

THIS DEED dated

26<sup>th</sup> October

2016 is made BETWEEN:-

1. THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Plough Lane Offices Plough Lane Hereford HR4 0LE ("the Council")
2. GALEBREAKER ENTERPRISES LLP (company registration number OC332212) of Galebreaker House, New Mills Industrial Estate, Ledbury, Herefordshire, HR8 2SS ("the First Owner")
3. GALEBREAKER AGRI LTD (company number 04069334) of Galebreaker House, New Mills Industrial Estate, Ledbury, Herefordshire, HR8 2SS ("the Second Owner")
4. ALDI STORES LIMITED (company registration number 2321869) of Holly Lane, Atherstone, CV9 2SQ ("the Developer")
5. HSBC BANK PLC (company registration number 14259 ) of Securities Processing Centre, P.O Box 6304 Coventry, CV3 9JY ("the Mortgagee")

WHEREAS:-

1. The Council is empowered by Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") to enter into an agreement with any person interested in land in its area for the purpose of restricting or regulating the development or use of that land.
2. The First Owner is the registered proprietor with title absolute of that part of the Land comprised in title number HW165728.
3. The Second Owner is the registered proprietor with title absolute of that part of the Land comprised in title number HE7671 and HE25756
4. The Owners and the Developer have by their agent submitted to the Council the application for planning permission described in the Second Schedule to this Deed ("the Application") in order to develop the Land and the Adjoining Land.
5. The Council acting by its planning committee has resolved to delegate authority to its officers for the grant of the Permission (subject to conditions) and subject to the completion of this Deed for the purpose of restricting or regulating the development or use of the Land.
6. The Council is the local planning authority by whom the restrictions and obligations contained in this Deed are enforceable.
7. The Developer has an interest in the Land for the purposes of Section 106 of the Act by virtue of a contract for sale dated 20 July 2015
8. The Mortgagee is a mortgagee of that part of the Land comprised in title number HE25756 by virtue of a legal charge dated 12 March 2010 made between the Second Owner and the Mortgagee and in that part of the Land comprised in title numbers HW165728 by virtue of a legal charge dated 3 March 2008 and 13 January 2016 made between the First Owner and the Mortgagee.

THIS DEED is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers and enactments which may be relevant for the purposes of giving validity hereto or

facilitating the enforcement of the obligations herein contained with the intent to bind the Land and WITNESSES as follows:-

1(A). Construction of this Deed:

In this Deed the following words and expressions shall where the context so admits have the following meanings:-

The expressions "the First Owner" "the Second Owner" "the Owners" the "the Council" "the Developer" and "the Mortgagee" shall include their respective successors in title and assigns.

Words importing the singular meaning where the context so admits include the plural meaning and vice versa

Words of the masculine gender include the feminine and neuter genders and all references in this Deed to a person or persons shall include corporations and unincorporated associations and all other legal entities.

Where there are two or more persons included in the expression "the Owners" covenants expressed or implied to be made by the Owners shall be deemed to be made by such persons jointly and severally.

Words denoting an obligation on a party to do any act include an obligation to procure that it be done.

Words placing a party under a restriction include an obligation not to permit infringement of that restriction.

References to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force.

1(B). Definitions

For the purposes of this Deed the following expressions shall have the following meanings:

"Adjoining Land" means the land identified in the Application and shown edged and shaded blue on the Plan

"CIL Contribution" means any sum payable in respect of the Permission pursuant to a charging schedule adopted by the Council pursuant to the provisions of Section 211(1) Planning Act 2008.

"Commence Development" and "Commencement of Development" mean to commence the Development pursuant to the Permission by the carrying out of a Material Operation.

"Development" shall mean the development of the Land and the Adjoining Land as set out in the Application.

"Land" means the land described in the First Schedule and against which this Deed may be enforced.

"Material Operation" has the meaning given by Section 56 (4) of the Act save that for the purposes of this Deed and for no other purpose it shall not include operations consisting of site clearance, demolition work, archaeological



investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements.

"Owners" means together the First Owner and the Second Owner

"Permission" means the planning permission subject to conditions to be granted by the Council permitting the Development pursuant to the Application.

"Plan" means the plan attached to this Deed.

