

DATED 10th August **2015**

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

ALDI STORES LIMITED

AGREEMENT

under Sections 72 and 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 relating to highway improvements at
Barnsley Road Goldthorpe Barnsley South Yorkshire

A.C. Frosdick, LL.B., DipLG,
Director of Legal and
Governance
Town Hall
Barnsley
S70 2TA

THIS AGREEMENT is made the 10th day of August
Two thousand and fifteen

BETWEEN

1. **BARNSELEY METROPOLITAN BOROUGH COUNCIL** of the Town Hall
Barnsley South Yorkshire S70 2TA ("**the Council**")
2. **ALDI STORES LIMITED** (Company Registration Number 2321869) whose
registered office is situate at Holly Lane Atherstone Warwickshire CV9 2SQ
("**the Company**")

INTERPRETATION

In this Agreement:-

"the Act" means the Highways Act 1980 as amended by the New Roads and
Street Works Act 1991

"the CDM Regulations" means the Construction (Design and Management)
Regulations 2007

"the Certificate of Completion" means the certificate to be issued by the
Highways Officer upon the satisfactory completion of the Works

"the Company" includes the successors in title of the Company

"the Conditions of Contract" means the Institution of Civil Engineers -
Conditions of Contract with such additions or amendments thereto as may be
approved by the Highways Officer

"the Development" means the retail development at the site for which planning
permission has been granted under reference 2014/1020 dated 20th November
2014

"the Drawings" means the drawings listed and attached at Schedule 1 hereto

"the Final Certificate" means the certificate to be issued by the Highways Officer
once the provisions of clause 5.3 hereof have been fully complied with to the
entire satisfaction of the Highways Officer

"the Highway" means the highway called Barnsley Road Goldthorpe Barnsley

“the Highways Officer” means the Head of Highways Engineering and Transportation for the time being of the Council and includes any professional officer appointed by him for the purpose of the supervision or inspection of the Works

“the Maintenance Period” means a period of twelve calendar months from the date of the issue of the Certificate of Completion

“Safety Audit” means a specified stage or stages of independent road safety audit procured pursuant to the Design Manual for Roads and Bridges

“Safety Audit Works” means any amended or additional works or any other measures necessary in order to comply with the recommendations of a Safety Audit

“the Section 115 Agreement” means an agreement entered into between the Council and a relevant sewerage undertaker pursuant to section 115 of the Water Industry Act 1991 to allow connections of highway drainage to the public sewerage system made pursuant or ancillary to the Works

“the Site” means the land at the junction of Barnsley Road and A635 at Goldthorpe Barnsley registered at HM Land Registry under title number SYK624478

“the Supervision Fee” means the sum of £10,113.00 (ten thousand one hundred and thirteen pounds) being the fees which are estimated will be incurred by the Council in checking and approving the drawings site inspections and administration of the Works of which the sum of £4,500.00 (four thousand five hundred pounds) has already been paid to the Council and receipt of which is hereby acknowledged

“the Security Deposit” means the sum of £90,000.00 (ninety thousand pounds) being the sum required to be deposited with the Council by the Company as security for the satisfactory completion of the Works

“the Specification” means the Specification for Highway Works published by HMSO with all amendments up to the date hereof

“the Works” means the works described generally in Schedule 2 hereto and indicated in outline on the Drawings and includes any amended or additional works as provided for herein

Clause headings are for ease of reference only and shall not form part of this Agreement for the purposes of its construction or interpretation

WHEREAS

- (1) The Council is the Highway Authority for the purposes of the Act
- (2) The Company has obtained planning permission for the Development of the Site and the Council and the Company are desirous that the Works shall be carried out to facilitate the Development
- (3) The Works are wholly required to improve access to the Site to a standard required for traffic safety and thus facilitate the Development and the Company will derive a special benefit if the Works are executed
- (4) The Company has agreed to execute or procure the execution of the Works as agent for and on behalf of the Council
- (5) This Agreement is made pursuant to Sections 72 and 278 of the Act and Section 111 of the Local Government Act 1972 and the Council is satisfied that it will be of benefit to the public
- (6) Nothing herein contained shall operate to restrict or prejudice the powers duties and rights of the Council under the Highways Act 1980 and the New Roads and Street Works Act 1991

