

DATED

30TH AUGUST

2019

BIRMINGHAM CITY COUNCIL

- and -

IM PROPERTIES PLC

SECTION 106 AGREEMENT
relating to
Land at Peddimore, Minworth, Birmingham

Planning Application Ref. 2019/00108/PA

INDEX

Clause	Page No
1. STATUTORY PROVISIONS	3
2. INTERPRETATION	4
3. COMMENCEMENT	14
4. COVENANTS BY IM PROPERTIES	14
5. COVENANTS BY THE DEVELOPER	15
6. FURTHER COVENANT BY THE DEVELOPER	15
7. COVENANTS BY THE COUNCIL	16
8. MISCELLANEOUS	16
9. NOTICES	16
10. ARBITRATION	18
11. LATE PAYMENT	19
12. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	19
13. LEGAL COSTS	20
14. JURISDICTION	20

Schedule 1- INVESTMENT IN CITY COUNCIL SEVEN DAY NOTICE DEPOSITS

Schedule 2- GREEN TRAVEL DISTRICT

Schedule 3- TRANSPORT CONTRIBUTION

Schedule 4- MONITOR AND MANAGE PROGRAMME

Schedule 5- CONTRIBUTION TO OFF-SITE LANDSCAPING

Schedule 6 - PATH NETWORK

Schedule 7 – FARMLAND BIRDS MITIGATION

Schedule 8 – MANAGEMENT COMPANY

Schedule 9 – COUNCIL'S COVENANTS

Appendix 1 – Plan 1: Site Plan

178466/TS/TS/06781203
27/08/2019
P888(s.106)

Appendix 2 – Plan 2: Phase Plan

Appendix 3 – Plan 3: Planting Plan

Appendix 4 – Plan 4: Path Network Plan

Appendix 5 – Outline Farmland Birds Mitigation Strategy

Appendix 6 – Draft Planning Consent

Appendix 7 – Implementation Notice

Appendix 8 – Section 106 Payment Form

THE DEED is made on 30TH day of AUGUST 2019

BETWEEN:-

- (1) BIRMINGHAM CITY COUNCIL of the Council House, Birmingham, B1 1BB ("the Council"); and
- (2) IM PROPERTIES PLC (Company Number 03456022) whose registered office is situated at I.M. House South Drive, Coleshill, Birmingham, B46 1DF ("IM Properties")

WHEREAS

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Development Site is situated;
- (B) The Council is interested in the Development Site as the person entitled to the freehold thereof registered under title number WM27165;
- (C) IM Properties is interested in Phase 1 of the Development Site pursuant to a Development Agreement dated 29 March 2018 between the Council and IM Properties and noted on the register of title number WM27165;
- (D) Under the Development Agreement, following satisfaction of certain conditions relating to the Development, the Council is due to grant a leasehold interest in Phase 1 of the Development Site to IM Properties and, following satisfaction of further conditions relating to the Development, the Council is due to grant the freehold interest of Phase 1 of the Development Site to IM Properties;
- (E) Under the Development Agreement, the Council retains the freehold of Phase 2 of the Development Site and will put in place arrangements to carry out the Development within Phase 2 in due course;
- (F) The Council considers and IM Properties accepts by the terms of this Deed that the Development of any Phase (or part of a Phase) should not take place without the obligations contained herein being secured by binding a person with a proprietary

interest in the Phase (or part of the Phase) prior to the commencement of that part of the Development under section 106 of the Town and Country Planning Act 1990;

- (G) The Council cannot covenant under this agreement as freeholder because it cannot enforce covenants against itself. Therefore, the Planning Permission is to contain the conditions numbered 2 and 33 in the draft Planning Permission appended hereto which prevent commencement of the Development of any Phase (or part of a Phase) of the Development unless and until all persons with estates and interests that need to be bound to ensure satisfactory enforcement of the obligations contained in this Deed have entered into a deed binding their interest in the Development Site under section 106 to adhere to the covenants on the part of the Developer contained in this Deed;
- (H) An Application has been submitted to the Council for the purpose of securing the development of the Development Site (Ref. 2019/00108/PA);
- (I) The Council and the Developer agree that the obligations in this Deed are in the interests of the proper planning of the Council's administrative area. They meet the tests of planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, being necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.

