

DATED 27<sup>th</sup> February 2017

**WD KINGSGATE LIMITED**

and

**AAREAL BANK AG, WIESBADEN**

and

**THE COUNCIL OF THE BOROUGH OF KIRKLEES**

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**PLANNING AGREEMENT PURSUANT TO SECTION 106  
OF THE TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO EXTENSION TO EXISTING KINGSGATE  
SHOPPING CENTRE ON LAND COMPRISING 20-22 CROSS  
CHURCH STREET, FLEECE YARD, SUN INN YARD AND  
WHITE LION YARD, HUDDERSFIELD HD1 2TP  
(PLANNING APPLICATION REFERENCE 2016/92029)**

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Dated this

27<sup>th</sup>

day of

February

2017

**PARTIES**

- (1) **WD KINGSGATE LIMITED** (Co. Regn. No. 05733567) of 9 Staple Inn, London WC1V 7QH (the "Owner");
- (2) **AAREAL BANK AG, WIESBADEN** (incorporated in the Federal Republic of Germany) of "CM-1-CR", Paulinenstrasse, c/o 6, 7, 8 Tokenhouse Yard, London EC2R 7AS ("the Mortgagee"); and
- (3) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield HD1 2TA.

**INTRODUCTION**

- A For the purposes of the Act the Council is the local planning authority for the area in which the Land is situated.
- B The Owner is the proprietor of the freehold interest in the Land registered at the Land Registry under title numbers WYK793294 and YY49292.
- C The Application was made to the Council for planning permission for the Development by the Owner.
- D The Owner and Council wish to enter into this Deed with the intention that if the Planning Permission is granted the Council will be able to enforce the planning obligations (subject to the terms and conditions of this Deed) pursuant to section 106 of the Act.
- E The planning obligations within this Deed are necessary to address planning issues related to the Development.
- F The Mortgagee is the chargee of the part of the Land registered under title number WYK793294 via charges dated 11 July 2006 and 9 May 2014 and referred to in entries 13 and 14 in the charges register of title number WYK793294.
- G The Council is satisfied that the obligations contained in this Agreement comply with Regulation 122 and all the other Regulations contained within the Community Infrastructure Levy Regulations 2010 (as amended).

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings (and further definitions are contained in the Schedule):

"Act" the Town and Country Planning Act 1990;

"Application"	the application for planning permission submitted to the Council for the Development and allocated reference number 2016/92029;
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) pursuant to the Planning Permission forming part of the Development and on the Land begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations and diversions in respect of statutory undertaker and telecommunication equipment, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure and site huts, the temporary display of site notices or advertisements and "Commence Development" and "Commence" shall be construed accordingly;
"Contributions"	the Public Art Contribution and the Cross Church Street Contribution;
"Cross Church Street Contribution"	the sum of £185,000 (one hundred and eighty five thousand pounds) to be spent by the Council only on improvement works between the existing Kingsgate entrance on Cross Church Street and 20/22 Cross Church Street to upgrade the streetscape ;
"Development"	the development of the Land for the erection of an extension to the existing Kingsgate Shopping Centre to form new leisure development including new cinema and restaurants;
"Land"	the land adjacent to King and Venn Street and land at Fleece Yard, Huddersfield which is the subject of the Application and against which this Deed may be enforced as shown edged red on Plan 1 attached to this Deed;
"Occupation"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" and "Occupier" shall be construed accordingly;
"Plan 1"	the plan marked "Plan 1" attached to this Deed;
"Planning Permission"	the planning permission for the Development granted pursuant to the Application;

"Public Art Contribution" the sum of £40,000 (forty thousand pounds) to be spent by the Council only on public artwork which is to be situated in the vicinity of the Development and which is designed to enhance the street scene on Cross Church Street and to indicate a link between the Development and the entrance to the existing Kingsgate centre

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Unless otherwise indicated references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and wherever more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.8 References to the Land include any part of it unless otherwise indicated.
- 2.9 The headings are for reference only and shall not affect construction.

## **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and all other powers enabling which may be relevant for the purpose of giving validity to this Deed.
- 3.2 The covenants, restrictions and requirements of the Owner contained in this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority subject to the terms and conditions of this Deed.

#### **4. CONDITIONALITY / COMMENCEMENT**

- 4.1 The obligations contained in clause 5.1 and Schedule 1 of this Deed are conditional upon and do not come into effect until the grant of the Planning Permission and Commencement of Development with the exception of paragraph 1 of Schedule 1 which shall come into effect from the grant of the Planning Permission. All the other provisions of this Deed shall come into effect from the grant of the Planning Permission.

