

DATED 12th July 2019

THE COUNCIL OF THE BOROUGH OF
KIRKLEES

and

WD KINGSGATE LIMITED

and

AAREAL BANK AG, WIESBADEN

DEED

**Under Section 106 of the Town & Country
Planning Act 1990 relating to land at
Kingsgate Centre Store 1 King Street
Huddersfield HD1 2QB**

Julie Muscroft
Director: Legal Governance and Commissioning
Kirklees Council
Second floor
High Street Buildings
High Street
Huddersfield
HD1 2ND

THIS AGREEMENT is made the 21st day of

Two Thousand and Nineteen

BETWEEN (1) **WD KINGSGATE LIMITED** (Co.Regn. No. 05733567) of 9-10 Staple Inn Holborn London WC1V 7Q (hereinafter called "the **Owner**") **AND** (2) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall Huddersfield West Yorkshire (hereinafter called "the **Council**") **AND** (3) **AAREAL BANK AG, WIESBADEN** (incorporated in the Federal Republic of Germany) of European Property Finance, UK Department, Paulinenstrasse, 15, 65189 Wiesbaden, Germany and care of 6 7 8 Tokenhouse Yard, London EC2R 7AS (hereinafter called "the **Mortgagee**")

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the Kirklees district within which the Site is situated and is the local planning authority by whom the planning obligation within this Deed is enforceable
2. The Owner is the freehold owner of the Site the Owner's title being registered at HM Land Registry under title number WYK793294
3. The Mortgagee has two charges over the Site, one dated 11 July 2006 and one dated 9 May 2014 both of which are registered against the Site in the Charges Register of title number WYK793294
4. By the provisions of Section 106 of the Town and Country Planning Act 1990 ("the **Act**") any person interested in land in the area of a local planning authority may by deed or otherwise enter into a planning obligation in respect of the land
5. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to obtain a financial contribution towards the cost of enhancing and supporting local highways improvements in the town centre and on and around Cross Church Street Huddersfield

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

- 1.1. In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

"**Development**" means the development of the Site in pursuant to the Planning Permission

"**Highways Contribution**" means the sum of £25,000 (twenty five thousand pounds) to be spent by the Council

"Occupation" means 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 security purposes and "Occupy" and "Occupied" shall be construed accordingly

"Plan" means the plan annexed hereto

"Planning Permission" means the planning permission to be granted under Ref No. 2018/93568 for change of use of existing unit in a mixed Class A1/A2/A3 retail development to form a mixed A1/A2/A3/A4/D2 retail and leisure development, internal alterations and reconstruction of upper level, with extension, external slide and formation of roof terrace for use as sky bar

"Site" means the land at Kingsgate Centre Store 1 King Street Huddersfield HD1 2QB as shown edged red on the Plan

2. GENERAL

- 2.1. The Developer covenants with the Council to observe the restrictions and perform the obligations contained in this Deed. This Highway Contribution obligation of the Owner within this Deed is a planning obligation for the purposes of Section 106 of the Act
- 2.2. The provisions of this Deed are planning obligations made pursuant to Section 106 of the Act and all other powers so enabling to the intent that they shall bind the Owner in relation to the Site
- 2.3. The expressions "the Council" and "the Owner" shall include their successors in title and assigns and any person deriving title from the Owner and in the case of the Council shall include any successor to its statutory functions.
- 2.4. No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 2.5. This Deed shall come into effect upon the date hereof
- 2.6. If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice

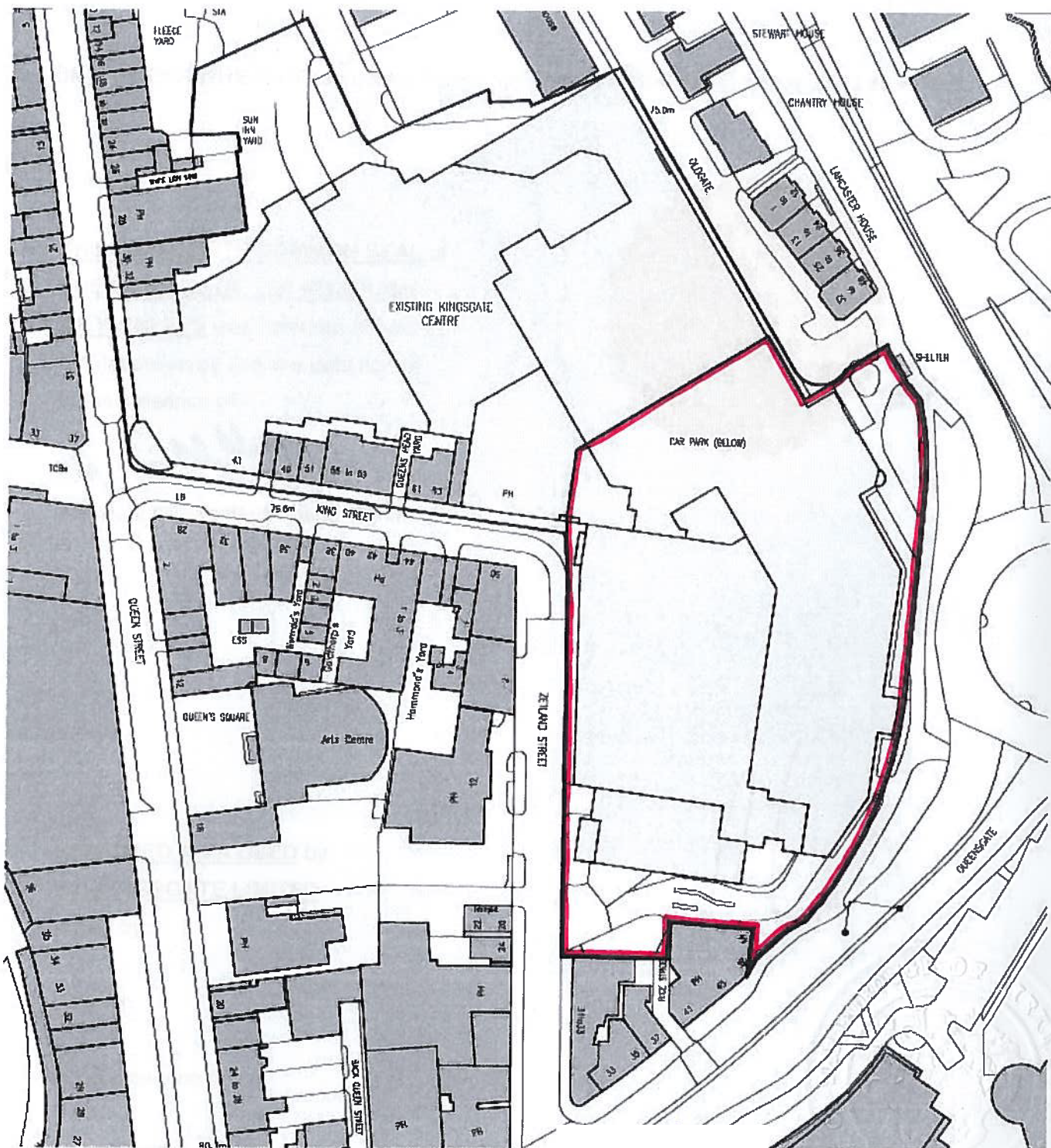
to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date

- 2.7. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) before and/or after the date of this Deed other than the Planning Permission
- 2.8. This Deed is a local land charge and shall be registered as such
- 2.9. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.10. The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed
- 2.11. The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligation contained in this Deed and that the security of its charge over the Site 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 Site in which case it too shall be bound by the obligation as if it were a person deriving title from the Owner.
- 2.12. The Council covenants with the Owner that it will issue the Planning Permission upon completion of this Deed *and only spend the Highways Contribution in accordance with Revised No. 5.*

3. **Highways Contribution**

The Owner covenants that prior to the Occupation of the cinema constructed as part of the Development it shall pay the Highways Contribution to the Council

PLAN



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- PROPOSED DEVELOPMENT
- NEIGHBOURING LAND UNDER CONTROL OF THE APPLICANT.
- EXISTING KINGSGATE SHOPPING CENTRE

1:1250
0 10 20 30 40 50m

N
012338

This drawing is copyright. All dimensions and details are to be verified on site. Any discrepancies are to be notified to the Architect prior to work commencing. Do not scale from drawings.

Content LOCATION PLAN
Client WD KINGSGATE LTD
Project KINGSGATE, PLAN H

Date OCT 2018 Drawing Scale 1:1250@ A4
Paper size A4 Drawn by GK Checked HB

Project Code 936 Drawing No. PL1-001 Revision

covellmatthews
ARCHITECTS

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PLANNING

Mark Böhmert
Legal Counsel

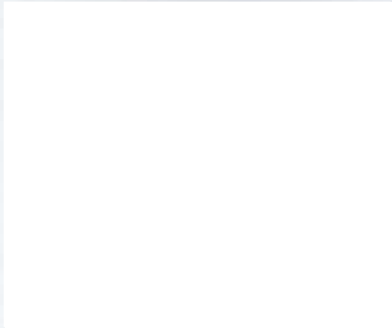
Unke Gutzen
Director

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed as a Deed

THE CORPORATE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF KIRKLEES was hereunto affixed)
but not delivered until the date hereof)
In the presence of:-)



Assistant Director/Authorised Signatory



EXECUTED AS A DEED by)
WD KINGSGATE LIMITED)
Acting by

Director

in the presence of

Witness Signature

Witness Name:

Witness Address: 1st Floor, 9-10 Sheep Inn
London WC1V 7QY

Witness Occupation: PA/office Mng

EXECUTED AS A DEED by
AAREAL BANK AG, WIESBADEN

)
)

Mark Böhmer
Legal Counsel

Ulrike Gutzen
Director

DATED

2019

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