"Public Realm Contribution" means a financial contribution of £120,000.00 (one hundred and twenty thousand pounds) index-linked in accordance with clause 3.10 of this Deed towards the Public Realm Facilities

"Public Realm Facilities" mean landscaping improvements to the 'Master's House' being a grade 2\* listed building within the public realm in Ledbury town centre.

2. Covenant

2.1 The Owners for the purposes of Section 106 of the Act with the intention of binding the Land agree and covenant with the Council to observe the restrictions and perform the obligations set out in the Third Schedule to this Deed.

2.2 The Council covenants with the Owners that the Council will comply with the obligations on its part set out in the Fourth Schedule to this Deed

3. Agreement and Declarations

IT IS HEREBY AGREED AND DECLARED that

3.1 The restrictions and obligations in the Third Schedule to this Deed are planning obligations enforceable by the Council in accordance with the provisions of Section 106(3) of the Act against the Owners and their successors in title to the Land and to the extent that any of the covenants restrictions agreements declarations and all other requirements imposed upon the Owners under this Deed are not planning obligations within the meaning of Section 106 of the Act they are entered into by the Council pursuant to Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and all other enabling powers and enactments which may be relevant for the purposes of giving validity to this Deed or to facilitate the enforcement of any of the requirements of this Deed.

3.2 With the exception of this clause 3.2 and clauses 3.10, 4, 5, 6, 7, 9 and 13, delivery and any other relevant clauses of this Deed which have effect on the date of this Deed none of the terms or provisions of this Deed will have operative effect unless and until the date that the Permission is issued by the Council.

3.3 If the Permission shall expire before Commencement of Development or shall at any time be quashed or revoked this Deed shall forthwith determine and cease to have effect insofar only as it has not already been complied with and without prejudice to the validity of anything done or payments or contributions made or expended whilst this Deed is in force.

3.4 If the Council agrees following an application under section 73 of the Act to vary or release of any condition contained in the Permission or if a condition is varied or released following an appeal under section 78 of the Act the covenants or

provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 application when a separate deed under s106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

- 3.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission including any variation thereto agreed pursuant to section 73 of the Act) granted (whether or not on appeal) after the date of this Deed.
- 3.6 If any provision or part provision of this Deed:
- 3.6.1 shall be held by any court or competent authority to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired; and
- 3.6.2 if any invalid illegal or unenforceable provision or part provision of this Deed would be valid legal and enforceable if some part or parts of it were amended the parties shall amend such provision(s) so that as amended it is legal valid and enforceable and so far as possible achieves the original intentions of the parties.
- 3.7 The Owner shall not be entitled to any costs or compensation whatsoever from the Council arising from the agreement restrictions and obligations contained in this Deed.
- 3.8 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from such act.
- 3.9 No person shall be liable for a breach of a covenant contained in this Deed after parting with all interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 3.10 The Public Realm Contribution payable in accordance with the obligations contained in the Third Schedule to this Deed shall be uplifted by reference to:
- 3.10.1 any increase in the BCIS tender price index published by the Royal Institute of Chartered Surveyors occurring between the date of its publication prior to the date of this Deed and the date that such sum is actually paid to the Council; or
- 3.10.2 an equivalent index that the Council may at their discretion select in the event that the BCIS tender price index shall cease to be published before such sums are paid.
- 3.11 If after the date of this Agreement the Owners become liable to pay a CIL Contribution and:-
- 3.11.1 the Public Realm Contribution has already been paid in respect of infrastructure towards which the CIL Contribution could be applied then the Council shall repay the Contribution to the person who paid the Public Realm Contribution; and/or



3.11.2 the Owners have not yet paid the Public Realm Contribution in respect of infrastructure towards which the CIL Contribution could be applied then the obligation to pay such unpaid Public Realm Contribution shall cease and determine absolutely.

3.12 The Public Realm Contribution may at the Council's discretion (provided that the Council is lawfully entitled to do so) be pooled with other such contributions to secure the Public Realm Facilities.

3.12 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation thereof.

3.13 This Deed shall not be enforceable against any statutory undertaker who acquires any part of the Land or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

#### 4. Reservations

For the avoidance of doubt nothing in this Deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Land.

#### 5. Local Land Charge Provisions

5.1 this Deed is a local land charge and shall be registered by the Council as such.

