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Copy to Cardine Ridge - please

Stuart Sugarman  
Rossendale Borough Council  
PO BOX 74  
Bacup  
OL13 0WU

Our ref bg/rwh/ajh

Contact Alex Harper  
0161 246 4838

20 April 2010

Dear Mr Sugarman

**Hurstwood Developments Ltd (in Administration) ("the Company")**  
**Joint Administrators - Brian Green and David Costley-Wood**

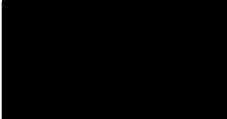
Further to our previous communication, please find enclosed the revised section 106 agreement between the Joint Administrators, National Westminster Bank Plc and Rossendale Borough Council in respect of the New Hall Hey site.

I would be grateful if you could sign page 6 of the agreement where indicated and return the original to me at the above address.

For your information, once signed the Joint Administrators will be instructing contractors to commence work on the site.

If you have any queries regarding the above please do not hesitate to contact Alex Harper on 0161 246 4838.

Yours sincerely  
for Hurstwood Developments Ltd

  
Richard Harrison  
for the Joint Administrators

The affairs, business and property of the Company are being managed by the Joint Administrators

Brian Green and David Costley-Wood are authorised to act as insolvency practitioners by the Institute of Chartered Accountants in England & Wales

Dated

2010

**HURSTWOOD DEVELOPMENTS LIMITED (IN ADMINISTRATION)**

**BRIAN GREEN AND DAVID JAMES COSTLEY-WOOD**

**NATIONAL WESTMINSTER BANK PLC**

**ROSSENDALE BOROUGH COUNCIL**

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**SUPPLEMENTARY AGREEMENT  
UNDER SECTION 106 TOWN AND  
COUNTRY PLANNING ACT 1990  
relating to land off New Hall Hey  
Road, Hermitage Arcade and Ex-  
Soldier and Sailor Club, Rawtenstall**

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**ADDLESHAW GODDARD**

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This Agreement Under Section 106 Town And Country Planning Act 1990 is made on 2009

**Between**

- (1) **Hurstwood Developments Limited (in administration)** (Company No. 1147083) of KPMG, 1 The Embankment, Neville Street, Leeds, LS1 4DW of KPMG, St James Square, Manchester, Greater Manchester, M2 6DS (**Landowner**);
- (2) **Brian Green and David James Costley-Wood** both of KPMG, St James Square, Manchester, Greater Manchester, M2 6DS (**Administrators**).
- (3) **National Westminster Bank Plc** (Company No. 929027) whose registered office is at 6th Floor, 1 Spinningfields Square, Manchester, M3 3AP (**Mortgagee**);
- (4) **Rosendale Borough Council**. of Futures Park, New Church Road, Bacup, Lancashire, OL13 0BB (**Council**);

**Whereas**

- (A) The Council is the local planning authority for the area within which the Site is located and is entitled to enforce the planning obligations contained in this Deed
- (B) The Landowner is the freehold owner of the whole of the Site (other than public highway land) subject to legal charges in favour of the Mortgagee but otherwise free from encumbrances which would prevent the Landowner entering into this Deed
- (C) The Site benefits from Planning Permission reference 2005/617 dated 9 May 2007 (**the 2005 Permission**) which is subject to condition 6 that governs the timing and quantum of use class B1 office floor space which shall be constructed under the Planning Permissions and how that use class B1 office floor space shall be linked to the retail unit A1 within the Development
- (D) The Site also benefits from Planning Permission reference 2007/030 dated 9 May 2007 (**the 2007 Permission**) which is subject to condition 21 that governs the timing and quantum of use class B1 office floor space which shall be constructed under the planning permissions and how that B1 office floor space shall be linked to the retail unit A1 within the Development
- (E) The Planning Permissions were granted subject to the terms of two Section 106 Agreements entered into by the Parties and Lancashire County Council (as highway authority) both dated 9 May 2007 (**Principal Agreements**)
- (F) The Administrators were appointed to act as joint administrators of the Landowner on 19 September 2008 by Order of the High Court of Justice, Manchester District Registry
- (G) This Deed is supplemental to the Principal Agreements and unless otherwise stated the terms covenants and obligations of the Principal Agreements remain as stated therein and continue to govern the Development permitted by the 2005 Permission and the 2007 Permission respectively
- (H) The Parties and the Administrators are entering into this Deed mindful of the need to secure the construction of the Development following the Landowner entering into administration and in light of prevailing economic conditions subsisting as at the date of this Deed
- (I) The Parties and the Administrators are entering into this Deed to secure the objective of safeguarding the construction of the Development and its incumbent benefits for the better planning of the area within which the Site is situated