NOW THIS DEED WITNESSES as follows:-

1. **STATUTORY PROVISIONS**

This Deed is made pursuant to the provisions of Section 106 of the Act, under section 111 of the Local Government Act 1972, section 278 of the Highways Act 1980 and all other powers enabling which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with intent to bind IM

Properties' interest in the Development Site and the covenants in this Deed on the part of the Developer are planning obligations for the purposes of the Act.

2. INTERPRETATION

2.1 In this Deed in addition to the parties hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:-

"Above Ground Works"

means works carried out or to be carried out above ground floor slab level of any Commercial Floorspace in such part of the Development as may be specified in the Deed, and for the avoidance of doubt shall not include any ancillary buildings including but not limited to sub-stations, gatehouses and security facilities;

"Act"

the Town and Country Planning Act 1990 (as amended);

"Annual Monitoring Report"

a report prepared by the Site Wide Travel Plan Co-ordinator based on the relevant surveys carried out under the Monitor and Manage Programme of this schedule which will:

- identify the impact of the Development taking into consideration any successes associated with the Travel Plan and sustainable travel measures;

- confirm whether the predicted need for the identified junction improvement schemes has been realised;

- confirm whether the identified schemes are still appropriate, or alternatives should be taken forward;

- inform the drawdown of the Transport Contribution in line with expected Reserved Matters Applications and development occupations;

"ANPR Survey"

a survey using automatic number plate recognition carried out throughout the Monitor and Manage Junctions, the scope of which is to be agreed with the Council prior to each survey, to confirm the network routing of vehicle traffic accessing the Development;

"Application"

planning application reference 2019/00108/PA, a hybrid application comprising: Outline application with all matters reserved for an employment park comprising B1b, B1c, B2 and/or B8 uses, including ancillary offices (B1a), gatehouses and security facilities, service yards and HGV parking, plant, vehicular and cycle parking, landscaping, pedestrian and cycle infrastructure, green and blue infrastructure,

ancillary business and community facilities (D1/D2/B1a/A3/Sui Generis) including a multi-purpose hub building and associated development. Full planning application for a new roundabout access from the A38, construction access and compound area, internal spine road, site gatehouse, primary substation and tower, engineering operations including foul pumping station, acoustic fencing, earthworks (including creation of development plot plateaus), pedestrian and cycle infrastructure and structural landscaping including drainage infrastructure and development platform within Peddimore Brook corridor for ancillary business and community facilities;

"Approved Farmland Birds Mitigation Strategy"

the Final Farmland Birds Mitigation Strategy as approved by the Council, or where the Council has not given notice within eight weeks of submission of the Final Farmland Birds Mitigation Strategy that it requires amendments to the Final Farmland Birds Mitigation Strategy, the Final Farmland Birds Mitigation Strategy as submitted;

"ATC Survey"

a survey using automatic traffic counters located at the access to the Development

	carried out for a period of seven days during a neutral day and month to be agreed with the Council;
"Authorised Deposit Taker"	a person permitted to accept deposits pursuant to Part 4 of the Financial Services and Markets Act 2000;
"Bridleway"	the new bridleway to be dedicated as an extension to PROW2086 identified on the Path Network Plan in dark blue;
"Commercial Floorspace"	floorspace within the Development for use for purposes falling within Classes B1b, B1c, B2 and/or B8 of the Use Classes Order (including the "multi purpose hub building") as permitted by the Planning Permission measured on the basis of GIA;
"Contribution"	means each of the GTD Contribution, the Transport Contribution, and the Off-site Landscaping Contribution;
"Director of Inclusive Growth"	the Director of Inclusive Growth at the Council or such other person performing that duty for the time being;
"Developer"	any person which has taken a legal interest in any part of the Site who has entered into a deed under section 106 to adhere to the covenants in this Deed and any person deriving title from such a person and IM

