

Cabinet

4<sup>th</sup> November 2014

**Name of Cabinet Member:**

Cabinet Member (Business Employment & Enterprise) – Councillor K Maton

**Director Approving Submission of the report:**

Executive Director Place

**Ward(s) affected:**

Land situated outside administrative boundary – in Warwickshire

**Title:**

**Coventry & Warwickshire Gateway – Section 106 Planning Agreement**

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**Is this a key decision?**

Yes

*The agreement imposes potential financial liabilities on the Council in excess of £2M*

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**Executive Summary:**

In October 2012, Council approved the disposal of land around Coventry Airport to form part of a commercial development scheme known as The Coventry & Warwickshire Gateway.

In June 2014 Council approved that the Council could enter into a section 106 planning agreement with Warwickshire County Council and Warwick District Council in order that a determination of the current planning application could be made.

The planning agreement would impose potential financial liabilities on the Council following land transfer and these were accepted because the obligations were to be underwritten by a Bank Guarantee put in place by the joint venture company, Coventry & Warwickshire Development Partnership, leading on the development of the scheme.

Due to a change in circumstances and advice provided regarding the timing by which the Council is required to sign the planning agreement and when the development agreement requires the land to be transferred to the development partnership, the Bank Guarantee is now not available in the interim period between the planning determination and the transfer of the land. Instead the Development Partnership has offered Parent Company Guarantees during this period but will retain the Bank Guarantee from the point of land transfer. The financial risk to the Council in this interim period is low in amount and the parent company guarantee is considered proportionate to the risk involved.

This report is returning to Cabinet on legal advice that an amendment to the approach as to how the Council will secure the obligations contained in the section 106 agreement in the interim period as set out above requires your approval .

This report seeks approval to enter into the s106 planning agreement with appropriate parent company guarantees for the interim period and a bank guarantees from the point of transfer and delegate authority to Executive Director, Resources and the Executive Director of Place, in consultation with Cabinet Member (Business Employment & Enterprise) and Cabinet Member (Strategic Finances and Resources) to obtain a form of Guarantee which protects the Council financial position yet facilitates the determination of the planning application, on terms which are to be negotiated and agreed.

**Recommendations:**

**The Cabinet is recommended to:**

1. Approve that the Council, acting as landowner, enter into the Coventry & Warwickshire Gateway Section 106 Planning Agreement with Warwickshire County Council and Warwick District Council, provided that that all the financial liabilities imposed on the Council in that agreement are indemnified by the Developer in the land agreement and backed by Parent Company Guarantee with a fully bank backed guarantee being put in place at the point the leasehold interest in the land is transferred.
2. Delegate authority to the Executive Director, Resources and the Executive Director of Place, in consultation with Cabinet Member (Business, Enterprise & Employment) and Cabinet Member (Strategic Finance & Resources), to negotiate the final terms of the indemnity from the Developer and the financial Guarantee (being the parent company guarantee and subsequently a bank guarantee) enabling the conclusion of all necessary legal documents in relation to the Section 106 Planning Agreement.

**List of Appendices included:**

Appendix 1 – Draft s106 agreement

**Background papers:**

None

**Other useful documents:**

Cabinet report 17<sup>th</sup> June 2014

Council report 24<sup>th</sup> June 2014

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## Report title: **Coventry & Warwickshire Gateway – Section 106 Planning Agreement**

### 1. **Context (or background)**

- 1.1 The current outline planning application for the Coventry & Warwickshire Gateway development around Coventry Airport was called in by the Secretary of State and has been considered by a planning inspector. To enable the determination of the application the planning inspector is requiring a signed, legally binding, section 106 planning agreement (S106) confirming the financial planning contributions which the scheme will contribute before submitting his report to the Secretary of State.
- 1.2 To ensure the obligations are delivered the agreement is required to be between the local planning authority within which the land sits and the freehold owners of the land involved. Coventry City Council wishes to retain the freehold of the land and grant a 999 year leasehold interest to the developer of the Coventry & Warwickshire Gateway scheme. For this reason, Coventry City Council as landowner is required to sign the section 106 agreement with Warwick District Council as planning authority and Warwickshire County Council.
- 1.3 The planning agreement outlines the obligations and liabilities imposed along with the timing of when the works and payments are due to be incurred. The proposed planning agreement is attached to the report, see appendix 1.
- 1.4 The obligations would potentially expose Coventry City Council to the £12.5M financial and works obligations contained in the agreement. This liability is in excess of the anticipated receipt from the land to be disposed of on the 999 year lease. Most of payments outlined in the agreement are triggered by activities related to the physical implementation of the development on land owned by the Council. These are predominantly significant and costly infrastructure works which will only take place after land transfer or where there are legal remedies if commenced before transfer. The Council will restrict the commencement of works by the developer on its land as part of the land agreement which minimises this risk. The subsequent risk to the Council would arise if the developer partnership experienced financial difficulty such that the lease was surrendered to the Council, leaving the Council to face the payment risk.
- 1.5 The only exception to this is a payment of £40,000 required to be made on signing the agreement and ahead of the commencement of works relating to the Whitley junction. This specific liability is to be dealt with separately by requiring the Coventry & Warwickshire Development Partnership to deposit the £40,000 into an interest bearing account.
- 1.6 Although the risk of incurring the liability is low, the impact on the authority if it materialised would be high; therefore the Council is requiring this liability to be underwritten by guarantees from the development partnership.
- 1.7 In the report approved in June 2014, it was agreed to enter the planning agreement with a Bank Guarantee protecting the Councils financial position assuming that the planning agreement would have been entered into simultaneously with the land transfer. The advice we now have is that The Secretary of State will not determine the planning application prior to the s106 being completed ahead of the land transfer. It is not practically achievable to obtain a bank guarantee prior to the land transfer and therefore whilst the Councils position remains that it still requires a

bank guarantee at that time an appropriate form of parent company guarantee prior to that time is being sought in the interim period between the planning agreement being signed and the land transfer taking place.

- 1.8 A Parent Company Guarantee has been offered from Roxhill Developments Group Ltd and a suitable entity from the Rigby Group in the value of £6.25M each during the interim period. Due diligence is being undertaken on each company to ensure that they have assets to support the guarantee, the results of which would be reported verbally at your meeting.

The Parent Company Guarantee would be in place for as long as any planning consent is valid and until the land is transferred to the development partnership. At transfer the Bank Guarantee would be available and put in place.

## **2. Options considered and recommended proposal**

### **2.1 Not Sign the s106 planning agreement**

- 2.1.1 Should the Council decide that it isn't prepared to sign the s106 planning agreement, this position would be reported back to the Secretary of State as to whether a planning consent for the Coventry & Warwickshire Gateway development should be granted.
- 2.1.2 Based on planning precedent, without a commitment from the landowner to take on the responsibility to fund and deliver the planning contributions being sought by the local planning authority, then the Secretary of State is unlikely to approve the grant of a planning consent.
- 2.1.3 As the Coventry & Warwickshire Gateway Scheme has the potential to deliver significant benefits to Coventry and Warwickshire area creating a major financial investment providing business development and expansion opportunities for local and new companies along with the associated job creation, a refusal of the outline planning consent would be a substantial blow to the development jeopardising its delivery and at best producing significant delays to its commencement.