NOW IT IS HEREBY AGREED by and between the parties as follows:-

1. SAFETY AUDITS

- 1.1 The Company has already procured Stage 1 and Stage 2 Safety Audits and shall procure a Stage 3 Safety Audit in respect of the Works and shall immediately upon receipt supply a copy to the Highways Officer
- 1.2 The Company shall prepare and submit to the Highways Officer for his approval details of any Safety Audit Works and if the Highways Officer deems that no amended or additional works or any other measures are necessary he shall notify the Company in writing to that effect
- 1.3 The Company shall carry out and complete the Safety Audit Works at its own expense and in the same manner as the Works
- 1.4 The Company shall certify to the Highways Officer in writing that it has fully complied with the recommendations of the Safety Audit in respect of the Works or if the Highways Officer has notified the Company that no Safety Audit Works are required it shall submit to the Highways Officer a written statement of the reasons why the recommendations of the Safety Audit have not been complied with

2. EXECUTION OF THE WORKS

- 2.1 The Company shall at its own expense for the purpose of carrying out the Works:-
 - (a) carry out surveys as required by the Highways Officer of the Highway and the Site
 - (b) carry out site investigation works
 - (c) appoint a designer approved by the Highways Officer to design a scheme for the Works (including all necessary drawings and documents to be approved by the Council) ("**the Approved Documents**")

- (d) appoint a contractor approved by the Highways Officer for the construction of the Works in accordance with a form of contract which shall be approved by the Highways Officer ("**the Contract**")

2.2 The Company shall:

- (a) procure the provision in writing of a programme and timetable for the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof ("**the Approved Programme**")
- (b) upon the request of the Highways Officer procure the provision of a written programme and timetable for any temporary traffic arrangements or any other measures which may be necessary or required in connection with the carrying out of the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof and shall comply with any further requests of the Highways Officer at any time during the carrying out of the Works
- (c) procure that the Works are carried out at its own expense in a good and workmanlike manner with proper and suitable materials to the reasonable satisfaction of the Highways Officer in accordance with the Specification and the Approved Documents and once commenced to proceed diligently with the Works and to use reasonable endeavours to complete the Works in accordance with the Approved Programme
- (d) before the commencement of the Works take whatever steps are necessary to locate and identify any services apparatus and equipment of any utility company Local Authority or other body which is situated in on under or over the Highway or which may otherwise be affected by the Works and shall supply to the Highways Officer copies of all consultations which have been carried

out copies of all consents and approvals obtained and details of any diversion or other works required to any services equipment or apparatus affected by the Works ("**Apparatus Works**")

- (e) carry out and complete the Apparatus Works at its own expense and in the same manner as the Works
- (f) procure compliance with all conditions and requirements imposed by any utility company local authority or other body in respect of any services equipment or apparatus affected by the Works
- (g) give the Highways Officer free access to such parts of the Site as are reasonably necessary for the proper inspection of the Works
- (h) procure that the Works are undertaken pursuant to the CDM Regulations
- (i) ensure the Works comply in every respect with the latest edition of Chapter 8 of the Traffic Signs Manual published by the Department of Transport
- (j) at its own expense arrange for all materials and soils in connection with the Works to be tested by a UK Accreditation Service (NAMAS) accredited laboratory and shall submit the test results to the Highways Officer and meet the costs of any further testing required by the Highways Officer

2.3 In the event the Highways Officer determines that any variations to the Works are required the Highways Officer shall notify the Company as soon as reasonably practicable of any revised or additional works which may be necessary and the Company shall carry out and complete the revised or additional works at its own expense and in the same manner as the Works

3. CONSENT TO WORK IN THE HIGHWAY

3.1 The Council shall during such hours of working as may be agreed in advance with the Highways Officer permit the Company or its approved

contractor (hereinbefore referred to) to enter upon the Highway for the purpose of carrying out the Works and all matters in connection with the Works

4. FEES AND COSTS

- 4.1 The Company shall on completion of this Agreement pay the remaining balance of the Supervision Fee in the sum of £5,613.00 (five thousand six hundred and thirteen pounds) to the Council
- 4.2 In the event the fees incurred by the Council exceed the Supervision Fee the Highways Officer shall provide a certified estimate or estimates of the increased fees and the Company shall pay the sum or sums due within 28 days of receiving a written request therefor
- 4.3 The Company shall upon completion of this Agreement pay to the Council the sum of £1,000.00 being the Council's legal fees for the preparation and completion of this Agreement

5. CERTIFICATES AND MAINTENANCE PERIOD

- 5.1 The Company may at any time when it believes the Works have been substantially completed notify the Highways Officer in writing whereupon the Highways Officer shall make arrangements to inspect the Works and the Highways Officer shall if the Works have been completed to his satisfaction issue the Certificate of Completion to the Company or the Highways Officer shall notify the Company of any outstanding items and the Company shall provide the Highways Officer with a program for their completion
- 5.2 The Company shall at its own expense maintain the Works throughout the Maintenance Period and shall make good any defects or damage arising or occurring during that period to the satisfaction of the Highways Officer