"Development"

Properties and any person deriving title from IM Properties;

an employment park comprising B1b, B1c, B2 and/or B8 uses, including ancillary offices (B1a), gatehouses and security facilities, service yards and HGV parking, plant, vehicular and cycle parking, landscaping, pedestrian and cycle infrastructure, green and blue infrastructure, ancillary business and community facilities (D1/D2/B1a/A3/Sui Generis) including a multi-purpose hub building and associated development, a new roundabout access from the A38, construction access and compound area, internal spine road, site gatehouse, primary substation and tower, engineering operations including foul pumping station, acoustic fencing, earthworks (including creation of development plot plateaus), pedestrian and cycle infrastructure and structural landscaping including drainage infrastructure and development platform within Peddimore Brook corridor for ancillary business and community facilities pursuant to the Planning Permission as may be amended pursuant to an application made under section 73 or section 96A of the Act;

"Development Site"	all that land shown edged red on the Site Plan;
"Due Date"	the date upon which any payment due under any of the provisions of this Deed is to be made;
"Farmland Birds Mitigation Site"	means the land at Coleshill Manor identified on page 12 of the Outline Farmland Birds Mitigation Strategy which is owned by IM Properties or such other site as agreed with the Council;
"Final Farmland Birds Mitigation Strategy"	a farmland birds mitigation strategy to be produced in accordance with section 5 of the Outline Farmland Birds Mitigation Strategy comprising: results of further breeding bird surveys, details of the amount of land that will be utilised for the creation of skylark plots, specific timings for the delivery of mitigation, details for the annual management of the Farmland Birds mitigation site; and details of personnel responsible for the delivery of mitigation;
"GTD"	a core area covering the electoral ward of Sutton Walmley & Minworth together with a wider area of influence where reasonably required within which contributions secured from developments are invested in schemes that provide long-term benefit to those

"GTD Board"

travelling within the area maximising the potential to reduce car dependency;

the board to be constituted and led by the GTD Director and formed of key stakeholders from within the GTD including:

- the Site Wide Travel Plan Co-ordinator for the Development, any equivalent person in respect of the proposed urban extension at Langley (the development allocated in the Birmingham Development Plan under Policy GA5) (and other developments within the GTD as considered appropriate by the Council);

- TfWM;
- Council representative;
- local community representatives;
- local business representatives;

with the role of:

- identifying transport issues and opportunities within the GTD Area; and
- recommending and prioritising suitable transport improvements to be funded by the Transport Contribution and contributions secured under a section 106 agreement from the proposed urban extension at Langley, such recommendations to be presented to the Council;

"GTD Director"

an individual employed by the Council with the following responsibilities (and/or such other duties as may be agreed in writing between the Council and the Developer):

- i) Agreeing the remit of the GTD, e.g. location, members, aims & objectives, decision-making processes;
- ii) Undertaking stakeholder mapping and analysis across the GTD area;
- iii) Conducting a transport audit of the GTD, including the Development and the proposed urban extension at Langley;
- iv) Reviewing the Travel Plan Survey for the Development and any equivalent survey in respect of the proposed urban extension at Langley and other developments included in the GTD;
- v) Undertaking wider community engagement around transport issues;
- vi) Recommend and prioritise transport improvements in an action plan to the Council;
- vii) Identify the contribution from the Transport Contribution needed to effectively deliver these actions;
- viii) Arrange for communications, marketing and promotion to support the activities;

- ix) Ensure monitoring, evaluation and reporting arrangements are in place to review this;
- x) Recognise, reward and celebrate the achievements and impact of the GTD; and
- xi) Carry out supplementary transport surveys across the GTD;

"GTD Contribution"

a contribution of £160,000 (one hundred and sixty thousand pounds) Index Linked to establish and develop the GTD for a minimum period of 5 years;

"Highway Improvement Works"