### **2.2 Sign the s106 planning agreement**

- 2.2.1 Only one payment becomes liable under the planning agreement prior to land transfer and this is backed off by a deposit. The planning agreement as proposed provides that the operative covenants, triggering the commencement of all other payments, will not come into effect until there has been a commencement of development on the City Council's land. This is an important control for the Council as it effectively ensures that no payments or works are required to be made or undertaken until the Council has transferred the land to the development partnership enabling them to commence the development. The planning agreement also provides that the Council will not be liable whilst its only interest is in the freehold reversion following the grant of a long lease or leases in respect of the development site. The Council will, therefore, only incur liability in the event that the proposed long lease to the developer is disclaimed following the insolvency of the lessee or the lease otherwise determines leaving the Council in possession of part of the development site.

- 2.2.2 To protect the Councils financial liability generated by signing the proposed planning agreement the development partnership has offered to indemnify the Council against the payments and works required. The indemnity agreement is recommended to be incorporated within the development agreement which has been created to document the previously approved leasehold disposal to Coventry & Warwickshire Gateway Partnership LLP.
- 2.2.3 Previously the indemnity proposed would be backed by a bank guarantee but as outlined in section 1.5 – 1.7 of your report this is not available for the interim period and parent company guarantees are proposed for this period. A Bank Guarantee will be put in place at the time the leasehold interest in the land is transferred to the Development Partnership and this ensures that the Council is not exposed to the risk of paying for any of the £12.5M s106 liabilities imposed in the circumstances that the development partnership goes into administration and the lease is disclaimed. As the developer's indemnity will be backed by a bank guarantee, the bank would be required to step in and make any payments required at that time as part of the s106 planning agreement obligations.
- 2.2.4 It is intended that the bank guarantees would be provided in stages prior to each trigger date for the individual obligations. In that way the level of the guarantee will be commensurate with the risk to the Council and will fall away in stages as individual obligations in relation to the works or payments are discharged and confirmed by Warwick District or Warwickshire County Council.
- 2.2.5 In addition the planning agreement also provides that development cannot commence until a Deed of Adherence is signed binding the balance of the site. This means that development within the remainder of the site will also have to comply with the s106 planning agreement.

- 2.2.6 Therefore based on the amended proposal regarding the type and form of guarantee there are three options which the Council should consider:-

Option 1 : Sign without any indemnities now but with a Bank Guarantee at transfer. This exposes the Council to a small risk as there is a period between the signature of the planning agreement and the land transfer when the Council would be responsible for any costs arising

Option 2 : Sign with Parent company Guarantees now and a Bank Guarantee at transfer. This provides a level of indemnity between the signature of the planning agreement and the land transfer. The quality of the cover is dependent on the strength of the company providing the guarantee during the interim period.

Option 3 : Insist on a Bank backed Guarantee now in line with the previous report. This would provide the strongest level of indemnity but is now not practical for the developer to offer. As such this would leave the development in a position which means it is unlikely to progress.

## 2.3 Recommendation

- 2.3.1 To facilitate the determination of the current outline planning application the recommendation is to enter into the planning agreement. To provide the Council with the best level of indemnity currently available to the recommendation is to accept

the Parent Company Guarantee now with a Bank Guarantee at the transfer of the land

### **3. Results of consultation undertaken**

- 3.1 No specific consultation has taken place around the issue of the s106 planning agreement. Clearly the appropriateness of the development has been publicly consulted upon both in terms of the original planning application and subsequently through the recent public inquiry. The principle of the development has also been discussed and approved by Cabinet and Council under public scrutiny.

### **4. Timetable for implementing this decision**

- 4.1 The indemnity and amended forms of financial guarantees agreed with the development partnership will form part of the amended development agreement, documenting the transfer of the leasehold interest in the land. It is the intention of the parties that this agreement be signed ahead of the signing of the s106 planning agreement.
- 4.2 The Secretary of State is due to determine the planning inspectors report toward the end of November. A signed s106 agreement will be required to be presented to enable the Secretary of State to determine as to whether a planning consent should be granted.

### **5. Comments from Executive Director, Resources**

- 5.1 Financial & legal implications

The Council will enter into the section 106 Planning Agreement as landowner under the power contained in section 1 of the Localism Act 2011.

A copy of the proposed Planning Agreement is annexed to this report as appendix 1. External advice has been taken in relation to the draft form of agreement.

The Development Agreement will contain the indemnity provisions from the Developer to the Council and the obligation to provide the financial guarantees to underwrite the indemnity.

The financial risk to the Council is low in amount in the interim period and a parent company guarantee is proportionate to the risk the Council faces. Following transfer the risk is low but the impact on the Council high if it did occur, and it is proposed to back this risk off with a bank guarantee. There are adequate contractual and legal remedies to ensure the developer does not expose the Council to the full planning agreement liability before the land is transferred.

### **6. Other implications**

- 6.1 **How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

Although the majority of the subject site is located just outside Coventry City Council's administrative boundary, the economic effects of the investment in the business premises proposed providing business growth and job opportunities will help to create a prosperous Coventry encouraging a creative and vibrant city.

## **6.2 How is risk being managed?**

The risk is being offset by the appropriate wording in the planning agreement which provides the Council with the control over the commencement of the development and therefore the commencement of any financial liabilities.

In addition the indemnity secured from the development partnership, initially underwritten by a parent company guarantee and subsequently a bank guarantee, will ensure that the Council is not exposed to the liabilities outlined in the planning agreement.

## **6.3 What is the impact on the organisation?**

Due to the structure of the agreement and its link to the disposal of the interest in land outside of the Councils administrative boundary this report will only impact on the organisation in the way of helping to deliver a future capital receipt.

## **6.4 Equalities / EIA**

As this report is specifically around the obligations to be entered into as part of a planning agreement leading to the potential disposal of a land interest it does not impact on the provision of services or Council policies, no Equalities / EIA is required to be undertaken.

## **6.5 Implications for (or impact on) the environment**

Any impact relating to the future possible development resultant from the approval from the Council to enter into the s106 planning agreement has been considered as part of the outline planning application considered and will further be considered as part of any future detailed planning applications for the development.

