

**Planning Obligation by Deed under Section 106 of the Town and Country Planning Act**

**1990 as amended**

relating to the development of land at Test Lane to the north side of Gover Road, Redbridge,  
Southampton

Dated:

2016

**SOUTHAMPTON CITY COUNCIL**  
and  
**TRANSEUROPEAN V (SOUTHAMPTON) LIMITED**  
and  
**ROCKSPRING TRANSEUROPEAN PROPERTY (GENERAL PARTNER) V LIMITED &  
ROCKSPRING TRANSEUROPEAN PROPERTIES LIMITED PARTNERSHIP V**

**Fosters 15.3.16 accepted amends on 1.3.16 v4 SCC**

**Legal Services  
Southampton & Fareham Legal Partnership  
Southampton City Council  
Civic Offices  
Southampton  
SO14 7LY**

Jp/ep06-01-0481

**PARTIES**

- (1) **SOUTHAMPTON CITY COUNCIL** of Civic Centre Southampton SO14 7PE (“the Council”)
- (2) **TRANSEUROPEAN V (SOUTHAMPTON) LIMITED** a company registered in Jersey (registration number 115193) whose registered office is First Island House, Peter Street, St Helier, Jersey JE2 4SP (“the Developer”)
- (3) **ROCKSPRING TRANSEUROPEAN PROPERTY (GENERAL PARTNER) V LIMITED** a company registered in England (registration number 07840887) whose registered office is at 166 Sloane Street, London, SW1X 9QF in its capacity as General Partner of the **ROCKSPRING TRANSEUROPEAN PROPERTIES LIMITED PARTNERSHIP V** (registration number LPO14764) whose registered office is at 166 Sloane Street, London, SW1X 9QF (“the Guarantor”)

**RECITALS**

- A The Council is the local planning authority and the local highway authority for the purposes of the Act for the area in which the Land is situated.
- B The Council is the freehold owner of the Land being registered with title absolute at the Land Registry under Title Number HP657167.
- C The Land is subject to a conditional contract dated the 6<sup>th</sup> day of June 2014 in favour of the Developer and the Developer hereby enters into this agreement by virtue of their equitable interest shown by a unilateral notice on the charges register of Land Registry Title Number HP657167. The conditional contract states that the Developer will acquire the legal interest in the Land six weeks after the grant of the Permission.
- D The Guarantor has an equitable interest in the land subject to the conditional contract of 6<sup>th</sup> June 2014 which was entered into with the Developer and the Council.
- E Evander Properties Limited on behalf of the Developer has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- F The Council has resolved to grant the Permission subject to the prior completion of this Deed.
- G The Developer has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Deed.
- H The Developer and the Guarantor have agreed to be parties to this Deed and consent to this Deed being entered into and to the obligations becoming binding on the Land.

**NOW THIS DEED WITNESSES AS FOLLOWS:****OPERATIVE PART**

## 1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

“the 1980 Act”	The Highways Act 1980
“the Act”	The Town and Country Planning Act 1990 (as amended)
“Additional Amount”	The amount calculated in accordance with Clause 17.1 and 17.3 hereof (and references to “the Revised Amount” shall mean the original amount of any Contribution plus the Additional Amount)
“Air Quality Management Plan”	<p>A plan to mitigate the impact of the Development on the Air Quality Management Area 5 (AQMA5) to include:-</p> <ul style="list-style-type: none"> <li>• the means whereby the objectives of the Air Quality Management Plan are promoted and encouraged</li> <li>• the means whereby the effectiveness of the Air Quality Management Plan can be monitored and recorded</li> <li>• the means whereby the achievement of the aspirational targets of the Air Quality Management Plan can be reviewed and (if necessary) the objectives updated</li> <li>• the timescales for the Air Quality Management Plan</li> </ul>
“Application”	The application for full planning permission dated 26 <sup>th</sup> November 2014 submitted to the Council for the Development and allocated reference number 14/01911/FUL.
“Carbon Management Plan”	<p>A carbon management plan to include :-</p> <ul style="list-style-type: none"> <li>• whether the development is to achieve Zero Carbon status or the Emissions Level.</li> <li>• for development that will not achieve Zero Carbon status, the proposed level of contribution to the Council’s Carbon Offset Fund and the basis of calculation.</li> <li>• the means and mechanisms for achieving either Zero Carbon status or the proposed Emissions Level.</li> <li>• a scheme and details of the funding for the management and maintenance of any equipment or plant provided by the Development to achieve Zero Carbon status or the Emissions Level for the lifetime of the Development.</li> </ul>
“Carbon Offset Fund”	A fund held by the Council and to be used towards alternative CO <sub>2</sub> reduction projects to mitigate for the CO <sub>2</sub> emissions produced by the Development in the first year.
“Commencement”	The carrying out of a “material operation” (as defined in section

