



9 February

2016

(1) **NEWRIVER TRUSTEE 7 LIMITED and NEWRIVER TRUSTEE 8 LIMITED**

and

(2) **HATFIELD PHILIPS AGENCY SERVICES LIMITED**

to

(3) **ASHFIELD DISTRICT COUNCIL**

UNILATERAL UNDERTAKING
Section 106 Town And Country Planning Act 1990
relating to
Mapplewells Inn, Sutton-in-Ashfield

DWF LLP
1 Scott Place
2 Hardman Street
Manchester
M3 3AA


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THIS AGREEMENT is dated *9 February 2016* and made between:

- (1) **NEWRIVER TRUSTEE 7 LIMITED** (incorporated in Jersey) and **NEWRIVER TRUSTEE 8 LIMITED** (incorporated in Jersey) both of 13 Castle Street, St Helier, Jersey JE4 5UT (the **Owner**); and
 - (2) **HATFIELD PHILIPS AGENCY SERVICES LIMITED** (company number 06892862) whose registered office is at 34th Floor, 25 Canada Square, Canary Wharf, London E14 5LB (the **Chargee**);
- To**
- (3) **ASHFIELD DISTRICT COUNCIL** of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA (the **Council**).

WHEREAS

- (A) The Council in the local planning authority for the purposes of the Act for the Land.
- (B) The Owner owns the freehold interest in the Land and is registered as proprietor of it with Title Absolute at HM Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number NT234197 at the date of this undertaking.
- (C) The Chargee is the proprietor of a charge dated 18 December 2013 which is noted on the title with charge reference LL93555.
- (D) The Application was validated by the Council on 22 January 2015  *WFLV*
- (E) The Council refused the Application in a decision notice dated 8 June 2015.
- (F) The refusal of the Application was appealed to the Secretary of State on 16 September 2015.
- (G) This Deed is entered into to make provision regulating the Development and to secure the matters hereinafter referred to which are required in order to enable the Development to proceed should the Secretary of State by its Planning Inspector or otherwise grant the Planning Permission pursuant to the Appeal.

TERMS AGREED

1. Definitions and Interpretation

1.1 Definitions

In this Agreement (except where the context otherwise requires):

the Act means the Town and Country Planning Act 1990 as amended from time to time;

Appeal means the appeal to the Secretary of State following the refusal of the Application by the Council given appeal reference

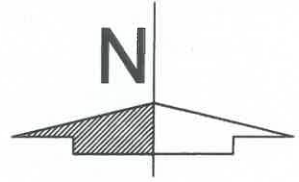
APP/S3005/W/15/3134656;

the Application	means Planning Application for the Development made to the Council numbered V/2015/0043;
Commencement of the Development	<p>means the earliest date upon which any material operations are begun in accordance with the provisions of section 56(4) of the Act pursuant to the planning permission save that for the purposes of this Agreement none of the following operations shall constitute a material operation:</p> <ul style="list-style-type: none">(a) site preparation works;(b) archaeological investigations;(c) site investigation works (including environmental investigations);(d) works of demolition or clearance;(e) remedial work in respect of any contamination or other adverse ground conditions;(f) diversion and laying of services;(g) erection of any temporary means of enclosure;(h) the temporary display of site notices or advertisements; <p>and "Commence the Development" shall be construed accordingly;</p>
the Development	means the change of use from public house (A4) to retail store (A1) with internal and external alterations including ATM and associated servicing, refuse, plant and parking areas;
the Land	means the Land shown for the purposes of identification only edged red on the plan annexed;
the Planning Permission	means any planning permission issued by the Planning Inspector or Secretary of State in determining the Appeal;
Planning Inspector	means the inspector appointed by the Secretary of State to preside over the hearing in relation to the Appeal;
Secretary of State	means the Secretary of State for Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act;
TRO Contribution	means the sum of £4,450 (four thousand four hundred and fifty pounds) to be paid to the Council toward the provision of a Traffic

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All contractors must visit the site and be responsible for checking all setting out dimensions and notifying the architect of any discrepancies prior to any manufacture or construction work.

NOTES:



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REVISIONS: DATE: NOTES: CHK:

FOR INFORMATION

Client

NEW RIVER RETAIL LTD

Project

EXTERNAL ALTERATIONS TO
MAPPLEWELLS INN
ALFRETON ROAD, SUTTON, NG17 1HU

Drawing Title
SITE LOCATION PLAN

Drawn	Checked	Paper Size	Scale	Date
ASG	PH	A3	1:1250	22.01.16
Project No.	Drawing No.	Revision		
131106	RF44-S106	-		

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Regulation Order near the Land.