## **6.6 Implications for partner organisations?**

None

### **Report author(s):**

#### **Name and job title:**

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#### **Directorate:**

Place

#### **Tel and email contact:**

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[www.coventry.gov.uk/councilmeetings](http://www.coventry.gov.uk/councilmeetings)



## **Appendices**

Proposed s106 planning agreement

**DATED**

**2014**

**(1) COVENTRY CITY COUNCIL**

**(2) WARWICK DISTRICT COUNCIL**

**(3) WARWICKSHIRE COUNTY COUNCIL**

**(4) COVENTRY & WARWICKSHIRE DEVELOPMENT PARTNERSHIP LLP**

## **DEED**

made pursuant to section 106 of the Town and  
Country Planning Act 1990 relating to the Coventry  
& Warwickshire Gateway

Planning Applications reference OUT/2012/1791  
and W/12/1143

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**File Ref: MET/903269.1**

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THIS DEED is made on

2014

**BETWEEN:**

- (1) **COVENTRY CITY COUNCIL** of The Council House Earl Street Coventry CV1 5RR ("**Owner**");
- (2) **WARWICK DISTRICT COUNCIL** of Riverside House, Milverton Hill, Leamington Spa CV32 5HZ ("**District Council**");
- (3) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall Warwick CV34 4RR ("**County Council**");
- (4) **COVENTRY AND WARWICKSHIRE DEVELOPMENT PARTNERSHIP LLP** (registered number OC364656) whose registered office is at James House, Warwick Road, Birmingham, West Midlands B11 2LE ("**the Developer**")

**BACKGROUND:**

Pursuant to the Application the Developer has applied for the Planning Permission to be issued for the Development to be carried out on the Application Site and intends to carry out the Development.

The Application Site is principally situated in the administrative areas of the District Council and the County Council with a small part of the Application Site being situated in the administrative area of the City Council.

The City Council and the District Council have resolved to grant Planning Permission subject to conditions and to the completion of this Deed which secures planning obligations considered by the Councils as being necessary to make the Development acceptable.

The Secretary of State has called in the Application for his own determination pursuant to s.78 of the 1990 Act and the planning obligations contained herein are being entered into to apply them to the Development in the event that the Secretary of State grants the Planning Permission pursuant to such determination.

The Owner is the freehold owner of the Blue Land and enters into this Deed as owner of that land which will be bound by the planning obligations.

The Additional Land will be bound by the obligations in due course by virtue of the provisions in relation to the Deed of Adherence contained herein.

The planning obligations will be enforceable against the Blue Land by the Councils and following the entering into of a Deed of Adherence against the land the subject of that Deed by the Councils and the City Council as provided for in clause 4.2.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Deed where the context so admits the following expressions shall have the following meanings:

"**1990 Act**" means the Town and Country Planning Act 1990;

"**Additional Land**" means the land shown coloured green on Plan 1;

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**"Application"** means the planning application for the Development submitted to the City Council and given reference number OUT/2012/1791 and to the District Council given reference number W/12/1143 as amended prior to their determination;

**"Application Site"** means land shown edged red on Plan 1;

**"Appointed Individual/Body"** means an individual or body who shall be responsible for working with companies and the local labour force/population within 12 miles of the Application Site to help fill jobs and training vacancies within the Development with local people;

**"BCIS"** means the All-in Tender Price Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors to include any applicable local or regional weighting;

**"Biodiversity Offsetting Scheme"** means the scheme to be approved pursuant to paragraph 4.1 of Schedule 1;

**"Blue Land"** means the land coloured blue on Plan 1;

**"Bubbenhall Road/Rowley Road/Coventry Road/Stoneleigh Road Access Restriction Strategy"** means a strategy setting out detailed measures to provide for

- (i) the restriction of access for employees at the Development and heavy goods vehicles visiting the Development along Bubbenhall Road, Rowley Road, Coventry Road and Stoneleigh Road to the Development whilst allowing continued access for local residents and businesses
- (ii) the funding of costs in respect of the notification of revised access arrangements to customers of business premises within the area
- (iii) funding of any necessary infrastructure
- (iv) the prevention of employees of the Development parking vehicles in Baginton Village and other public roads near the Application Site whilst working at the Development;

**"Bus Infrastructure Works"** means the works to the public highway to allow for a high quality bus route between Coventry Railway Station, Pool Meadow Bus Station, Whitley Business Park and the Development;

**"City Council"** means Coventry City Council;

**"CIL"** means a tax or tariff or charge introduced by any of the Councils pursuant to the Community Infrastructure Levy Regulations 2010 or any subsequent legislation to fund the delivery of infrastructure known as the community infrastructure levy or known by any other name;

**"Commercial Unit"** means those buildings within the Development used or to be used as car showrooms or for any purposes within classes B1,B8,C1,A1,A3,A4,A5 or B2 of the Town and Country Planning (Use Classes) Order 1987;

**"Construction Ecological Protection and Mitigation Strategy"** means the strategy to be approved pursuant to paragraph 3.1 of Schedule 1;

**“Construction Works”** means infrastructure, construction and remediation works funded and tendered by the Developer/Owner on the Application Site;

**“Councils”** means the County Council and the District Council and following the cessation of any legal interests in the Application Site by the City Council shall also mean the City Council;

**“Countryside Park”** means all the areas shown coloured green on Plan 4;

**“Cycling/Walking Works Fund”** means the sum of £2,500,000.00 (Two million five hundred thousand pounds) (Index Linked);

**“Dedicated Commuter Service”** means a bus service provided for and tailored to the specific needs and working times of the employees employed in the Development;

**"Deed of Adherence"** means the form of deed contained in Schedule 3 to be entered into by all parties with a legal interest in the Additional Land so as to bind the interests in the Additional Land by the obligations contained herein;

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

**"Employment and Training Strategy"** means a scheme required to be submitted pursuant to paragraph 1.1 of Schedule 1 and containing the details required by paragraph 1.3 of Schedule 1;

**“Exceedence Day”** means any day during a Monitoring Period on which the employees travelling to and from the Development by single car occupancy exceed the Modal Shift Target;

**"Expert"** means such expert as may from time to time be appointed for the purposes of resolving a relevant dispute in accordance with clause 11.2 of this Deed being an expert in the matter under dispute with not less than twenty years experience in the relevant field;

**"Framework Travel Plan"** means the travel plan for the whole Development which shall embrace the principles set out in the draft Framework Travel Plan contained in Schedule 5 and shall include detailed proposals for the provision of the Dedicated Commuter Services and subsidised bus travel passes and monitoring of modal split of employees between different modes of transport to and from the Development;

**"Implementation"** means implementation on the Blue Land of the Development by the carrying out of any material operation within the meaning of sections 56(2) and (4) of the 1990 Act provided that for the purposes of this Deed and this definition the carrying out of demolition of existing buildings and structures, termination or diversion of existing services or temporary diversion of highways, temporary construction, site preparation, investigation works, archaeological investigations, environmental site investigations, re-profiling of land, decontamination works or works and operations to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this definition or this Deed and **"Implement"** and **"Implemented"** shall be interpreted in accordance with this definition;

**"Index-Linked"** means the adjustment of the financial sums referred to in this Deed to be adjusted by Indexing from the date of this Deed to the date of payment;

**"Indexing"** means the recalculation of any amount specified in this Deed by applying the following formula:

$A \times B/C = D$  where:

A = the sum specified in this Deed in pounds sterling

B = the figures shown in the Relevant Index for the period immediately prior to the date up to which the sum concerned is to be indexed under the provisions of this Deed

C = the figure shown in the Relevant Index for the period immediately prior to the date of this Deed

D = the recalculated sum in pounds sterling applying under this Deed

B/C is equal to or greater than 1

provided that if the Relevant Index becomes no longer maintained the said formula shall be applied mutatis mutandis (so far as concerns periods after it ceases to be so maintained) by reference to such other publication or index as may be agreed from time to time with the Councils;

