreement; or
			2. the legality validity or enforceability in any other jurisdiction of that or any other provision of this Agreement

No implied waivers, remedies cumulative

The rights of each party under this Agreement:

* + - 1. may be exercised as often as necessary;
			2. are cumulative and not exclusive of its rights under the general law; and
			3. may be waived only in writing and specifically

Delay in exercising or non-exercise of any such right is not a waiver of that right

Set-off

All payments (including interest) to be made by the Tenant under this Agreement shall be made without any withholding deduction legal or equitable set-off or counterclaim

Entire agreement

This Agreement constitutes the entire agreement relating to the subject matter of this Agreement and supersedes all prior negotiations documents agreements statements and understandings

Variations

This Agreement may only be varied or modified by a supplemental agreement which is made in writing by the parties and in such a form that complies with the requirements of the Law of Property (Miscellaneous Provisions) Act 1989

Contracts (Rights of Third Parties) Act 1999

The parties do not intend that any term of this Agreement 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 Agreement.

Disputes

Any dispute between the parties in respect of this Agreement may at the instigation of either party be referred to an Expert.

* + 1. **Selection and appointment of Expert**
			1. The Expert shall be an individual who has recent and substantial experience in the field of the subject matter of the dispute and is a partner or director of a leading firm which itself has recognised expertise in the subject matter of the dispute.
			2. The Expert shall be independent of all the parties to this Agreement.
			3. The Dispute Party wishing the appointment to be made shall give notice to that effect to the other Dispute Party and with such notice shall give details of the matter which it is proposed shall be referred to and determined by the Expert.
			4. The Dispute Parties shall endeavour to agree upon the identity of a single Expert to whom the matter in dispute shall be referred for determination, but if within five working days after service of the notice referred to in clause (c) the Dispute Parties have not agreed upon the identity of an Expert then either Dispute Party may request that the RICS select an Expert.
			5. In its request, the requesting Dispute Party shall specify the Dispute Parties, the Agreement, this clause and the issue or issues to be referred to and determined by the Expert, and shall supply a copy of this Agreement as executed by the parties to the RICS with its request.
			6. Upon selection of the Expert, the Dispute Parties or either of them, shall forthwith notify the Expert of his selection and request him to confirm to both Dispute Parties within 10 working days whether or not he is willing and able to accept the appointment.
			7. The Dispute Parties will co-operate with each other to appoint the Expert and ensure that the terms of the appointment of the Expert are agreed with him within 10 working days of service of the notice referred to in clause (f), subject always to clause 7.8.2.
		2. **Reappointment**

If:

* + - 1. an Expert upon whose identity the Dispute Parties have agreed refuses to accept the appointment;
			2. an Expert whom the RICS has selected refuses to accept the appointment;
			3. at any time the appointed Expert becomes unable or unwilling to act,

the Dispute Parties shall appoint another Expert to begin the reference afresh (or complete it if the Dispute Parties so agree) in accordance with the procedure set out in clause 7.8.1.

* + 1. **Procedure for Expert determination**
			1. Following appointment of the Expert and his acceptance of such appointment, the Dispute Party initiating the reference shall within 10 working days of such acceptance serve upon the Expert and the other Dispute Party a notice of referral of the dispute setting out the substance of the matters to be decided by the Expert and attaching any documents which it considers may be relevant.
			2. The terms of the Expert's appointment shall provide for the Expert to give directions as to the procedure for determination of the dispute within 10 working days of the referral to him, and the Dispute Parties shall comply with the directions given by the Expert, save that neither party shall be obliged to provide any document or information to the Expert or to the other Dispute Party if that party would be entitled in proceedings before the High Court to refuse to provide such document or information by reason of legal privilege.
			3. The determination shall take the form of a detailed document stating the Expert's reasons for his decision.
			4. The Expert shall act as an expert and not as an arbitrator and the law relating to arbitration shall not apply to the proceedings.
			5. Any and all communications between and submissions made by either of the Dispute Parties and the Expert shall be made in writing and a copy thereof provided simultaneously to the other Dispute Party and no meeting between the Expert and the Dispute Parties or either of them shall take place unless both Dispute Parties have been notified and have had a reasonable opportunity to attend any such meeting.
			6. The Expert shall be entitled to use his knowledge and experience in coming to his determination.
			7. The terms of the Expert's appointment shall require him to publish his determination in writing to the Dispute Parties within 20 working days after the referral to him, unless both Dispute Parties agree in writing to an extension of such period.
			8. If either Dispute Party fails to comply with the Expert's directions or withdraws from the procedure the Expert shall nevertheless be entitled to proceed to make his determination.
			9. The Expert's determination shall be final and binding upon the Dispute Parties save in the case of fraud, collusion or manifest error. The Dispute Parties expressly waive the right to submit the matters referred to and determined by the Expert under this agreement to any Court save in respect of any application to enforce the determination through the Court.
		2. **Legal costs and Expert's fees and expenses**
			1. The Expert may in his determination provide that one or other or both of the Dispute Parties pay the Expert's fees and the expenses of any professional advice, consultation and secretarial assistance provided to the Expert in such proportions as he may specify.
			2. In the absence of such provision, each Dispute Party shall bear its own legal costs and the fees and expenses of the Expert shall be borne in equal shares by the Dispute Parties.