(a) works to the highway arising out of the Monitor and Manage Programme (b) works to the highway to provide public transport infrastructure (c) such other ancillary works as the Council shall reasonably require (d) any accommodation works (e) works which may as a consequence of (a) (b) or (c) be necessary to statutory undertakers' and telecommunications apparatus and all other equipment under in or over the highway;

"Implementation Notice"

the notice in writing to be served upon the Council by the Developer notifying it of the Developer's intention to commence the Implementation Works in the form of the draft notice annexed hereto as Appendix 7;

"Implementation Works"

any works to implement the Planning Permission by the carrying out of a material

operation as defined by Section 56(4) of the Act other than operations of: (a) archaeological investigations; (b) works of demolition and site clearance; (c) investigations for the purpose of assessing ground conditions; (d) remedial work in respect of any contamination or other adverse ground conditions; (e) diversion and laying of services; (f) erection of fences, hoarding, temporary accesses and scaffolding and (g) the temporary display of site notices or advertisements; and the terms "Implement" and "Implementation" shall be construed accordingly;

"Index"

the Building Cost Information Service All-In Tender Price Index published by the Royal Institution of Chartered Surveyors (or such other index as may be agreed between the parties);

"Index Linked"

means adjusted in accordance with the Index from 15 August 2019 to the date on which the contribution is paid;

"Junction Surveys"

turning counts and queue surveys using camera technology to be carried out at each of the Monitor and Manage Junctions during a neutral day and month to be agreed with the Council;

"Management Company"

means a management company, the details of which are to be approved in writing by the Council for the purposes of managing and maintaining the Development (or such specified part thereof) and performing the obligations in paragraphs 2 to 6 of the Sixth Schedule to this Deed for the life of the Development or until alternative arrangements have been put in place to the reasonable satisfaction of the Council;

"Monitor and Manage End Date"

the earlier of the date two years after the date on which the Transport Contribution has been expended in full or the date six months after the date on which the Annual Monitoring Report is provided following the date on which the last Reserved Matters Phase within the Development is fully occupied or in the event that the Annual Monitoring Report is provided within six months of the date on which the last Reserved Matters Phase within the Development is fully occupied, the date on which the next Annual Monitoring Report is provided (unless otherwise agreed in writing between the parties);

"Monitor and Manage Start Date"

upon the carrying out of the first Junction Surveys prior to first Occupation of any Commercial Floorspace pursuant to

paragraph 1 of the Monitor and Manage Programme;

"Monitor and Manage Junctions" the following junctions:

Kingsbury Road/Water Orton Lane

Kingsbury Road/Minworth Parkway

M6 Junction 5

M42 Junction 9

Tyburn House Island

Spitfire Island

Chester Road/Sutton Road

Tyburn Road/Eachelhurst Road

Chester Road/Kings Road/Jockey Road

Eachelhurst Road/Walmley Ash Road/

Penns Lane

Minworth Island

Walmley Ash Road/Asda access

Walmley Ash Road/Webster Way

Chester Road/College Road.

Tyburn Road/Eachelhurst Road

Lindridge Road junction with
Whitehouse Common

Tamworth Road junction with
Whitehouse Common Road

Rectory Road junction with Whitehouse
Common Road

Hollyfield Road junction with Reddicap
Heath Road

Walmley Road junction with Hollyfield
Road;

"Monitor and Manage Programme"

a programme of monitoring of the Monitor and Manage Junctions and such other junctions within the GTD as agreed with the Council in consultation with the GTD Board from time to time to include:

1. Junction Surveys carried out prior to first Occupation of any Commercial Floorspace;
2. further Junction Surveys carried out on a timetable agreed with the Site Wide Travel Plan Coordinator and the Council;
3. ATC surveys on an annual basis unless otherwise agreed with the Site Wide Travel Plan Coordinator and the Council;
4. ANPR Surveys carried out on a timetable agreed with the Site Wide Travel Plan Coordinator and the Council;
5. A Travel Plan Survey carried out on an annual basis;