5.2 on the written request of the Owners at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge;

5.3 following the performance and full satisfaction of all the terms of this Agreement or if this deed is determined pursuant to clause 3.3 the Council will on the written request of the Owner record such performance or determination in the Local Land Charges Register in respect of this Deed.

#### 6. Costs

On or before the date of this Deed the Developer shall pay to the Council its reasonable and proper costs in the preparation and completion of this Deed.

#### 7. Notices and Notice of Commencement of Development

7.1 A notice under this Deed is valid only if it is given by hand sent by recorded delivery or document exchange and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.

7.2 A notice sent to the Council in relation to any matters arising from all other obligations in this Deed shall be addressed to the 'Planning Obligations Manager,' Development Management Team, Herefordshire Council, Blue School House, Blue School Street, Hereford HR1 2ZB quoting reference 160606/F.

7.3 A notice:

7.3.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;

7.3.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient.

7.4 The Council's Planning Obligations Manager shall be given 14 days prior notice of Commencement of Development.

8. Waiver

No waiver (whether expressed or implied) by the Council of any breach or default by the Owners in performing or observing any of the obligations or other terms of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the obligations or other terms of this Deed or from acting upon any subsequent breach or default by the Owners.

9. Arbitration

In the event of any dispute or difference arising out of this Deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) which is not resolved within 14 days such dispute or difference shall at the request of any party be referred for arbitration under the Arbitration Act 1996 to a sole arbitrator to be agreed between the parties or in the absence of agreement within fourteen days after any party has given to the other(s) a written request to concur in the appointment of an arbitrator to be appointed at the request of any party by the President or Vice President of the Chartered Institute of Arbitrators and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996.

10. Warranty as to title

The Owners warrant to the Council that the title details referred to in recital 2 and the First Schedule are complete and accurate in every respect and that no person other than the Owners the Developer and the Mortgagee have any legal or equitable interest in the Land.

11. VAT

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

12. Interest

If any payment due under the terms of this Deed is paid late interest calculated at the rate of 4% per annum above the National Westminster Bank Plc base rate from time to time will be payable from the date payment is due to the date payment is made.

13. Jurisdiction

This Deed is governed by and in accordance with the law of England.

14. Developer's Consent and Acknowledgement

The Developer hereby consents to the execution of this Deed and acknowledges that the Land shall be bound by the restrictions and obligations contained in this Deed and that the Developer's interest in the Land referred to in recital 6 takes effect subject to this Deed PROVIDED THAT the Developer shall have no liability under the terms of this Deed unless and until it acquires a freehold or leasehold interest in the Land.

15. Mortgagee's Consent and Acknowledgement

The Mortgagee consents to the Owners entering into this Deed and acknowledges that this Deed binds the Land. The Mortgagee shall only be liable for any breach of this Deed if it has itself caused the breach whilst mortgagee in possession. It shall not be liable for any pre-existing breach.

IN WITNESS of which this instrument has been duly executed as a deed by the parties and delivered on the date set out above

FIRST SCHEDULE

(the Land)

The freehold land at and known as Galebreaker House, Leadon Way, Ledbury, Herefordshire, HR8 2SS registered under title numbers HE25756, HE7671 (in respect of part) and HW165728 (in respect of part) and shown edged red and shaded pink on the Plan.

SECOND SCHEDULE

(the Application)

An application for planning permission for "Proposed extension to existing factory building and erection of a limited assortment discount foodstore (Class A1), car parking, landscaping and associated works" made under the Council's reference P160606/F and validated by the Council on 16 March 2016.

THIRD SCHEDULE

(Owner's Covenants)

The Owners covenant with the Council not to Commence Development on any part of the Land unless and until the Public Realm Contribution has been paid in full to the Council.