Governing law and jurisdiction

* + 1. English law governs
			1. this Agreement;
			2. its interpretation; and
			3. any non-contractual obligations arising from or connected with it.
		2. The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.
1. Registration

Promptly following completion of the Deed of Variation, the Tenant shall register the Deed of Variation at the Land Registry.

1. Trustee Limitation
	1. In this Clause 9, 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 Agreement as trustees of the Trust and, as such, despite any other provision of this Agreement, the parties to this Agreement acknowledge and agree that:
		1. references in this Agreement 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 9.3 and to the fullest extent permitted by law, any claim against, or liability of, the Trustees pursuant to this Agreement whether in contract, negligence or other tort, under statute or otherwise is limited to the Trust Assets; and
		3. subject to Clause 9.3, the Trustees have no obligation to meet any claim or liability under this Agreement except out of the Trust Assets.
	2. If any act or omission of the Trustees:
		1. in their performance of their obligations under this Agreement 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 9.3.2, the Trustees will not be liable under this Clause 9.3.1 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 Agreement; 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 Agreement 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.
1. Tax Treatment of Variation

The parties acknowledge and agree for the purposes of Pt.4, Ch.4, Corporation Tax Act 2009 ("CTA 2009") that:

* + 1. the Variation takes effect in relation to the Lease, the New Lease and the Further Lease (the **"Leases"**), such that the parties intend that the Leases may be treated (solely in relation to the tax treatment of the Price for the purposes of s.243 CTA 2009) as continuing to the end of 18 May 2094; and

without prejudice to any of the rights of the Tenant, including the right of the Tenant not to renew the Lease (including for example as a result of any economic or operational requirements that may arise in the future but which are not known or ascertainable now), there are no circumstances or facts, as at the date of this Agreement, that make it unlikely that the Tenant will continue to occupy the Property until 18 May 2094

such that the parties expect that the Lease will be treated for the purposes of Pt.4, Ch.4, CTA 2009 as having an effective duration of more than 50 years and provided that this clause 10 is without prejudice to any other right of the Tenant (including the right of the Tenant to not renew the Lease).

The parties agree to reflect the position described in this clause 10 in their respective tax computations and returns.

**As witness** the hands of the parties or their duly authorised representatives the day and year first above written.

Schedule

* + 1. – Change of Use Condition

Definitions

In this schedule and this Agreement the following definitions apply:

1. Appeal means:
	* + 1. an appeal by the Landlord and Tenant against a refusal of the Change of Use Application pursuant to either Section 78 of the Town and Country Planning Act 1990;
			2. the reference of the Planning Application to the Secretary of State under either Section 77 of the Town and Country Planning Act 1990;
			3. any reconsideration by the Local Planning Authority or the Secretary of State of any matter referred back to them for the decision arising out of any appeal in paragraph (a);
			4. any further proceedings, applications, reconsiderations or appeals arising out of (a), (b) and/or (c) above;
2. Challenge means an application for judicial review under Part 54 of the Civil Procedures Rules or an application pursuant to either Section 288 of the Town and Country Planning Act 1990 including in each case any appeals to a higher court following a judgment of lower court.
3. Change of Use means the use of up to 40,000 square feet of the Property for uses within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as at 30 August 2020.
4. Change of Use Application means a detailed application for planning permission and/or an application for listed building consent and/or conservation area consent (if applicable) for the Change of Use submitted by or on behalf of or at the request of the Tenant and pursued in accordance with this Schedule including all supporting drawings and other requisite information relating to the application for the Change of Use, together with such further applications for a Change of Use as may be made pursuant to this agreement.
5. Change of Use Permission means a planning permission granted in respect of a Change of Use Application.
6. Leading Counsel means King's Counsel experienced in town and country planning law practice and procedure jointly appointed by the Landlord and the Tenant.
7. Local Planning Authority means the competent planning authority for the area in which the Premises are situated.
8. Planning Acts means the statutes and statutory instruments from time to time in force relating to town and country planning.
9. Planning Agreement means an agreement (or undertaking) required in connection with the Change of Use (whether or not affecting other property) expressed to be made:
	1. pursuant to section 106 of the Town & Country Planning Act 1990; and/or
	2. pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982; and/or
	3. pursuant to section 111 of the Local Government Act 1972; and/or
	4. pursuant to sections 38 and/or 278 of the Highways Act 1980; and/or
	5. pursuant to section 98 and/or 104 of the Water Industry Act 1991 or any provision of similar intent; and/or
	6. with a water or sewage undertaker or other appropriate authority as to water supply to or drainage of surface water and/or effluent from the Property; and/or
	7. pursuant to any other enactment having the same or similar effect with any competent authority or body relating to the provision of other services or regulating the use or development of the Property or providing for contributions towards infrastructure, educational provision or other social amenity or benefit.
10. Planning Payment means the cost of discharging any liability or obligation attributable to the grant or implementation of the Planning Permission, including any CIL Charge and any other tariff properly charged or levied by the local planning authority which is not included in the Planning Agreement.
11. Satisfactory Change of Use Permission means a Change of Use Permission and any related Planning Agreement which is not subject to any Unacceptable Conditions.
12. Secretary of State means the Secretary of State for Communities and Local Government and any person and/or body appointed to exercise his/her powers (or any of them) under the Town & Country Planning Act 1990.
13. Unacceptable Condition means a condition imposed on a Change of Use Permission or an obligation imposed by a Planning Agreement of the type listed in Part 2 of this schedule, (provided that where a party has at any time agreed in writing to accept a condition or obligation (whether with another party to this agreement or the Local Planning Authority or the Secretary of State or a third party) such a condition or obligation shall be deemed not to be an Unacceptable Condition for that party).

Planning obligations

Submission of Change of Use Application

The Tenant shall at its own expense diligently pursue the Change of Use Application as soon as reasonably practicable after the date of this Agreement.

Obtaining Change of Use Permission

The Tenant shall at its own expense use reasonable endeavours to procure the grant of a Satisfactory Change of Use Permission as soon as reasonably practicable after the date of this Agreement (and in any event before the Longstop Date) including (without limitation) entering into such discussions and negotiations with the Local Planning Authority as may be reasonably necessary.

Keep Landlord informed

The Tenant shall:

* + - 1. consult with and keep the Landlord informed of the progress of any Change of Use Application (including in respect of any Appeal or proceedings) and the negotiation of any Planning Agreement and supply the Landlord with copies of all material correspondence and documentation.
			2. give the Landlord reasonable notice of any committee date or hearing date relevant to the Change of Use Application, the Planning Agreement or any Appeal or proceedings and give the Landlord and the Landlord's representatives the opportunity to attend;
			3. promptly reply to the Landlord's reasonable written requests for reasonable information as to the progress of the Change of Use Application and any Appeal or proceedings or the Planning Agreement.
			4. promptly notify the Landlord in the event that a preliminary draft or draft Community Infrastructure Levy Charging Schedule is issued for consultation or examination and consult the Landlord as to whether and what representations should be made in respect of any such Charging Schedule (and the Tenant shall not itself make any such representations without the Landlord's prior written approval such approval not to be unreasonably withheld or delayed);
			5. supply the Landlord with copies of:

any draft or final version of any of the Planning Authority's committee agendas or committee reports or committee resolutions relevant to the Change of Use Application;

minutes of any meetings relevant to the Change of Use Application held with the Local Planning Authority or the Secretary of State or any third party;

details of any proposed Change of Use Permission resolved to be granted;

the Change of Use Application, any Appeal or Challenge and any other documents relevant to any of these proceedings; and

within five Working Days following its receipt by the Tenant, any notice served pursuant to Regulation 2 of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 which proposes the imposition of one or more pre-commencement conditions to any decision notice relating to the Change of Use Application.