**"LA Co-ordinator"** means a person nominated by the Councils who will represent the Councils in respect of all matters relating to the implementation of the Framework Travel Plan and the Workplace Travel Plans;

**"Leaf Lane Works Contribution"** means the sum of £150,000.00 (One hundred and fifty thousand pounds) (Index Linked);

**"Logistics Park"** means the area referred to as Zone A on Plan 4;

**"Lunt Roman Fort Mitigation Payment"** means the sum of £100,000.00 (One hundred thousand pounds) (Index Linked);

**"Modal Shift Target"** means the target of no more than 65% of employees attending the Development doing so by means of single car occupancy;

**"Monitoring Period"** means the period of six months commencing with the date of the first monitoring of employees modes of travel pursuant to the provisions of the Framework Travel Plan and each consecutive six month period thereafter;

**"Occupation"** means any use of the buildings and land on the Application Site pursuant to the Planning Permission save for temporary occupation for the purposes of site preparation, infrastructure provision, construction or fitting out buildings or marketing and the words **"Occupy"** and **"Occupied"** and cognate expressions shall be construed accordingly;

**"Occupation Date"** means that date on which the Development is first Occupied;

**"Off Site Highway Contribution"** means the sum of £2,500,000.00 (Two million five hundred thousand pounds) (Index Linked);

**"Phase 2 Highway Works"** means those highway works shown in red on Plan 2;

**"Phase 3 Highway Works"** means those highway works shown in green on Plan 2;

"**Plan 1**" means the plan marked as such attached to this Deed at Schedule 4;

"**Plan 2**" means the plan marked as such attached to this Deed at Schedule 4;

"**Plan 3**" means the plan marked as such attached to this Deed at Schedule 4;

"**Plan 4**" means the plan marked as such attached to this Deed at Schedule 4;

"**Planning Permission**" means the planning permission for the Development to be granted pursuant to the Applications;

"**Public Transport Infrastructure Strategy**" means the strategy to be approved pursuant to paragraph 10.1 of Schedule 1;

"**Qualifying Building**" means a building within the Development occupied by one employer with more than twenty (full time equivalent) employees working in that building;

"**RCI**" means the Road Construction Tender Price Index as published by the Department of Business Enterprise and Regulatory Reform (or any successor thereof) to include any applicable local or regional weighting;

"**Relevant Index**" means the index ascribed to each contribution in Schedule 2 and in all cases in the event of an index ceasing to exist an alternative index agreed between the relevant parties;

"**Remedial Payment**" shall be a payment in accordance with the following formula in respect of each Exceedence Day during the period to which the Remedial Payment relates:

$(B/100) \times A \times C = \text{remedial payment}$

where: A is the number equivalent to the difference between 65% and the percentage by which the single car occupancy exceeds 65% (for example if the single car occupancy was 85% the number would be 20)

B is the number of employees present within the Development on that day

C is £0.10 (ten pence);

"**RM Approval**" means the approval of all matters reserved for approval by and pursuant to the Planning Permission in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010;

"**RPI**" means the All Items Retail Prices Index as published by the Office of National Statistics (or any successor thereof) to include any applicable local or regional weighting;

"**Secretary of State**" means the Secretary of State for Communities and Local Government who will determine the Application;

"**SUDS**" means a sustainable urban drainage system to be provided within the Development;

"**Technology Park**" means the area referred to as Zone B on Plan 4;

"**TP Approval Contribution**" means the sum of £5,000.00 (Five thousand pounds) (Index Linked);



**“TP Co-ordinator”** means an individual or organisation whose responsibilities shall include the preparation, implementation, promotion, monitoring and review of the Framework Travel Plan and the Workplace Travel Plans relating to the Application Site;

**“TRO East Contribution”** means the sum of £20,000.00 (Twenty thousand pounds) (Index Linked);

**“TRO West Contribution”** means the sum of £17,500.00 (Seventeen thousand five hundred pounds) (Index Linked);

**“Whitley Common Open Space Payment”** means the sum of £40,000.00 (Forty thousand pounds) (Index Linked);

**“Working Day”** means a day (other than a Saturday Sunday or public holiday in England) when banks in London are open for business

**“Workplace Travel Plan”** means the plan in respect of each Qualifying Building containing details of targets, measures and monitoring to be implemented in order to encourage employees, contractors and visitors to that Qualifying Building to travel to and from the Development by means other than by private car and to minimise car usage (particularly single occupancy journeys) and to increase the use of public transport, walking and cycling to and from the Development substantially in accordance with the Framework Travel Plan;

2. 1.2 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
3. 1.3 Unless the context requires otherwise the use in this Deed of any definition in the singular shall include the plural and vice versa and any reference to a gender shall include any other gender.
4. 1.4 Unless the context requires otherwise references in this Deed to clauses, sub clauses, paragraphs, recitals, sub-paragraphs, annexures, appendices and schedules are references to those contained in this Deed and references to plans and drawings are references to plans and drawings annexed to this Deed.
5. 1.5 The word "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
6. 1.6 References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same.
7. 1.7 In this Deed the expression "Owner" shall include its successors in title and following the entering into of any Deeds of Adherence shall include any owners of the land the subject of those Deeds and the expressions "City Council" "County Council" and District Council" shall include their respective statutory successors in function.
8. 1.8 Any obligations of the parties to this Deed contained in this Deed which are or may be deemed to be obligations of one or more persons shall be joint and several obligations on the part of those persons unless the context otherwise requires.
9. 1.9 Any covenant in this Deed not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred and any

covenant to do an act or thing may be deemed to include an obligation to procure that the act or thing is done.

10. 1.10 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question.
11. 1.11 In the event of any conflict between the provisions of this Deed and any document annexed hereto as referred to herein, the terms, conditions and provisions of this Deed will prevail.
12. 1.12 The Interpretation Act 1978 shall apply to this Deed.
13. 1.13 Where any approval, consent, agreement or the like is required to be given or is requested pursuant to the terms of this Deed it shall be given or requested in writing and no party shall unreasonably withhold or delay any such approval, consent, agreement or the like and shall act expeditiously provided that nothing herein shall fetter the statutory rights, powers or duties of the Councils.
14. 1.14 Unless the context otherwise requires, where this Deed refers to:
  1. 1.14.1 any government body or other entity that publishes guidance, indices or any other document referred to in this Deed the publication or revision which is not within the control of the Councils; and
  2. 1.14.2 any such guidance, indices or other document published by such an entity or body (in this clause "document"),

if the relevant body or entity ceases to exist or the document is revoked or replaced the reference shall be deemed to be to the successor to the relevant body or entity and to the replacement document save where no such body, entity or document exists, in which case the reference shall be to such body, entity or document as the Councils acting reasonably shall determine or as may be determined pursuant to the dispute resolution provisions of this Deed.