"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 display or

	<p>occupation in relation to security operations and "Occupied", "Occupier" and "Occupy" shall be construed accordingly;</p>
"Off-site Landscaping Contribution"	<p>the sum of £66,200 Index Linked to be paid to the Council to be applied to the planting of trees in accordance with the Planting Plan;</p>
"On-Demand Bus Service"	<p>a bus service which provides an on-demand travel capability to connect the Development to Coleshill Parkway station, nearby residential areas and local centres, and to link to other bus services;</p>
"Outline Farmland Birds Mitigation Strategy"	<p>the "Peddimore, Outline Skylark Mitigation Strategy, Middlemarch Environmental, - RT-MME-130710 [INTERIM] - July 2019" Appended to this Deed at Appendix 5;</p>
"Path Network Plan"	<p>the plan titled "Strategy for Public Rights of Way and Permissive Paths and numbered PED-BWB-GEN-XX-TR-DR-007 S2 Rev P11 Appended at Appendix 4 to this Deed or such amended plan as may be agreed between the Developer and the Council from time to time;</p>
"Phase"	<p>means either Phase 1 or Phase 2;</p>
"Phase 1"	<p>means the area shaded blue on Plan 2;</p>
"Phase 2"	<p>means the area shaded red on Plan 2;</p>
"Plan 2"	<p>the plan annexed hereto as Appendix 2;</p>

"Planning Permission"

the planning permission to be issued by the Council pursuant to the Application generally in the form of the draft annexed hereto as Appendix 6;

"Planting Plan"

the plan titled "Detailed Infrastructure Planting Proposals (10 of 10) numbered 17-098-021 rev F as submitted with the Application appended at Appendix 3 to this Deed or such amended plan as may be agreed between the Developer and the Council;

"Permissive Paths"

the paths identified on the Path Network Plan in green;

"Practical Completion"

means the issue of a certificate of practical completion by the Developer's Employers agent, architect, engineer or other certifying officer as the case may be under the relevant building contract entered into in respect of the relevant part of the Development, or in the event that the Development is constructed by a party other than the Developer, the issue of such a certificate by that other party's Employers agent, architect, surveyor, engineer or other relevant professional advisor and the expression "Practically Completed" shall be construed accordingly;

"PROW 1131 Extension"	the extension to PROW 1131 identified on the Path Network Plan in light blue and yellow;
"PROW 2086 Re-provision"	the re-provision and upgrading of the footpath to a bridleway of PROW 2086 identified on the Path Network Plan in purple;
"Replacement Bus Service"	a Bus Service provided by the Developer to meet the needs of occupiers of the Development where a public On-Demand Bus Service is not available;
"Reserved Matters Application"	an application for approval of matters reserved by condition in respect of an individual plot within the Development;
"Reserved Matters Phase"	a phase of the Development for which a Reserved Matters Application has been made;
"Reserved Matters Second Instalment Phase"	the Reserved Matters Phase the completion of which would, when combined with Reserved Matters Phases already approved and Implemented within the Development, result in a total of more than 45,000 sqm of Commercial Floorspace being provided;
"Section 106"	Section 106 of the Act;
"Section 106 Payment Form"	the form annexed hereto as Appendix 8 which is to be completed and sent to the

<p>“Site Plan”</p> <p>“Site Wide Travel Plan Co-ordinator”</p> <p>“TWM”</p> <p>“Transport Contribution”</p>	<p>Council when paying monies due under this Deed;</p> <p>the site plan annexed hereto as Appendix 1;</p> <p>an individual appointed by the Developer to co-ordinate the individual occupiers’ Travel Plans implemented pursuant to a condition on the Planning Permission</p> <p>Transport for West Midlands</p> <p>a contribution of £3,874,106 (three million, eight hundred and seventy four thousand, one hundred and six pounds), Index Linked, towards: Walking and Cycling Measures; Highway Improvement Works; Public Transport Services (including a demand responsive bus service, which comprises a mobile phone app, back office systems and support, high quality passenger service vehicles and an operating subsidy for three years) and £20,000 (twenty thousand pounds), Index Linked, towards the A446 transport corridor study (relating to wider highway works to support regional economic growth), such measures to mitigate the impact of the development as agreed with the Council, based on advice from the GTD using outputs from the Monitor and Manage Programme, to be paid in instalments;</p>
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"Transport Contribution