Variations to Change of Use Application

The Tenant shall not submit any further Change of Use Applications without the prior written approval of the Landlord such approval not to be unreasonably withheld or delayed.

The Tenant shall not amend or vary any Change of Use Application without the prior written approval of the Landlord, such approval not to be unreasonably withheld or delayed and the Tenant shall have due regard to any reasonable comments that the Landlord may make with regard to the Change of Use Application or any Planning Agreement from time to time.

The Tenant shall not withdraw any Change of Use Application without the prior written approval of the Landlord.

Extension of Statutory Period

The Tenant may with the consent of the Landlord (such consent not to be unreasonably withheld or delayed) agree with the Local Planning Authority an extension of the statutory period for the giving of notice of its decision under Section 78(2) of the Town & Country Planning Act 1990.

Extension of the Longstop Date

If on the Longstop Date, a Change of Use Permission has been granted but it has not been established under this Agreement whether or not it is a Satisfactory Change of Use Permission, then the Longstop Date will be extended to the date which is 10 Working Days after the date on which the Change of Use Permission is established to be or not be a Satisfactory Change of Use Permission in accordance with paragraph 2.9.

Appeals, Challenges

The Tenant shall (either on its own behalf or on behalf of itself and the Landlord jointly where requested by the Landlord) as soon as practicable (and in any event within the period prescribed by the 1990 Act) following:

the issue of a decision notice by the Local Planning Authority refusing the Change of Use Application; or

the non-determination of the Change of Use Application by the Local Planning Authority either within the period prescribed by the 1990 Act or within any agreed extension of time for determination; or

the grant of any Change of Use Permission by the Local Planning Authority which is not a Satisfactory Change of Use Permission,

if Leading Counsel advises that there is a greater than 60% chance of an Appeal resulting in the grant of a Satisfactory Change of Use Permission, lodge and pursue an Appeal against the Local Planning Authority's decision the reasonable cost of which is to be borne by the Tenant and the Tenant shall not withdraw the Appeal without the prior written consent of the Landlord such consent not to be unreasonably withheld where Leading Counsel advises during the Appeal that the chance of success has reduced to below 60%.

The Tenant shall (either on its own behalf or on behalf of itself and the Landlord jointly where requested by the Landlord) as soon as practicable (and in any event within the period prescribed by the 1990 Act) following:

the issue of a decision notice by the Secretary of State refusing the Change of Use Application; or

the grant of any Change of Use Permission by the Secretary of State which is not a Satisfactory Change of Use Permission,

if Leading Counsel advises that there is a greater than 60% chance of the Court remitting the case to the Secretary of State for redetermination and the Secretary of State granting a Satisfactory Change of Use Permission, lodge and pursue a Challenge the reasonable cost of which is to be borne by the Tenant and the Tenant shall not withdraw the Challenge without the prior written consent of the Landlord such consent not to be unreasonably withheld where Leading Counsel advises during the Challenge that the chance of success has reduced to below 60%

Neither the Landlord nor the Tenant may institute an Appeal or a Challenge in respect of a Satisfactory Change of Use Permission.

Planning Decision Notification

The Tenant shall notify the Landlord within ten working days of receipt of a planning decision pursuant to a Change of Use Application (or pursuant to an Appeal or a Challenge or any proceedings in connection with the Change of Use Application or any Change of Use Permission) and supply a copy of it to the Landlord as soon as reasonably practicable after the date upon which it is received by the Tenant together with a copy of any related Planning Agreement.

Satisfactory Change of Use Permission

Within 20 working days of the grant of a Change of Use Permission the Tenant shall notify the Landlord in writing whether or not the Change of Use Permission (and any related Planning Agreement) is a Satisfactory Change of Use Permission and if not stating its detailed reasons why not.