FOURTH SCHEDULE

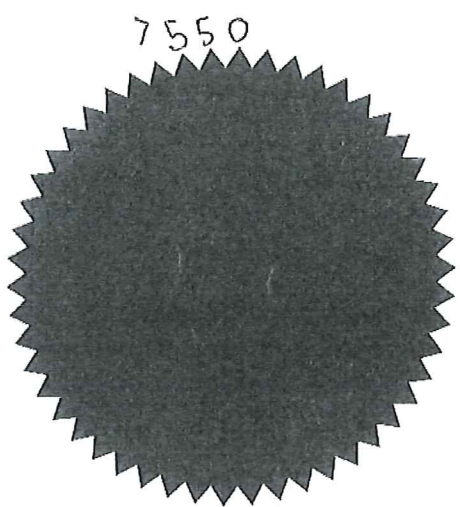
(Council's Covenants)

1. Upon receipt of the Public Realm Contribution the Council will place the same in an interest bearing account.



2. The Council shall apply the Public Realm Contribution towards the Public Realm Facilities
3. The Council agree that if any part of the Public Realm Contribution has not been expended or remains uncommitted following ten years from the date of payment then such part of the Contributions as may remain unspent or uncommitted together with interest accrued as aforesaid on the balance shall be returned to the payer of the Public Realm Contribution.
4. If so requested to provide the payer of the Public Realm Contribution with such evidence as shall be reasonably requested to confirm the expenditure of the Contributions.

EXECUTED AS A DEED when  
 THE COMMON SEAL OF  
 THE COUNTY OF HEREFORDSHIRE  
 DISTRICT COUNCIL  
 was hereunto affixed BY ORDER



Authorised Officer [REDACTED]

EXECUTED as a DEED  
 GALEBREAKER ENTERPRISES S.LLP  
 acting by ~~two~~ Members

in the presence of: [REDACTED] .....

Member

Witness signature: x [REDACTED] x

Witness name: [REDACTED]

Member

Address: 33 BLACKMORE RD  
 MALVERN WORCS  
 WR14 1QT

EXECUTED as a DEED by  
 GALEBREAKER AGRI LTD  
 acting by ~~two~~ Directors  
 or a Director and ~~its~~ Secretary:

in the presence of:

[REDACTED] .....

Director

.....

Director/Secretary

Witness signature: x [REDACTED] x

Witness name: [REDACTED]

Address: 33 BLACKMORE RD  
 MALVERN WORCS  
 WR14 1QT



EXECUTED as a DEED by **MICHAEL GERARD LONG**  
a duly authorised Official of  
HSBC BANK PLC  
as Attorney of the Bank  
in the presence of:

[Redacted]  
[Redacted]  
Attorney

Witness' signature: [Redacted]  
Name (in block capitals): **ANNETTE JUNE BRADDOCK**  
Address:

HSBC Bank plc  
SHEPPARD AVENUE  
PROCESSEMENT CENTRE

BANK OFFICIAL

SIGNED [Redacted] DEED [Redacted]  
[Redacted]

as attorney for  
**ALDI STORES LIMITED**  
under a power of attorney dated 20 July 2009  
in the presence of:

[Redacted]

Attorney

Witness' signature: [Redacted]  
Name (in block capitals): [Redacted]  
Address:

Freeths LLP  
Solicitors  
Cumberland Court  
80 Mount Street  
Nottingham NG1 6HH

Dated

26<sup>th</sup> October

2016

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

- and -

GALEBREAKER ENTERPRISES LLP

- and -

GALEBREAKER AGRI LTD

-and-

ALDI STORES LIMITED

-and-

HSBC BANK PLC

DEED OF PLANNING OBLIGATION  
made under the provisions of  
Section 106 Town and Country Planning Act 1990 (as amended)  
relating to land at Galebreaker House, Leadon Way, Ledbury  
Herefordshire

Herefordshire Council  
Plough Lane Offices  
Plough Lane  
Hereford HR4 0LE.



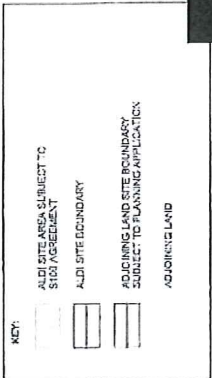
FOR INFORMATION: PLAN SHOWS EXTENT OF SITE SUBJECT TO S106 AGREEMENT WHICH APPLIES TO THE FOOD STORE ELEMENT OF THE APPLICATION SITE - EDGED IN RED AND COLOURED PINK. THE REMAINDER OF THE APPLICATION SITE IS EDGED IN BLUE AND SHADED LIGHT BLUE.