(J) Unless otherwise stated definitions in this Deed are as stated in the Principal Agreements

It is agreed

## 1 Defined Terms

In this Deed the following words and expressions shall have the following meanings:-

**Agreed Period** means the period of 36 calendar months to commence 14 days after the date of this Deed

**Agreed Terms** means that the Landowner shall have completed all necessary contractual requirements on reasonable commercial terms as determined by the Landowner acting reasonably with the freehold purchaser or the leasehold purchaser of the B1 Floorspace within 39 months of the date of this Deed

**B1 Floorspace** means the 1,651 square metres of use class B1 Floorspace referred to in the Conditions

**Conditions** means condition 6 of planning permission 2005/617 and condition 21 of planning permission 2007/030

**Parties** means the Council the Landowner and the Mortgagee

**Plan** means the plan appended to this Deed

**Planning Permission** means the Planning Permission 2005/617 dated 9 May 2007 and Planning Permission 2007/030 dated 9 May 2007

**Requirements** means the marketing of the B1 Floorspace in the following manner and in each case providing a specification of the B1 Floorspace and contact details of the Surveyors:

- (a) on Site boundary hoardings to be agreed in writing with the Council detailing the specification of the B1 Floorspace
- (b) monthly advertisements in one local newspaper circulating in the vicinity of the Site during the Agreed Period
- (c) placement of an advertisement in Property Week on two occasions throughout the first 12 calendar months of the Agreed Period
- (d) placement of an advertisement that is updated regularly on the national website [www.egpropertylink.co.uk](http://www.egpropertylink.co.uk)
- (e) mailshot once every 6 months during the Agreed Period to agents in the vicinity of the Site, within the Greater Manchester area and potential local occupiers on the Surveyor's Database
- (f) placement on 3 occasions during the Agreed Period in the Surveyors' quarterly publication circulated in the north west of England titled Commercial Property
- (g) placement of details on the Property Register of the Council

**Site** means the land shown edged red on Plan 1 which lies to the north west of New Hall Hey Road, Rawtenstall and Heritage Arcade (formerly know as The Picture House), Bacup Road, Rawtenstall and the former Soldiers and Sailors Club at 12 Bury Road, Rawtenstall

**Surveyors** means Eddisons of Pennine House, Russell Street, Leeds, LS1 5RN

**Units A1–A3** mean the retail units within the Development as shown on the Plan

## 2 Supplementary Planning Obligations

### 2.1 The Parties and the Administrators **HEREBY AGREE AND DECLARE** that:

- (a) whereas the Landowner has commenced the construction of Units A1-A3 of the Development and the Conditions require that within 18 months of Unit A1 being brought into use not less than 1,651 square metres of B1 Floorspace shall be constructed and made available for occupation **THAT** the requirements of clause 2.2 of this Deed shall be deemed to satisfy the requirements of the Conditions and govern compliance by the Landowner with their terms
- (b) save for the matters set out in this clause 2.2 and at clauses 2.2, 2.3, 3.1 and 4.1 of this Deed the terms covenants and obligations of the Principal Agreements remain in full force as set out therein and are supplemented by the terms obligations and covenants of this Deed

### 2.2 The Landowner covenants with the Council and the Bank that:

- (a) it shall use all reasonable endeavours to complete the construction of Units A1-A3 of the Development within 4 months of the date of this Deed
- (b) within 21 days of the date of this Deed the Landowner shall instruct the Surveyors to market the B1 Floorspace in an open and transparent manner in accordance with the Requirements in order to secure the Agreed Terms for the duration of the Agreed Period
- (c) the Landowner shall keep the Council apprised during the Agreed Period of all marketing activity carried out by the Surveyors on a six monthly basis in the form of a written report and such written report shall include
  - (i) subject to issues of confidentiality and commercial sensitivity to provide full details of all enquiries negotiations and offers during as at the date of that report; and
  - (ii) details of the marketing activity which the Surveyors propose to undertake in accordance with the Requirements in the subsequent six month period
- (d) if at the expiry of the Agreed Period no leasehold or freehold transfer of the B1 Floorspace in accordance with the Agreed Terms shall have been completed by the Landowner acting reasonably in accordance with the Requirements then the Landowner shall notify the Council and the Landowner shall be released from the terms of this Clause 2.2 and the Conditions shall thereupon be deemed by the Council as satisfied **SAVE THAT** such release shall also be dependent on the Landowner having completed the construction of Units A1-3 of the Development
- (e) if the Landowner shall have secured a long leasehold or freehold transfer of the B1 Floorspace in accordance with the Agreed Terms prior to the expiry of the Agreed