Within 20 working days of receipt of a copy of the Change of Use Permission from the Tenant the Landlord shall notify the Tenant whether or not the Change of Use Permission (and any related Planning Agreement) is a Satisfactory Change of Use Permission and if not stating its detailed reasons why not.

The Landlord and the Tenant may only respectively state that the Change of Use Permission (and any related Planning Agreement) is not a Satisfactory Change of Use Permission because of the presence of any Unacceptable Conditions.

If both the Landlord and the Tenant confirm in accordance with paragraphs 2.9(a) and (b) that the Change of Use Permission is a Satisfactory Change of Use Permission, then the Change of Use Permission shall be a Satisfactory Change of Use Permission.

If the Tenant fails to notify the Landlord within 20 working days of grant of a Change of Use Permission whether or not that Change of Use Permission is a Satisfactory Change of Use Permission, then the Change of Use Permission shall be deemed to be a Satisfactory Change of Use Permission unless the Landlord notifies the Tenant that the Change of Use Permission (and any related Planning Agreement) is not a Satisfactory Change of Use Permission (in accordance with paragraph 2.9(b)).

If the Landlord fails to notify the Tenant within 20 working days of receipt of a Change of Use Permission from the Tenant whether or not that Change of Use Permission is a Satisfactory Change of Use Permission, then the Change of Use Permission shall be deemed to be a Satisfactory Change of Use Permission unless the Tenant notifies the Landlord that the Change of Use Permission (and any related Planning Agreement) is not a Satisfactory Change of Use Permission (in accordance with paragraph 2.9(a)).

Disputes

Any dispute between the parties in respect of the provisions of this schedule or as to whether a Change of Use Permission (and any related Planning Agreement) is a Satisfactory Change of Use Permission may at the instigation of either party be referred to an Expert in accordance with clause 7.8.

Waiver of Unacceptable Conditions

Each of the Landlord and the Tenant may waive their respective rights to treat a condition or term as an Unacceptable Condition by giving to the other party notice to that effect at any time. Such a waiver by one party does not prejudice the rights of the other party to treat a condition or term as an Unacceptable Condition.

Planning agreements

The Tenant shall use reasonable endeavours to negotiate diligently any Planning Agreement (not containing any Unacceptable Conditions) that may be reasonably required by the Local Planning Authority in order to obtain the grant of a Satisfactory Change of Use Permission as soon as reasonably practicable and shall obtain the Landlord's approval to any such Planning Agreement (such approval not to be unreasonably withheld or delayed).

The Tenant shall provide the Landlord with copies of all heads of terms (including drafts), correspondence and draft agreements relating to any proposed Planning Agreement and allow the Landlord to make representations on any such heads of terms and each draft of the Planning Agreement in writing.

The Tenant shall take into account any representations made by the Landlord on any version of the heads of terms or any draft Planning Agreement.

If reasonably required by the Local Planning Authority the Tenant shall enter into any Planning Agreement which is reasonably required in order to secure the grant of a Satisfactory Change of Use Permission.

In the event that any Planning Payments (other than a CIL Liability) are levied or charged upon or in respect of the Change of Use or become the liability of the owner of the Property in consequence of the grant or implementation of the Change of Use Permission, the Tenant shall assume liability to make such payments in full and shall indemnify and keep the Landlord indemnified against all liabilities, proceedings, costs, claims, demands and expenses properly incurred or arising out of such Planning Payment provided that the Landlord must use reasonable endeavours to mitigate its losses.

Community Infrastructure Levy

In this paragraph (and otherwise where used in this Schedule), word and expressions, not otherwise defined in this agreement, but which have capitalised first letters, have the meaning given by the Community Infrastructure Levy Regulations 2010 (as amended from time to time).

The Tenant shall assume liability to pay any CIL Liability by submitting to the CIL Collecting Authority such notice as is required by the CIL Regulations for that purpose (with a copy to the Landlord), and shall not withdraw or revoke such notice without the Landlord's prior written consent (which shall not be unreasonably withheld or delayed where (i) the Tenant is disposing of its entire interest in the Property and the disponee is assuming liability or (ii) this Agreement terminates prior to the commencement of development pursuant to the Change of Use Permission).

The Tenant shall keep the Landlord indemnified against all liabilities, proceedings, costs, claims, demands and expenses properly incurred or arising out of the CIL Liability and other liabilities under the CIL Regulations relating to the Change of Use Permission provided that the Landlord must use reasonable endeavours to mitigate its losses.