## **1. 2. STATUTORY POWERS**

15. 2.1 This Deed is made pursuant to section 106 of the 1990 Act and the obligations herein constitute planning obligations for the purposes of the 1990 Act enforceable as provided for in clause 4.2.
16. 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into by the County Council and the District Council pursuant to the powers contained in section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and all other enabling powers.
17. 2.3 The Owner enters into this Deed with the effect of binding its interest in the Blue Land.

## **2. 3. PROVISIONS FOR RELEASE AND ASSIGNMENT**

18. 3.1 It is hereby agreed by the parties hereto that this Deed shall determine if the Planning Permission is quashed, cancelled, revoked, modified (without the consent of the Owner), or expires prior to Implementation except insofar as any obligation hereunder has been performed in whole or in part.

19. 3.2 The Councils hereby covenant with the Owner that each shall upon reasonable request from the Owner certify compliance or partial compliance (as and if appropriate) with the provisions of this deed and if so requested by the Owner shall (as and if appropriate) execute a Deed of release or partial release from the relevant provision(s) of this Deed and (in the case of the District Council) shall place a note thereof on the Register of Local Land Charges.

**3. 4. COVENANTS BY THE OWNER**

20. 4.1 The Owner and the Developer hereby covenant with the County Council and District Council to carry out and comply with the obligations contained in Schedule 1.

21. 4.2 The covenants contained in paragraphs 3,6,7,8,9,10,11. and paragraph 14.1.1 all of Schedule 1 shall be enforceable by the County Council and the covenants in paragraphs 1,2,3,4,5,6,9,11.4, 11.5, 12, 13 and 14.1.2 all of Schedule 1 shall be enforceable by the District Council (in respect of land within its administrative area) and following the grant of a leasehold interest in or a transfer to a third party of its land within the Application Site paragraphs 2,3,5,6,7,9,10,11.1, 11.3, 11.4,11.5, and 14.1.3 all of Schedule 1 shall be enforceable by the City Council (in respect of land within its administrative area)

**4. 5. PROVISIONS RELATING TO THE ADDITIONAL LAND**

22. 5.1 The Owner and the Developer covenant not to Implement the Development unless and until a Deed of Adherence has been completed in respect of all the Additional Land to the effect that all of the Additional Land is bound by the obligations in this Deed.

**5. 6. COVENANTS BY THE COUNTY COUNCIL AND DISTRICT COUNCIL**

23. 6.1 The Councils hereby covenant with the Owner (including for the avoidance of doubt successors in title) and any subsequent Owners of the Additional Land to observe and comply with the obligations on their respective parts contained in Schedule 2.

**6. 7. SUCCESSORS IN TITLE**

24. 7.1 The parties hereto agree that this Deed shall be binding upon the Blue Land (and in due course the Additional Land) and shall be enforceable against the Owner and its respective successors in title and those deriving title under them in respect of the Blue Land (and in due course the owners of the Additional Land) and that neither the Owner nor the owners of the Additional Land nor their successors in title nor those deriving title under them shall have any further liability under this Deed (but without prejudice to any rights in respect of any antecedent breach) in respect of any period during which the Owner or as the case may be any of their successors in title or those deriving title under them no longer have an interest in the Blue Land or the Additional Land (as the case may be) and neither the reservation of any rights in or the inclusion of any covenants or restrictions over the Blue Land or the Additional Land in any transfer of the Site or part thereof will constitute an interest for the purposes of this clause 7 and the City Council shall have no liability under this Deed in respect of any period when its interest in the Blue Land or the Additional Land is limited to an interest in the freehold reversion following the grant of a lease of such land for a term of not less than 50 years.

**7. 8. COMMENCEMENT**

25. 8.1 This Deed will take effect from the date hereof save for the obligations contained in the schedules to this Deed which will come into effect upon Implementation other than those contained in paragraphs 1, 3, 4 and 6 of Schedule 1 which will come into effect upon the date hereof.

**8. 9. EXCLUSIONS**

26. 9.1 The obligations and restrictions in this Deed shall not be enforceable against either:

3. 9.1.1 those persons who purchase any Commercial Unit for occupation by themselves or any chargee of such a person or any successor in title to any such person save that a tenant or occupier of an individual Commercial Unit shall be liable in respect of the obligations contained in paragraph 9 of Schedule 1 in respect of the Workplace Travel Plan relating to that Commercial Unit and paragraph 1 of Schedule 1 in respect of the Employment and Training Strategy in respect of that Commercial Unit; and

4. 9.1.2 any statutory undertaker who acquires any part of the Application Site or interest therein for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.

27. 9.2 Obligations to perform or carry out works or activities on any part of the Application Site shall so far as the relevant obligation is a positive obligation to perform or carry out works or activities only be enforceable against the owners for the time being of that part of the Application Site.

28. 9.3 The Developer enters into this Deed for the purposes of binding any interest it may have but will not incur any liability for any breach of the obligations contained in this Deed unless and until it enters into possession of any of the Blue Land or becomes a successor in title to the Blue Land and/or acquires any part of the Additional Land and executes a Deed of Adherence in respect of the same in the manner herein provided.

**9. 10. THIRD PARTY RIGHTS**

29. 10.1 A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**10. 11. DISPUTE RESOLUTION**

30. 11.1 The parties hereby agree that in the event that any dispute disagreement or other substantive matter of contention shall arise between them as to the terms of this Deed and/or the performance of the powers duties and other functions of any of the parties under it:

5. 11.1.1 the parties shall (save in case of emergency) first refer the said dispute to senior representatives of the parties in dispute who shall (within 10 Working Days of a notice from any party to the others) meet to attempt in good faith to resolve the dispute amicably on a full and final basis;

6. 11.1.2 in the absence of such resolution the parties shall then use such alternative dispute resolution mechanisms as may be appropriate in the circumstances of the case and having due regard to all relevant judicial protocols and other relevant guidance and advice and shall not unreasonably withhold or delay their agreement to such a procedure;

7. 11.1.3 the parties shall act reasonably in consequence of a decision made under an alternative dispute resolution process.

31. 11.2 Any difference or dispute which shall arise between the parties in respect of any aspect of the Deed or the performance under it may be referred to an Expert in accordance with the provisions of clauses 11.3 to 11.8.
32. 11.3 Any difference or dispute which shall arise between the parties in respect of the matters referred to in clause 11.2 shall first be dealt with in the manner provided in clause 11.1.1 and failing agreement between the senior representatives of the parties in dispute within ten Working Days of such a referral then any party to the dispute shall be entitled by a further notice ("**Dispute Notice**") to refer the difference or dispute to an Expert to be determined in the manner provided in the following sub-clauses of this clause 11.
33. 11.4 The Expert shall be appointed by agreement between the parties to the dispute and failing such agreement being reached within ten Working Days of the service of the Dispute Notice then on the application of any party to the dispute by such one of the following as the parties to the dispute shall (subject to clause 11.5 below) agree to be appropriate having regard to the nature of the difference or dispute in question:
8. 11.4.1 the President for the time being of the Royal Institution of Chartered Surveyors:
9. 11.4.2 the President for the time being of the Institute of Civil Engineers; and
10. 11.4.3 the President of the time being of the Law Society.
34. 11.5 If within 20 Working Days after the service of the Dispute Notice the parties to the dispute have failed to agree which of the persons referred to in clause 11.4 is appropriate to appoint as the Expert then he shall be appointed on the application of any party to the dispute by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors.
35. 11.6 The parties to the dispute shall be given an opportunity to make representations to the Expert in the manner and in accordance with directions given by him.
36. 11.7 The decision of the Expert shall (save in case of manifest error) be final and binding on the parties to the dispute.
37. 11.8 Except as otherwise provided in this sub-clause each party to the dispute shall bear their own costs of the referral to the Expert and the fees and expenses (if any) of the Expert shall be borne by the parties to the dispute in equal shares SAVE that the Expert may make an award of costs in such other proportions as the Expert may determine (including as to the fees and expenses of the Expert) and any such award shall be final and binding on all parties.