- 5.3 After the expiration of the Maintenance Period and provided the Company has made good any defects or damage to the entire satisfaction of the Highways Officer and provided that all monies due to the Council hereunder have been paid the Highways Officer shall issue the Final Certificate to the Company
- 5.4 For the avoidance of doubt the covenants on the part of the Company contained in clause 7 of this Agreement shall not be affected by the issue of the Final Certificate

6. **IT IS HEREBY AGREED AND DECLARED** as follows:-

- 6.1 That for the purpose of carrying out its obligations under this Agreement but for no other purpose whatsoever the Company will act as agent for and on behalf of the Council
- 6.2 The Company is to act as the only client in respect of the Works pursuant to the CDM Regulations
- 6.3 Any monies due to be paid under the provisions of this Agreement shall be paid within twenty one days of the due date or if not paid within that period shall bear interest at 3% above the Base Rate of Barclays Bank Plc for the time being such interest being payable from the due date to the date of payment
- 6.4 Once executed the Contract shall be deemed incorporated in this Agreement insofar as it is applicable and does not conflict with the provisions herein
- 6.5 The Company shall not assign its rights and obligations arising under this Agreement without the prior written consent of the Council

7. **COMPENSATION AND INDEMNITY**

- 7.1 The Company will on demand reimburse the Council with all expenditure it may properly incur in relation to any valid and proper

claims made pursuant to the Noise Insulation Regulations 1975 or Part I of the Land Compensation Act 1973 arising from the use of the Highway as altered by the Works and the Roads constructed by the Works together with the reasonable legal costs and surveyor's fees incurred either by the Council or any third party whose costs the Council is legally obliged to pay in connection with the processing and settlement of any such claims provided that no such claim shall be settled without the Council first liaising with the Company as to the nature and quantum of such claim and provided always that:

7.1.1. prior to settling any claim under the Noise Insulation Regulations 1975 of Part 1 of the Land Compensation Act 1973 the Council shall give the Company the opportunity to comment and take advice from the Company's own independent consultant in relation to any such proposed settlement such advice not to be unreasonably withheld or delayed;

7.1.2 the Company and/or its independent consultant shall be entitled to make representations to the Council in relation to any proposed settlement in relation to any claim under the Noise Insulation Regulations 1975 or Part I of the Land Compensation Act 1973 such representations not to be unreasonably withheld or delayed; and

7.1.3 the Council shall have proper regard to any representations made by the Company or its consultant in accordance with this clause

7.2 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising out of the non-observance non-performance or other breach of the Company's obligations under this Agreement and all claims demands damages and losses of whatever nature which may be

suffered by the Council due to any reason connected with the carrying out of the Works

- 7.3 The Company shall insure or shall procure that the Contractor carrying out the Works shall insure against any damage loss or injury which may occur to any property or person arising by or out of the execution of the Works otherwise than due to any act or omission of the Council and such insurance shall be effected prior to the commencement of the Works with an insurer on terms approved by the Council (such approval not to be unreasonably withheld or delayed) for at least the sum of £10,000,000 for each and every claim

- 7.4 The Company shall be responsible for :-

- (a) any costs that the Council may incur in entering into a Section 115 Agreement including any costs the sewerage undertaker may charge the Council under the Section 115 Agreement for technical administrative supervisory or legal costs from time to time
- (b) notifying the sewerage undertaker of their intention to commence drainage connection works
- (c) carrying out any maintenance or remedial works required by the sewerage undertaker pursuant to the Section 115 Agreement
- (d) indemnifying the Council against all losses liabilities claims costs damages and expenses arising from any claim by a sewerage undertaker any person or competent authority arising from or ancillary to the connection of the highway drains to the public sewers

8. DETERMINATION BY THE COUNCIL

- 8.1 In the event the Company fails to perform or observe any of the covenants or obligations herein contained or if a receiving order in bankruptcy is made against the Company or if the Company is wound up or enters into a composition or arrangement (otherwise than for the purpose of

amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Company for such non-performance or non-observance determine this Agreement by notice in writing to the Company sent to the address stated in this Agreement Subject always to the provisions of clauses 9 and 10 hereof

9. DEFAULT POWERS

- 9.1 Without prejudice to clause 8 hereof if the Company fails to execute or complete the Works in accordance with the Company's obligations hereunder the Council shall be entitled to execute or complete the Works in default by its own employees contractors or otherwise and to recover from the Company the reasonable and proper costs incurred by the Council thereby as certified in writing by the Highways Officer Provided that this default power shall only be exercisable by the Council after at least twenty eight days notice of intention has been given in writing to the Company