#### **5. THE OWNER'S COVENANTS**

- 5.1 The Owner covenants so as to bind its interest in the Land to comply with the obligations set out in Schedule 1 being planning obligations under Section 106 of the Act subject to the terms and conditions of this Deed.

#### **6. THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Owner as set out in the Schedule 2.

#### **7. MISCELLANEOUS**

- 7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 (save in respect of successors in title).
- 7.2 This Deed shall be registered as a local land charge by the Council.
- 7.3 Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and shall not be unreasonably withheld or delayed.
- 7.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request of the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.5 Insofar as any clause or clauses and/or provisions of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.
- 7.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest. Neither the reservation of any rights or the inclusion of any comments or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause 7.6.
- 7.7 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 Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development.

## **8. WAIVER**

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

## **9. VAT**

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

## **10. NOTICES**

10.1 Any notice, demand or other communication to be delivered to a party under this Deed shall be in writing and shall be in the manner and marked for the attention of the person from time to time designated by it to the other parties to this Deed. The initial details so designated are as follows:

10.1.1 The Council: Legal Services, High Street Buildings, High Street Huddersfield HD1 2ND

10.1.2 The Owner: F.A.O. Peter Everest, WD Kingsgate Limited, 9 Staple Inn, London WC1V 7QH.

10.2 Subject to clause 10.3 below and unless the date and/or time of actual receipt is proved a notice, demand or other communication sent by the following means is to be treated as having been served as follows:

10.2.1 If delivered by hand at the time of delivery;

10.2.2 If sent by pre-paid first class post on the second working day after posting; or

10.2.3 If sent by recorded delivery at the date and time delivery was signed for.

10.3 If a notice, demand or other communication is served after 4.00pm on a working day or on a day that is not a working day it is to be treated as having been served on the next working day and for the purpose of this clause a working day is any day from Monday to Friday (inclusive) which is neither Christmas Day nor Good Friday and not any statutory bank holiday.

## **11. MORTGAGEE**

11.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed

unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

**12. JURISDICTION**

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

**13. DELIVERY**

13.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## SCHEDULE 1

### Owner's Covenants to the Council

#### Part 1

1. Not to Commence Development without having served written notice on the Council of the proposed date of Commencement of Development 14 days before the actual date of Commencement of Development.

#### Part 2

#### 2. CONTRIBUTIONS

The Owner covenants with the Council:

- 2.1 To use reasonable endeavours to notify the Council of the date it estimates as being 3 months prior to first Occupation of any part of the completed Development.
- 2.2 To pay to the Council the Public Art Contribution within 14 days of Commencement of Development
- 2.3 To pay to the Council 50% of the Cross Church Street Contribution within 14 days of Commencement of Development and the remaining 50% on or prior to first Occupation.

**SCHEDULE 2**  
**Council's Covenants**

1. At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

2. **REPAYMENT OF CONTRIBUTIONS**

2.1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.

2.2 The Council covenants with the Owner that it will repay to the person who made such payment such amounts of any of the Contributions which have not been committed or expended in accordance with the provisions of this Deed within 5 years from the date of receipt by the Council of the last of such Contributions payment together with interest at the Co-operative Bank base rate from time to time for the period from the date of payment to the date of refund.

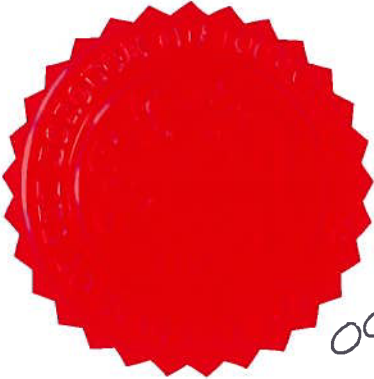
2.3 The Council shall provide to the Owner when reasonably requested to do so evidence to confirm the commitment/expenditure (or not) of the sums paid by the Owner to the Council under this Deed.

PLAN 1



The parties have executed this Deed as a Deed and it is delivered on the date set out above

THE COMMON SEAL of )  
THE COUNCIL OF THE BOROUGH OF KIRKLEES )  
was hereunto affixed in the presence of: )



**EXECUTED as a DEED by**  
**WD KINGSGATE LIMITED**  
Acting by

Director

~~Director/Secretary~~

**EXECUTED as a DEED by** )  
**AAREAL BANK AG, WIEBADEN** )  
Acting by )