SECTION 57  
SECT 57(1)A



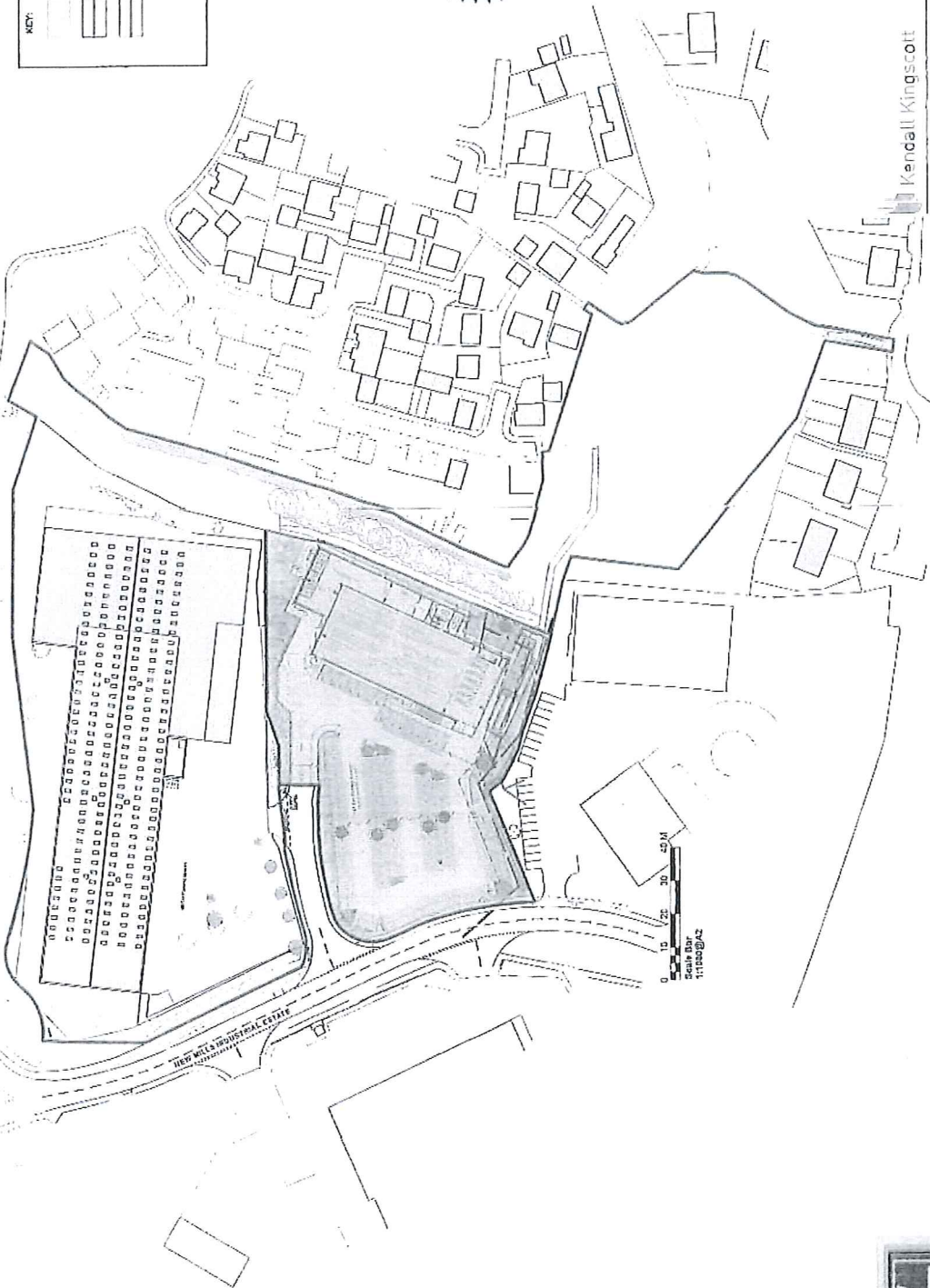
NEW MILLS WAY

HOMERASE



7550

Authorised by



Kendall Kingcott

A 152869 NR C25 468982 (L45) 181412100

ALDI Stores, Ledbury

S106 Site Plan with adjoining site

**ALDI Stores Ltd**  
Sovereign Court, Old Park Circus  
Drove, Gloucester, Gloucestershire GL1 2YH  
01452 525252  
www.aldi.co.uk

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