10. SECURITY DEPOSIT

- 10.1 The Company shall prior to the commencement of the Works pay the Security Deposit to the Council
- 10.2 Upon the issue of the Certificate of Completion the sum of the Security Deposit shall be reduced to a sum equal to ten percent of its original sum and the Council shall arrange as soon as practicable thereafter to refund the sum of the excess to the Company together with all accrued interest up to the date of refund
- 10.3 As soon as practicable after the issue of the Final Certificate the Council shall refund the remaining sum of the Security Deposit to the Company together with any further interest accrued on the remaining sum
- 10.4 If at any time the Company fails to observe or perform any of the covenants on the Company's part herein contained or to pay any sums due from the

Company to the Council under this Agreement or if circumstances shall arise which would entitle the Council to terminate this Agreement then without prejudice to any other rights and remedies of the Council against the Company under this Agreement or under statutory powers the Council shall be entitled to deduct the amount of any costs and expenditure which the Council may suffer or incur by reason thereof from the Security Deposit and the Council shall be entitled to retain any such sums so deducted and apply the same to discharge any such amounts or sums due from the Company to the Council

10.3 If the Council gives notice pursuant to clause 9 hereof and the amount as certified by the Highways Officer to be the estimated cost of carrying out and completing the Works or any part thereof or otherwise remedying any breach by the Company of the provisions hereof shall exceed the sum of the Security Deposit being held at that time the Company shall forthwith on demand pay the difference between the estimated cost and the sum of the Security Deposit to the Council and the same shall be held by the Council as part of the Security Deposit

10.4 The amount of the costs and expenditure estimated to be incurred by the Council shall be that certified by the Highways Officer in writing and such certificate shall be final and binding on the parties hereto

10.5 The relevant rate of interest to be applied to the sum of the Security Deposit or any part of it while it is held by the Council will be the Public Works Load Board (PWLB) Standard New Loan Annuity Rate for 7 1/2 to 8 years plus 1%

11. COVENANTS BY THE COMPANY AND THE COUNCIL

11.1 If at any time prior to the commencement of the Works the Company wishes to terminate this Agreement it may do so by giving notice to the Council and the Council shall give the Company an account of all abortive

costs reasonably and properly incurred by the Council in respect of this Agreement Within 28 days from the date of that account if that account shows that the payments made by the Company under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess and if that account shows that those costs exceed the payment made by the Company under the foregoing provisions of this Agreement the Company shall pay to the Council a sum equal to that excess

12. NOTICES

- 12.1 Any notice or demand required by this Agreement to be given or made shall be in writing and sent to the addresses stated in this Agreement

13. BENEFITS

- 13.1 The land which is to be benefited by the Works is the land to which the planning application hereinbefore referred to relates
- 13.2 This Agreement will be of benefit to the public

14. ARBITRATION

- 14.1 The Company hereby further agrees with the Council in the event of any dispute or difference between the parties hereto arising as to the construction of this Agreement or any of the provisions hereof such dispute or difference shall be referred to the President for the time being of the Institution of Civil Engineers whose decision shall be final and binding on the parties hereto Provided that nothing in this clause shall authorise the reference to arbitration of any question as to whether the whole or any part of the Works has been carried out and completed to the satisfaction of the Highways Officer

SCHEDULE 1
THE DRAWINGS

T262/100/01 – F

T262/200/01 – F

T262/500/01 - F

T262/700/01 - F

T262/700/02 - F

T262/1200/01 - G

T262/C100 - A

T262/C300

T262/C400

- T262/C500 - A

T262/C700

T262/C700/02 - A

T262/C1000/02

SCHEDULE 2

THE WORKS

- (a) Construction of new access road into the Site off Barnsley Road including the provision of a right turn pocket;
- (b) Construction of 2 traffic islands;
- (c) Kerbing
- (d) Carriageway and footway surfacing;
- (e) Drainage;
- (f) Amendments to street lighting;
- (g) Provision of signing and lining;
- (h) Provision of 2 new bus stops;
- (i) Any other works ancillary to the above.

EXECUTED by the parties hereto as a Deed the day and year first before written

THE COMMON SEAL of Barnsley)

Metropolitan Borough Council was)

hereunto affixed in the presence of:-)



Director of Legal & Governance/Authorised Signatory

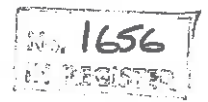
KARE JAMES)

SIGNED as a DEED by ~~Darren Williamson~~)

as attorney for **ALDI STORES LIMITED**)

under a power of attorney dated 20th July)

2009 in the presence of:)



Witness' signature:

Name (in Block Capitals):



Address:

Jemima Clarke
Freeths LLP
Cumberland Court
80 Mount Street
Nottingham NG1 6HH