(First Instalment)"

an instalment of the Transport Contribution of £720,000 (seven hundred and twenty thousand pounds) Index Linked of which £20,000 (twenty thousand pounds) Index Linked will go towards the A446 transport corridor study);

"Transport Contribution

(Second Instalment)"

an instalment of the Transport Contribution of £3,154,106 (three million, one hundred and fifty four thousand, one hundred and six pounds) Index Linked;

"Travel Plan"

means a site wide framework travel plan for the entire Development and an individual tenant or occupiers travel plan;

"Travel Plan Survey"

a survey to be carried out by the Site Wide Travel Plan Co-ordinator to establish the number of employees driving to and from the Peddimore Development; the number of employees travelling by sustainable modes and any modal shift; the distribution of the Peddimore employee trips; and the success of the sustainable travel measures;

"Use Classes Order"

means the Town and Country Planning (Use Classes) Order 1987 (as amended); and

"Walking and Cycling Measures"

works or measures to encourage walking and cycling with the objective of assisting in

achieving targeted modal shift from private vehicular usage in connection with the Development, which measures may include contributions to bike share scheme infrastructure and/or pedestrian and cycle schemes within the GTD and wider areas of influence.

2.2 In this Deed where the context so requires:

2.2.1 the singular includes the plural and vice versa;

2.2.2 references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified;

2.2.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed;

2.2.4 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; and

2.2.5 the expression the "Developer" shall include persons successors in title to the Developer and its assigns and all persons deriving title to all or part of the Development Site under or through it.

3. **COMMENCEMENT**

The provisions of this Deed shall have immediate effect upon the completion of this Deed SAVE FOR Clauses 4 and 6.1 that shall only have effect upon the date upon which the Planning Permission is granted.

4. COVENANTS BY IM PROPERTIES

- 4.1 IM Properties covenants with the Council that it will comply with the covenants on the part of the Developer in this Deed and with the covenant in Part 2 of the Seventh Schedule
- 4.2 IM Properties covenants with the Council that it will notify the Council once it has been granted a leasehold interest or freehold interest in any part of the Site and will, at the request of the Council, enter into a deed to confirm that the land in which it has been granted an interest is bound by the planning obligations in this Deed

5. COVENANTS BY THE DEVELOPER

- 5.1 The Developer covenants that it shall serve the Implementation Notice on the Council's Director of Inclusive Growth before carrying out any Implementation Works
- 5.2 The Developer covenants with the Council not to carry out any Implementation Works before the service of the Implementation Notice

6. FURTHER COVENANTS BY THE DEVELOPER

- 6.1 The Developer covenants with the Council to observe and perform the obligations contained in the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Schedules hereto.
- 6.2 Unless and until the Council has issued notice under clause 7.3 the Developer shall provide the Council with a certified copy (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition ("Disposition") of all or any part of the Development Site in which the Developer has an interest (save to the owner and/or occupier of a single commercial unit or mortgagee thereof) including the name and address of the person to whom the Disposition was made and the nature and extent of the interests disposed of to them within twenty one days of such Disposition.

7. COVENANTS BY THE COUNCIL

- 7.1 The Council covenants with the Developer and IM Properties to observe and perform the obligations contained in the Ninth Schedule hereto.
- 7.2 The Council shall within 10 working days of the completion of this Deed grant the Planning Permission save that the Council shall not be in breach of this obligation if it shall be prevented from issuing the Planning Permission by a court order.
- 7.3 The Council will upon the written request of the Developer (or its successors in title) at any time after the obligations on the part of the Developer contained herein have been fulfilled issue confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.
- 7.4 Any Contribution when received by the Council shall be held by the Council in accordance with the provisions contained in Part 2 of the First Schedule to this Deed.