Period then the Landowner shall thereafter be released from the requirements of this Clause 2.2 and the Conditions shall thereupon be deemed by the Council as satisfied

- (f) the Landowner shall procure that the surveyors submit a final written report to the Council at the expiry of the Agreed Period confirming the result of the marketing of the B1 Floorspace in accordance with the Requirements

2.3 The Council covenants with the Landowner and the Bank that:

- (a) it shall notify the Landowner of any potential occupiers for the B1 Floorspace of which the Council may be made aware in order that the Surveyor can make contact with such potential occupiers
- (b) it shall certify the satisfaction of the Conditions in clause 2.2(d) and 2.2(e) in writing within 14 days

### **3 Exclusion of Administrators' Personal Liability**

3.1 The Administrators are party to this Deed only for the purposes of receiving the benefit of this declaration and any other covenants conditions or provisions contained in their favour under this Deed and the Parties and the Administrators agree acknowledge and declare that the Administrators acts as agent of the Landowner and shall have no personal liability under or in connection with this Deed or any other document executed pursuant to it and any payments within the Principal Agreements shall rank as expenses of the administration pursuant to Rule 2.67 of the Insolvency Rules 1986

### **4 Mortgagee**

4.1 The consent of the Mortgagee in the Principal Agreements is extended and applies to the terms covenants and obligations in this Deed

This Deed shall not be deemed to have been delivered until it shall be dated

Executed as a deed by **HURSTWOOD DEVELOPMENTS LIMITED** )  
acting by one of its Joint Administrators in the )  
presence of )

.....  .....  
Administrator

.....  
Signature  
Name .....  
Address  
.....

Executed as a deed by one of the )  
Administrators acting on behalf of the Joint )  
Administrators in the presence of )

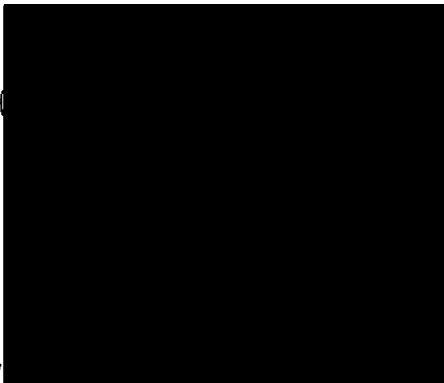
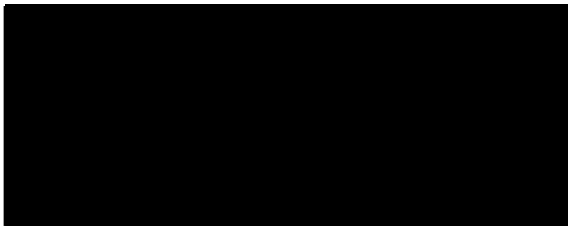
.....  .....  
Administrator

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Signature  
Name .....  
Address ...  
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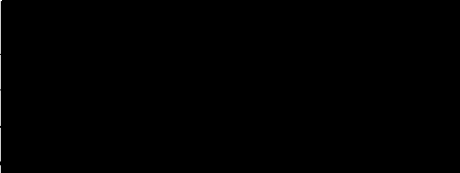
Executed as a Deed by **NATIONAL WESTMINSTER BANK PLC** in the presence of )

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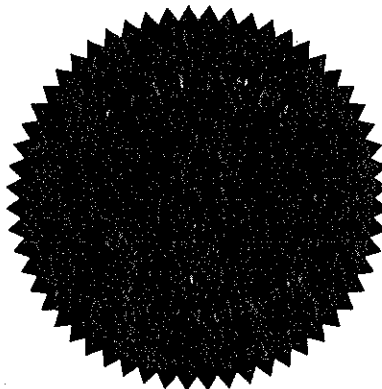


The common seal of  
**ROSSENDALE BOROUGH COUNCIL**  
was affixed to this deed in the presence of.....

.....  
.....

.....  
.....  
Director..... 

.....  
.....  
.....



No. IN SEAL REGISTER  
114917