## **11. 12. FURTHER PLANNING PERMISSIONS**

38. 12.1 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission, other than the Planning Permission, granted (whether or not on appeal) after the date of this Deed.

## **12. 13. SERVICE OF NOTICES**

39. 13.1 All notices, requests, demands or other written communications to or upon the respective parties hereto pursuant to this Deed shall be deemed to have been properly given or made if despatched by first class letter 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:

11. 13.1.1 if to the Owner to the address set out above marked for the attention of the Chief Planning Officer;
12. 13.1.2 if to the County Council to the address set out above and marked for the attention of the Strategic Director for Communities;
13. 13.1.3 if to the District Council to the address set out above and marked for the attention of the Head of Development Services;
14. 13.1.4 if to the Developer to the address set out above and marked for the attention of the Chairman

**13. 14. INTEREST**

40. 14.1 Where any payment or part payment which is due to be paid pursuant to this Deed is not paid on the date upon which the obligation to make such a payment falls due to be performed, then interest at two per cent above the base rate of HSBC Bank Plc from time to time calculated on a daily basis shall be paid by the Owners to the party to whom the money was due on and in addition to the outstanding balance of the payment from the date on which the payment or part payment became due to the actual receipt of the payment by the party to whom the money was due.

**14. 15. COMMUNITY INFRASTRUCTURE LEVY**

15. 15.1 If after the date of this Deed a CIL is introduced which is applicable to the Development then the Parties hereto will use reasonable endeavours to agree variations to this Deed with the intent that:
  16. 15.1.1 the planning objectives secured by the planning obligations in this Deed continue to be delivered; and
  17. 15.1.2 that the Development shall not become unviable because of the application of the CIL in respect of the obligations in Schedule 1 hereto

**18. 16. THIRD PARTY LAND**

41. 16.1 Nothing in this Deed creates or has any intention of creating any obligation to do anything on or secure consents or rights over any land outside the Application Site and which is out of their control or ownership save for publicly adopted highway as expressly required by this Deed.

**42. 17. LEGAL COSTS**

- 17.1 The Developer shall upon completion of this Deed pay the Owner's, the District Council's and the County Council's reasonable legal costs in connection with the preparation and completion of this Deed.

**IN WITNESS** whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written

## **SCHEDULE 1: COVENANTS OF THE OWNER**

### **Employment and Training Strategy**

- 1.1 Not to Implement the Development unless and until an Employment and Training Strategy has been submitted to and approved by the District Council and the Appointed Individual/Body has been employed.
- 1.2 To include within the Employment and Training Strategy details (in respect of both the construction and operational phases of the Development) regarding measures to target employment and training opportunities at local people, delivery mechanisms and timescales regarding the provision of such measures, targets in respect of the placement of local people in employment and training and review mechanisms.
- 1.3 The Employment and Training Strategy shall provide for the following:
  - 1.3.1 in respect of Construction Works, a requirement that the main contractor and their sub-contractors will submit to the Appointed Individual/Body details of how they will provide jobs, training and development opportunities for the local labour force living within 12 miles of the Application Site during the construction period of the Development;
  - 1.3.2 a target during the first 10 years of the construction phase to create for a member of the local labour force as a minimum one new full time permanent job for a period of at least 12 months or one new entrant training opportunity for a minimum of 52 person weeks for each £5 million of development cost with a mechanism for annual updates during the construction phase to be provided to the Appointed Individual/Body and the District Council (if they are not the Appointed Individual/Body) regarding achievement of this target;
  - 1.3.3 in respect of Construction Works, a requirement that the main contractor and their sub-contractors will submit to the Appointed Individual/Body details of how they will promote and encourage the availability of contracts and employment opportunities to the local supply chain and the local labour force;
  - 1.3.4 a requirement that the main contractor and their sub-contractors will submit annually during the construction phase to the Appointed Individual/Body and to the District Council (if they are not the Appointed Individual/Body) a list of local appointed sub-contractors, their addresses and the value of contracts awarded and a list of suppliers from the local area that have been engaged and the value of goods and services procured;
  - 1.3.5 a mechanism for the strategy to be reviewed during the construction phase in light of the above annual submissions with provision for the District Council input into such review if they are not the Appointed Individual/Body; and
  - 1.3.6 in respect of the operational phase a requirement that all occupiers as a condition of their leasehold or freehold purchase from the Developer/Owner notify the Appointed Individual/Body of new job or training opportunities arising from their company's operations on the Application Site, and that all occupiers employing more than 50 FTE persons on the Application Site be required to develop a local employment and training strategy for the local labour force living within 12 miles of the Application Site with the Appointed Individual/Body such strategy to be approved by the District Council.
- 1.4 To implement and comply with the approved Employment & Training Strategy at all times

### **Whitley Common Open Space Payment**

43. 2.1 To pay the Whitley Common Open Space Payment to the City Council prior to the commencement of any construction works to the Whitley Junction, as shown on application drawing no. 11-0540-206C GA, carried out through Implementation of planning permission reference OUT/2012/1791 unless planning permission reference FUL/2013/2599 granted by the City Council on the 7 February 2014 in respect of the remodelling of this junction is implemented prior to the Implementation of permission reference OUT/2012/1791 in respect of this junction.

### **Construction Ecological Protection and Mitigation Strategy**

- 3.1 Not to Implement the Development until the Construction Ecological Protection and Mitigation Strategy has been submitted to and approved by the Councils.
- 3.2 The Strategy to be approved pursuant to paragraph 3.1 above will:
- 3.2.1 relate to all of the Application Site including all common landscaped areas (including SUDS features) and common estate roads/footpaths and cycleways;
  - 3.2.2 contain detailed arrangements in respect of the protection during construction of protected and important species; and
  - 3.2.3 accord with the principles in relation to the construction period set down in the Ecological Reports (various dates) and Biodiversity Offsetting Report (dated November 2012) submitted in conjunction with the Application.
- 3.3 To implement the strategy as approved pursuant to paragraph 3.1 and to obtain prior approval to any changes to the strategy from the Councils.