1.2 Interpretation

- (a) References to the masculine, feminine and neuter genders shall include the other genders.
- (b) References to the singular include the plural and vice versa unless the contrary intention is expressed.
- (c) References to natural persons are to include corporations and vice versa.
- (d) Headings in this Deed are for reference purposes only and shall not be taken into account in its construction or interpretation.
- (e) The expressions the "Owner", the "Chargee" and the "Council" shall include their respective successors in title and assigns.
- (f) A reference to a clause, paragraph or schedule is (unless the context otherwise requires) a reference to a clause, paragraph or schedule of this Deed.
- (g) Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.
- (h) Where in this Deed a party includes more than one person any obligations of that party shall be joint and several.
- (i) Any reference in this Deed to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

2. Statutory Authority and Legal Effect

- 2.1 This Deed shall constitute a planning obligation for the purposes of and is made pursuant to section 106 of the Act.
- 2.2 The obligations of the Owner in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council as local planning authority.
- 2.3 Subject to clause 2.4, the Owner covenants with the Council to the intent that this Deed shall be enforceable without limit of time (other than as expressly mentioned in this Deed) against the Owner and any person deriving title through or under it to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 2.4 No person shall be bound by any obligations, rights and duties contained in this Deed and/or be liable for any breach of a covenant and/or obligation contained in this Deed after they shall have parted with all interest in the Land or the part in respect of which such obligation relates

or such breach occurs provided that they shall remain liable for any subsisting breach of covenant prior to parting with their interest.

- 2.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Deed and/or be liable for any breach of a covenant and/or obligation contained in this Deed in respect of any site used only as an electricity substation, gas governor or pumping station.
- 2.6 If the Planning Permission expires (within the meaning of sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Deed shall forthwith determine and cease to have effect.
- 2.7 Nothing in this Deed shall be construed as prohibiting or limiting any 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.
- 2.8 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

3. Condition Precedent

This Deed is conditional on the grant of the Planning Permission and the Commencement of the Development.

4. Obligations

The Owner covenants in respect of the Land as set out in the schedule.

5. The Owner

The Owner enters into this Deed in their capacity as trustees of NewRiver Retail Property Unit Trust No. 4 and as such any liability on their part pursuant to this Deed is limited to the assets held by them for the time being as trustee of NewRiver Retail Property Unit Trust No. 4.

6. The Chargee

The Chargee acknowledges and declares that this Deed has been entered into by the Owner with its consent to the intent that the planning obligations shall be binding on the Land and that the security of the mortgage/charge over the Land shall take effect subject to this Deed PROVIDED THAT the Chargee shall only be liable for any breach that it has itself caused whilst mortgagee in possession but shall not be liable itself for any pre-existing breach.

7. Invalidity

It is agreed and declared that if any clause or subclause of this Deed shall be deemed to be unenforceable or ultra vires the remainder of this Deed shall remain in full force and effect provided severance from this Deed is possible.

8. Contracts (Rights of Third Parties) Act 1999

Nothing contained in this Deed shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council, and to the specific person executing this

Deed as the Owners and their successors (if any) as defined in this Deed and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that act shall have any rights of enforcement in respect of any matter contained in this Deed.

9. Other Matters

This Deed shall be registerable as a Local Land Charge in the register of Local Land Charges maintained by the Council.

In witness of which the Owner and the Chargee have executed this undertaking as a deed and have delivered it upon dating the day and year first before written.

SCHEDULE

The Owner covenants with the Council with the intent that these are planning obligations for the purposes of section 106 of the Act:

1. To notify the Council in writing of the Commencement of the Development within 7 (seven) days.
2. To pay to the Council the TRO Contribution within 14 (fourteen) days of Commencement of the Development.

SIGNATURE PAGE

EXECUTED as a deed)
for and on behalf of)
NEWRIVER TRUSTEE 7 LIMITED)
a company incorporated in Jersey.)
acting by [**SIMON VARDOL**])
and [**PHILIP TURAN**] being persons)
who, in accordance with the laws of)
that territory, are acting under the)
authority of that the company)


.....
Signature of authorised signatory


.....
Signature of authorised signatory

EXECUTED as a deed)
for and on behalf of)
NEWRIVER TRUSTEE 8 LIMITED)
a company incorporated in Jersey)
acting by [**SIMON VARDOL**])
and [**PHILIP TURAN**] being persons)
who, in accordance with the laws of)
that territory, are acting under the)
authority of that the company)


.....
Signature of authorised signatory


.....
Signature of authorised signatory

Matt Carson

EXECUTED as a deed)
for and on behalf of)
HATFIELD PHILIPS AGENCY)
SERVICES LIMITED by)
[MATT] in the presence of:)
CARSON)



Director

Witness Signature



Witness Name

Meloye MBAMA

Address

36th floor
25 Canada Square
London E14 5LB

Occupation