	56(4) of the Act) in connection with the Development save that for the purposes of this Deed and for no other purpose; operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not be included (and “Commence” and “Commenced” shall be construed accordingly)
“Commuter Car Parking Initial Survey”	A survey to measure kerbside parking covering Test Lane south of the development entrance, Gover Road, Westover Road and Coniston Road to provide the baseline level of on-street parking in the identified roads. The survey shall take place at 10am, 3pm and 8pm on a normal working day outside of school holidays.
“Commuter Car Parking Repeat Survey(s)”	A survey which shall be repeated within six months of the Occupation of each Unit to establish if any overspill parking is evident as a result of the new Development, the Commuter Car Parking Repeat Survey(s) shall be taken on the same highways and at the same times as the Commuter Car Parking Initial Survey
“Completed”	Practically complete save for minor snagging items such that it is reasonably fit for occupation (and “Complete” and “Completion” shall have the same meaning)
“Conditions Precedent”	The conditions contained in clause 4
“Confirmatory Deed”	A Deed (a draft of which is appended hereto) to be entered into by all of the parties with an interest in the Land for the purposes of Section 106 of the Act which confirms that the obligations contained in this Agreement shall also bind their interest in that part of the Land acquired from the Council after the date of this Agreement.
“Construction Traffic Management Plan”	A plan to regulate the routes ( including internal circulation routes within the Land) and times to be observed by construction vehicles visiting the Land for the purposes of carrying out the Development with the objective of ensuring that construction vehicle movements avoid peak traffic periods and do not adversely affect pedestrian routes within or close the Land
“Contributions”	The Site Specific Transport Contribution, Zero Carbon Contribution and the Recreational Land Loss Mitigation Contribution.
“Deed”	This planning obligation made by deed
“Development”	Redevelopment of the site to provide 19,132 square metres of employment floorspace in three buildings (Units 1 and 3 to be storage and distribution Use (Class B8), Unit 2 to be business

	Use (Class B1c) and/or storage and distribution Use (Class B8)) with an area of open space, associated landscaping, servicing areas and car parking with vehicular access from Test Lane (amended description following alterations to the planning application) in accordance with the Permission.
“the Development Plan”	The City of Southampton Local Plan (2006) and the Local Development Framework Core Strategy Development Plan Document January 2010
“Emissions Level”	How many tonnes of CO <sub>2</sub> are expected to be produced per annum based on buildings regulations calculations, after minimum on site requirements have been met in accordance with core strategy policy CS20 i.e. BREEAM/ Code requirements.
“Employment and Skills Plan”	A plan setting out how the Developer; and to the extent they are not the same person, any occupier and their contractors will work with the local employment and training agencies and shall specify the provision for employment and training opportunities and other initiatives in respect of the vocational and employability skills required by the Developer, their contractors and future occupiers, for any new jobs and business opportunities created by the Development.
“Employment and Training Agencies”	Training Agencies including but not limited to the following: <ul style="list-style-type: none"> <li>▪ Jobcentre Plus;</li> <li>▪ voluntary and private sectors providers;</li> <li>▪ schools;</li> <li>▪ sixth form colleges;</li> <li>▪ colleges of further education; and</li> <li>▪ universities</li> </ul>
“the Enabling Powers”	Section 111 of the Local Government Act 1972 (as amended) Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to or facilitating the enforcement of the obligations created by this Deed.
“Engineering Index”	In the case of amounts referred to in Clause 17.1 the Civil Engineering Prices Formula or during any period when no such index indices exists the Index which replaces the same or is the nearest equivalent thereto as the Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation
“Highway Condition Survey”	A survey to identify the current condition of the adopted highway in the vicinity of the Land which shall include:- <ul style="list-style-type: none"> <li>▪ a plan which identifies the area covered by the survey;</li> <li>▪ a written report detailing the current condition of the</li> </ul>

	<p>adopted roads and footways in the vicinity of the Land;</p> <ul style="list-style-type: none"> <li>▪ a list of defects in the adopted highway that exist prior to the Commencement of the Development including specific photographs identifying the individual defects;</li> <li>▪ a photographic overview of the adopted roads and footways in the vicinity of the Land; and</li> <li>▪ an estimate of the size, types and level of construction traffic expected to service the Land during the construction of the Development</li> </ul>
“Inflationary Index”	<p>the Retail Prices Index issued by the Office for National Statistics</p> <ul style="list-style-type: none"> <li>▪ or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation</li> </ul>
“Interest”	Means interest at 4 per cent above the base lending rate of the Barclays Bank Plc (calculated on a daily basis from the date on which it fell due)
“the Land”	The land referred to in Schedule One
“Legal Costs”	The Council’s legal costs in connection with the preparation and completion of this Deed
“Linear Park”	The public open space to be provided at the Development shown on Plan 2 appended to this Deed for illustrative purposes only
“Linear Park Commuted Sum”	The sum of £41,640.00 (forty one thousand six hundred and forty pounds) which represents the costs of maintaining the Linear Park over a 10 year period following transfer of the Linear Park by the Developer to the Council
“Linear Park Scheme of Works”	A scheme of works for the Linear Park as shown for illustrative purposes only on Plan 2
“Linear Park Management Plan”	<p>A plan which shall include details of:</p> <ul style="list-style-type: none"> <li>• such associated works of management and maintenance of the publicly accessible areas within the Development Land including litter collection</li> <li>• measures for the transfer of the Linear Park to the Council for adoption (if required) which shall be free from encumbrances and for nil consideration</li> <li>• the Linear Park commuted sum of £41,640, which is based on 10 years maintenance period</li> </ul>
“Lorry Routing Agreement”	An agreement to regulate the routes (including internal circulation routes within the Land) and times to be observed by construction/delivery/servicing vehicle movements to avoid peak traffic periods and to not adversely affect pedestrian routes