8. MISCELLANEOUS

- 8.1 This Deed shall forthwith be registered as a Local Land Charge for the purposes of the Local Land Charges Act 1975.
- 8.2 This Deed shall be enforceable against the Developer to the extent specified in Section 106(3) of the Act and against any person for the time being deriving title from the Developer as provided in Section 106 of the Act but PROVIDED THAT the Developer has first provided to the Council all relevant information pursuant to Clause 6.2, the Developer shall not (in accordance with Section 106(4) of the Act) have any further liability under this Deed (but without prejudice to the rights of either party in respect of any antecedent breach) in respect of any period during which the Developer (or as the case may be such other person) no longer has an interest in the Development Site.
- 8.3 Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority.

- 8.4 If the Planning Permission is quashed revoked or otherwise withdrawn or expires within the meaning of Sections 91 92 and 93 of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act without the consent of the Developer this Deed shall cease to have effect (but without prejudice to the rights of either party against the other in respect of any antecedent breach).
- 8.5 No waiver (whether express or implied) by the Council of any breach or default by the Developer in performing or observing any of the obligations terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Developer.
- 8.6 Unless otherwise specified where any agreement consent approval or expression of satisfaction is to be obtained from any party under the terms of this Deed the parties hereby agree that the same shall not be unreasonably withheld or delayed.
- 8.7 The obligations in this Deed shall not be enforceable against the purchaser, tenant or occupier of an individual commercial unit erected on the Development Site pursuant to the Planning Permission or a statutory undertaker after the transfer of statutory apparatus by the Developer to that statutory undertaker.
- 8.8 The obligations in this Deed shall not be enforceable against any future mortgagee of any part of the Development Site or any receiver or administrative receiver appointed by such mortgagee of the Development Site unless the mortgagee, receiver or administrative receiver is in possession of the Development Site.
- 8.9 Insofar as any clause or clauses 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 or enforceability of the remaining provisions of this Deed.

9. **NOTICES**

9.1 All notices requests demands or other written communications to or upon the parties pursuant to this Deed shall be deemed to have been properly given or made if dispatched by first class recorded delivery letter or facsimile transmission to the party to which such notice request demand or other written communication is to be given or made under this Deed and addressed as follows:

9.1.1 if to the Council, either to (i) Director of Inclusive Growth Birmingham City Council Department of Planning and Regeneration PO Box 28 Birmingham B1 1TR for the attention of the Projects Co-ordinator (or such other officer for the time being performing those functions); or (ii) Birmingham City Council Transport and Connectivity Team P.O. Box 14439, Birmingham B2 2JE for the attention of the Assistant Director of Transport and Connectivity as appropriate;

9.1.2 if to IM Properties to its address specified above;

9.1.3 or such other address for service as shall have been previously notified to the other party.

9.2 Any notice request or demand or other written communication shall be deemed to have been served as follows:-

9.2.1 if posted recorded delivery at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

9.2.2 if sent by facsimile transmission at the time of the successful transmission provided that if any means of service shall be outside normal working hours such service shall be deemed to have taken place upon the day the recipient's office is next open for business

and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or

recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be

10. 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) such dispute or difference shall be referred to a sole arbitrator to be agreed between the parties and being a member of the Royal Institution of Chartered Surveyors or in the absence of agreement on the application of any party by the President of the Royal Institution of Chartered Surveyors and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996

11. LATE PAYMENT

If any payment due under any of the provisions of this Deed is not made on or before the date upon which it is due the party from whom it was due shall at the same time as making the payment to the other party pay interest at 3% above the base lending rate of the Barclays Bank Plc as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is received

12. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is hereby agreed and declared that unless specifically agreed the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

13. LEGAL COSTS

The Developer shall upon completion of this Deed pay the Council's legal costs in the sum of £7250 and administrative costs in the sum of £10,000 in connection with the preparation, completion and monitoring of this Deed

14. JURISDICTION

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

IN WITNESS WHEREOF the parties hereto have executed this Deed the day and year first before written