### **Biodiversity Offsetting Scheme**

- 4.1 Not to Implement the Development until the Biodiversity Offsetting Scheme for the off site compensation as identified in the Biodiversity Offsetting Report dated November 2012 has been submitted to and approved by the District Council.
- 4.2 The scheme to be approved pursuant to paragraph 4.1 above will:
- 4.2.1 identify receptor site or sites;
  - 4.2.2 include a management plan for the provision and maintenance of such offsetting measures for not less than 30 years from the date of Implementation; and
  - 4.2.3 include the provision of contractual terms to secure the delivery of the offsetting measures.
- 4.3 To implement the scheme as approved pursuant to paragraph 4.1 and to obtain prior written approval to any changes to the strategy from the District Council.

### **Lunt Roman Fort Mitigation Payment**

- 5.1 To pay the Lunt Roman Fort Mitigation Payment to the City Council prior to the commencement of the construction of any Commercial Unit on the Technology Park.



## **On Site Open Space and Common Infrastructure Management**

- 6.1 Not to Implement the Development prior to production of a site wide infrastructure design, management and maintenance strategy and to obtain approval thereof from the Councils prior to Implementation.
- 6.2 The strategy to be approved pursuant to paragraph 6.1 above will:
- 6.2.1 relate to the Countryside Park and other common landscaped areas including SUDS features and common estate roads/footpaths/cycleways;
  - 6.2.2 contain detailed arrangements in respect of the design principles to inform the applications for RM Approval including who will be responsible for the implementation and maintenance of the various areas, details of the maintenance regime, and public access arrangements in respect of the Countryside Park which shall provide for public access in perpetuity; and
  - 6.2.3 accord with the principles set down in the Green Infrastructure Strategy, the Ecological Reports (various dates) and the Biodiversity Offsetting Report dated November 2012 submitted as part of the Application.
- 6.3 Not to carry out the Development without full adherence with the strategy approved pursuant to paragraph 6.1 and to obtain prior written approval to any changes to the strategy from the Councils.

## **Off Site Highway Contribution**

- 7.1 To pay the Off Site Highway Contribution as follows;
- 7.1.1 £1,500,000 (One million five hundred thousand pounds) to be paid to the City Council prior to the completion of the Phase 2 Highway Works; and
  - 7.1.2 £1,000,000 (One million pounds) to be paid to the City Council prior to the completion of the Phase 3 Highway Works.

## **Cycling/Walking Works Fund**

- 8.1 To pay the sum of £2,500,000.00 (Two million five hundred thousand pounds) to the County Council in respect of the Cycling/Walking Works Fund prior to the Occupation Date.

## **Travel Plan & Travel Plan Co-ordinator**

- 9.1 To submit the Framework Travel Plan to the LA Co-ordinator and to obtain approval thereof prior to the Occupation Date.
- 9.2 To appoint the TP Co-ordinator prior to the preparation of the Framework Travel Plan and any of the Workplace Travel Plans and to maintain employment of a TP Co-ordinator until the expiry of a period of five years from the Occupation of the last building to be first Occupied unless otherwise agreed with the LA Co-ordinator.
- 9.3 To notify the LA Co-ordinator of the TP Co-ordinator's contact details (i.e. name, address, telephone number, email address) within seven days of their appointment and to notify the LA Co-ordinator of any subsequent changes to these details within 14 days of such changes occurring.

- 9.4 To notify the LA Co-ordinator of the date on which the final building within the Development is Occupied within 28 days of such Occupation taking place.
- 9.5 To submit a Workplace Travel Plan to the LA Co-ordinator in respect of each Qualifying Building and not to Occupy or permit Occupation of that building until the Workplace Travel Plan has been approved by the LA Co-ordinator.
- 9.6 To implement and comply with the Framework Travel Plan and the Workplace Travel Plans (including provisions relating to the monitoring thereof).
- 9.7 Within 28 days from the end of each Monitoring Period the TP Co-ordinator shall:
  - 9.7.1 provide a report to the LA Co-ordinator identifying any Exceedence Days during that Monitoring Period; and
  - 9.7.2 in the event of there being any Exceedence Days within that Monitoring Period identify details of any remedial measures to be actioned by the TP Co-ordinator to address the causes of the Exceedence Days.
- 9.8 To implement those remedial measures in full in accordance with a programme approved by the LA Co-ordinator following written confirmation by the LA Co-ordinator of the remedial measures referred to in paragraph 9.7.2 above (who shall secure approval for any remedial measures from the Councils before agreeing those with the TP Co-ordinator).
- 9.9 If monitoring undertaken at the end of four consecutive Monitoring Periods reveals that there have been in excess of 12 Exceedence Days in each of the four (4) consecutive Monitoring Periods representing a continued failure to meet the Modal Shift Target then subject to paragraph 9.10 below the Remedial Payments in respect of all Exceedence Days shall be paid to the County Council in respect of those Monitoring Periods.
- 9.10 Only one Remedial Payment shall be payable in respect of each Exceedence Day pursuant to the application of the above provisions.
- 9.11 To pay the TP Approval Contribution to the County Council in respect of each Workplace Travel Plan prior to the submission of that plan for approval.

## **Public Transport**

- 10.1 Prior to the completion of the Phase 2 Highway Works and prior to Occupation of not more than 9,300 square metres (100,000 square feet) of floorspace within the Technology Park to submit a Public Transport Infrastructure Strategy in respect of the Bus Infrastructure Works to the City Council and the County Council which shall:
  - 10.1.1 set out the detail of the Bus Infrastructure Works and a programme for their implementation;
  - 10.1.2 relate to the route shown on Figure 6 of the Transport Assessment dated August 2012 submitted with the Application or such alternative route including Pool Meadow Bus Station, Coventry Railway Station, Whitley Business Park and the Development as is agreed between the parties; and
  - 10.1.3 cost a maximum of £5,000,000.00 (Five Million Pounds) Index Linked (exclusive of VAT).

- 10.2 To carry out the Bus Infrastructure Works in accordance with the programme set out in the approved Public Transport Infrastructure Strategy and in any event complete those works prior to the completion of the Phase 2 Highway Works and the Occupation of more than 100,000 square feet of floorspace within the Development.
- 10.3 To provide the City Centre Bus Service as detailed in Schedule 6 for a period of 10 years from the completion of the Phase 2 Highway Works subject to the caveat in paragraph 10.5 below.
- 10.4 To provide the Wood End Bus Service as detailed in Schedule 6 for a period of 10 years from the date on which at least 200,000 square feet of floorspace in the Development is Occupied subject to the caveat in paragraph 10.5 below.
- 10.5 The liability of the Owner in respect of the provision of bus services referred to in paragraphs 10.3 and 10.4 of this Schedule and the Dedicated Commuter Service shall not exceed £12,500,000.00 (Twelve Million Five Hundred Thousand Pounds)(Index-Linked) over the 10 year period referred to above being a gross figure with no account being taken of any offsetting income provided that the liability shall not cease until the Owner has provided written notice to the City Council and the County Council that it has expended £12,500,000 in respect of the provision of the said bus services and a written breakdown showing how the expenditure has been incurred.