Before any Chargeable Development is commenced, the Tenant shall submit to the Collecting Authority a Commencement Notice and shall provide a copy of that notice to the Landlord.

The Tenant must comply with all statutory requirements in relation to CIL.

Termination

Following the termination of this agreement:

If requested by the Landlord (but not otherwise) the Tenant shall withdraw any Change of Use Application or Appeal, Challenge or proceedings relating to the Change of Use Application or all or any of them;

(without prejudice to paragraph 2.12(a)) the Landlord at its own cost shall on giving notice to the Tenant have the right and authority to prosecute any Change of Use Application or Appeal, Challenge or proceedings relating to the Change of Use Application or all or any of them (and the Tenant shall at the request of the Landlord give written confirmation of such authority in such form as the Landlord may reasonably require) and the Tenant shall thereafter make no further representations on any such Change of Use Application or Appeal, Challenge or proceedings relating to the Change of Use Application or all or any of them without the written consent of the Landlord.

Landlord's planning obligation

The Landlord shall at the request and reasonable and proper cost of the Tenant provide such reasonable assistance as reasonably necessary to facilitate the grant of a Satisfactory Change of Use Permission as soon as reasonably practicable.

Mutual planning restrictions

Neither party shall at any time prior to the termination of this Agreement without the consent of the other party:

object to the Local Planning Authority the Secretary of State or any court in relation to any Change of Use Application;

mark, promote or incite any objection to the Change of Use Application; or

make any statement or representation to the Local Planning Authority the Secretary of State or any court regarding any local or structure plan or planning policy document for the area in which the Property is situated insofar as it relates to the Property.

* + 1. – Unacceptable Conditions

Any condition or obligation which:

* + - 1. would be likely, in the opinion of the Landlord acting reasonably, to reduce the reversionary value of the Property by more than £3 million;
			2. requires the payment or expenditure of money or other consideration by the Tenant or Landlord by way of planning gain or on works outside the Property, provided that the Tenant may not determine that a Change of Use Permission is not a Satisfactory Change of Use Permission on the basis of any such condition or obligation imposed on the Landlord and provided further that the Landlord may not determinate that a Change of Use Permission is not a Satisfactory Change of Use Permission on the basis of any such condition or obligation imposed on the Landlord or the Tenant where the Tenant agrees in writing (which may be by email) to pay the payment, expenditure of other consideration;
			3. creates a temporary planning permission;
			4. makes the Change of Use Permission personal to any particular person or class of persons;
			5. limits the occupation and/or use of the Property to a designated occupier or class of occupiers or in any way limits the duration of the permission once implemented;
			6. restricts hours of operation, by prohibiting operation between the hours of 07.00 to 23.00 on Mondays to Saturdays (inclusive) and 07.30 – 22.30 on Sunday and public holidays;
			7. unreasonably restricts timings of deliveries and servicing, provided that the imposition of a condition requiring the submission of and compliance with a delivery and servicing management strategy shall not be unreasonable;
			8. imposes any unreasonable restriction on the type, layout or size of vehicular access to the Property, provided that:
				1. a condition which prevents vehicles queuing, waiting or laying-over on the highway or outside the service yard shall not be unreasonable;
				2. a condition which requires the provision (and subsequent retention) of vehicular access, manoeuvring and parking areas prior to occupation shall not be unreasonable; and
				3. a condition which requires the submission of and compliance with a travel or transport plan shall not be unreasonable;
			9. imposes a limit on noise levels emanating from the Property with which it would be impracticable to comply or which would impose an undue financial burden, provided that:
				1. a condition which requires prior approval for the use of external tannoy, public address or other such audio system (other than fire alarms) outside of the buildings shall not be unreasonable;
				2. a condition which restricts the level of noise emitted from fixed plant, equipment or machinery at the Property below the levels detailed in the noise assessment submitted with the Change of Use Application shall not be unreasonable;
			10. prevents the use of the Property without the agreement or co-operation of any third party which cannot be obtained on reasonable terms or at a reasonable cost or within a reasonable time limit.

**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

………………………………………....

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| --- | --- | --- |
| **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:                       ...........................................................                                     ...........................................................  |