## **11. Traffic Management**

- 11.1 To pay the TRO East Contribution to the City Council prior to the Occupation Date.
- 11.2 To pay the TRO West Contribution to the County Council prior to the Occupation Date.
- 11.3 To pay the Leaf Lane Works Contribution to the City Council as follows;
  - 11.3.1 £15,000 (Fifteen thousand pounds) to be paid prior to Implementation; and
  - 11.3.2 £135,000 (One hundred and thirty five thousand pounds) to be paid prior to the Occupation Date.
- 11.4 To submit the Bubbenhall Road/Rowley Road/Coventry Road/Stoneleigh Road Access Restriction Strategy to the Councils and obtain approval thereof prior to the Occupation Date or the completion of the link road between the Technology Park and the Logistics Park whichever is the sooner.
- 11.5 To implement the Bubbenhall Road/Rowley Road/Coventry Road/Stoneleigh Road Access Restriction Strategy as approved in accordance with the programme contained therein at all times following its approval.

## **12. Relocation of Existing Businesses**

- 12.1 To use reasonable endeavours to assist the occupiers of businesses currently located within the Application Site to relocate provided that this obligation shall not require the Owner to provide the occupiers with any financial assistance or subsidy.

## **13. Model Car Club and Electric Railway Museum**

- 13.1 To use reasonable endeavours to agree an agreement for lease or a lease of new premises within the Development with the Coventry Model Car Club and the Electric Railway Museum prior to Implementation.

## 14. Monitoring Fee

14.1 To pay a monitoring fee to the County Council and District Council prior to Implementation as follows:

14.1.1 £20,000 (TWENTY THOUSAND POUNDS) to the County Council

14.1.2 £20,000 (TWENTY THOUSAND POUNDS) to the District Council

14.1.3 £20,000 (TWENTY THOUSAND POUNDS) to the City Council

## SCHEDULE 2: COUNCILS' COVENANTS

The County Council the District Council separately covenant with the Owner and the Developer as follows:

### 1. Application of Contributions

1.1 Unless otherwise agreed by the Owner to apply the contributions set out in column 1 below received by any of the Councils solely for the purposes identified in respect of that contribution in column 2 below and in the event of all or any of the contribution not being reasonably and properly expended for that purpose within the period as set out in column 3 below the Council in receipt of the payment shall repay the unexpended contribution to the payer of the contribution along with interest incurred thereon after the expiry of the period in column 3 within 28 days of receipt of a written request from the payer so to do.

### Council Covenants

Column 1	Column 2	Column 3	Column 4 Relevant Index
Whitley Common Open Space Payment	For the purposes of providing improved open space within the wards of Cheylesmore and Whitley to compensate for the open space lost as a result of the works to be carried out at Whitley Junction	Five years from receipt of payment of the contribution	BCIS
Lunt Roman Fort Mitigation Payment	The funding of restoration works to Lunt Fort and enhancement of on-site interpretation boards and highway directional signage in relation to Lunt Fort	Five years from receipt of payment of the contribution	BCIS

Column 1	Column 2	Column 3	Column 4 Relevant Index
	and landscaping and other works to open up views to the countryside to the north of the Fort		
Off Site Highways Contribution	(i) £1,500,000 to be applied to works to the junction of the A45 and St Martins Road/Leamington Road  (ii) £500,000 to be applied to works to the junction of the A45 and Kenilworth Road  (iii) £500,000 to be applied to works to the junction of London Road/Humber Road/Allard Way	Five years from receipt of each instalment of the contribution	BCIS
Cycling/Walking Fund Works	The provision of new cycling/walking routes shown in blue on Plan 3	Five years from receipt of payment	BCIS
Remedial Payment	Measures to assist in achieving the Modal Shift Target	12 months from receipt of each payment	BCIS
Travel Plan Approval Contribution	The involvement of the County Council in approving the Workplace Travel Plan to which the payment relates	No repayment	RPI
TRO East Contribution	Funding of a Traffic Regulation Order(s) for works to Rowley Road to the east of the Technology Park	Five years from the installation of the works sanctioned by the Traffic Regulation	BCIS

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4 Relevant Index</b>
	to restrict on street car parking and for the enforcement of such order(s)	Orders and referred to in column 2 of this table	
TRO West Contribution	Funding of a Traffic Regulation Order for works to Rowley Road and Baginton Village to the west of the Technology Park to restrict on street car parking and for the enforcement of such order	Five years from the installation of the works referred to in column 2	BCIS
Leaf Lane Works Contribution	The funding of traffic calming/improvement works in Leaf Lane and/or its locality if necessary to address traffic impact arising from the Development	Five years of receipt of each instalment of the contribution	BCIS
Monitoring Contribution	The monitoring of compliance with this Deed	N/A	N/A
Bus Infrastructure Works	N/A	N/A	BCIS
Bus services referred to in paragraphs 10.3 and 10.4 of Schedule 1	N/A	N/A	BCIS

2. To advise the Owner and the Developer of the contact details of the LA Co-ordinator within 28 days of the date hereof.

### SCHEDULE 3: DEED OF ADHERENCE

**THIS DEED OF CONFIRMATION** is made on            day            20

**BY**

[(1)

(2)            of [            ];]

(3) [            ] of [            ] ("**Covenantor**")

#### **RECITALS**

- A        [ ] entered into an Agreement under section 106 of the Town and Country Planning Act 1990 on [ ] 2014 ("**Planning Agreement**") with, inter alia, the Owners of the site which is the subject of planning permissions ref [            ] and [            ] ("the Application Site") which contains obligations in respect of the Application Site.
- B        Land within the Application Site owned by [            ] ("the Additional Land") was not bound by the obligations contained in the Planning Agreement and in the agreement [            ] covenanted as landowner to ensure that the Additional Land is bound by the obligations in the Planning Agreement prior to implementation on the Blue Land of the planning permission to which the Planning Agreement relates
- C        The Covenantor has agreed to enter into this Deed of Adherence to confirm that its or their interest in the Additional Land is bound by the provisions of the Planning Agreement.

#### **NOW THIS DEED WITNESSETH**

##### **Planning Obligations and Operative Provisions**

1.        The words and expressions used in this Deed of Adherence shall (save where the context requires or where new definitions are referred to in this Deed of Adherence) have the meanings assigned to them in the Planning Agreement.

This Deed of Adherence is entered into pursuant to section 106 of the Act and creates planning obligations to bind the Covenantor's interest in the Additional Land and is enforceable against the Covenantor and its successors in title and those deriving title from it in respect of the Additional Land by the Councils being the local planning authority for the purposes of section 106 of the Act for the area within which the Additional Land is situated.

The Covenantor with the intent to bind its interests in the Additional Land undertakes to the Councils to observe and perform the obligations contained in the Planning Agreement as if they were set out in full in this Deed of Adherence subject to the provisions of the Planning Agreement which shall remain in full force and effect.

Save in respect of liability for any prior breach of this Deed of Adherence the Covenantor shall upon parting with all legal interest in the Application Site and/or the Additional Land be released from all obligations rights and duties under this Deed of Adherence and the Planning Agreement as provided for in the Planning Agreement.

**DELIVERED** as a **DEED** on the date of this document

## **SCHEDULE 4: PLANS**

Plan 1

Plan 2

Plan 3

Plan 4