	within or close to the Land
“the Monitoring Charge”	The costs of the Council’s Planning Agreements Officer for monitoring compliance with the terms of this Deed in the sum of £2,665.00
“Occupation” and “Occupied”	Occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
“Plan 1”	The site location plan attached to this Deed
“Plan 2”	The Linear Park plan attached to this Deed
“Plan 3”	The Site Specific Transport Works plan attached to this Deed
“the Permission”	The full planning permission subject to conditions to be granted by the Council pursuant to the Application
“Post Development Highway Condition Survey”	<p>A survey of the area identified in the Highway Condition Survey to identify;</p> <ul style="list-style-type: none"> <li>▪ any damage to the adopted highway caused during the construction of the Development which has been caused by vehicles using the adopted highway to access the Land in connection with the construction of the Development, and;</li> <li>▪ a list of repairs to be agreed between the council and the Developer which are required to put the adopted highway into the condition it was in prior to the construction of the Development as recorded in the Highway Condition Survey.</li> </ul>
“Public Art Scheme”	<p>A scheme to ensure the successful integration of public art within the Development such proposals to include:-</p> <ul style="list-style-type: none"> <li>▪ details of the location of the public art within the Development or within the vicinity of the Development</li> <li>▪ a programme for the realisation of public art</li> <li>▪ details of how the provision of public art shall be integrated into the construction of the Development</li> <li>▪ details of the means for future maintenance of the public art</li> </ul>
“Recreational Land Loss Mitigation Contribution”	The sum of £35,000.00 (thirty five thousand pounds) being a contribution to mitigate the loss of recreational land within the Development Site
“Site Specific Transport Contribution”	<p>The sum of £153,150.00 (one hundred and fifty three thousand and one hundred fifty pounds) to be used as follows:</p> <ul style="list-style-type: none"> <li>▪ £10,000.00 (ten thousand pounds) to be used as a contribution towards traffic regulation orders to extend the 30mph speed limit on the complete length of Test</li> </ul>

	<p>Lane to the roundabout at Andes Road, with suitable traffic calming designed in to reinforce the reduction in speed, and amend the weight restriction on Test Lane to allow correct access to the site, and restrict heavy movements beyond the site, and</p> <ul style="list-style-type: none"> <li>▪ £50,000.00 (fifty thousand pounds) to be used as a contribution towards improvements works to the A33/M271 Redbridge Roundabout to provide a reconfiguration to assist traffic flow based on increase in HGV and non-HGV traffic routing south on the M271 to Redbridge Roundabout, and</li> <li>▪ £50,000.00 (fifty thousand pounds) for the extension of a two metre footpath linking from Test Lane along Gover Road to link into the existing footway on the north side of Gover Road; and</li> <li>▪ £11,250.00 (eleven thousand and two hundred and fifty pounds) to remove one speed hump and reinstate the carriageway as standard construction, and</li> <li>▪ £31,900.00 (thirty one thousand and nine hundred pounds) to remove two speed humps and replace with chicane style traffic calming measures and associated road markings.</li> </ul> <p>Total: £153,150.00</p>
<p>"Site Specific Transport Works"</p>	<p>Works with appropriate plans detailing the Developer's scheme including to</p> <ul style="list-style-type: none"> <li>• the provision/widening of a three metre wide cycleway footpath along Test Lane from the entrance of the site to the boundary of the Council's Land in the vicinity of the Southern Daily Echo access as illustrated on Plan 3 appended to this Deed.</li> </ul>
<p>"Statutory Undertakers"</p>	<p>Organisations licensed by the government which include all utilities electricity, gas, water, telephone, cable telephone and television and other telecommunication companies</p>
<p>"Travel Plan"</p>	<p>A plan aimed at reducing the reliance on the use of the private car by occupants of the Development and that encourages positively the use by those occupants of alternative means of transport which have less of an adverse impact on the environment which plan shall include</p> <ul style="list-style-type: none"> <li>▪ the means whereby the effectiveness of the Travel Plan can be monitored and recorded;</li> <li>▪ aspirational targets for a modal split as between those using the private car and those using alternative modes of transport; and</li> </ul>



	<ul style="list-style-type: none"> <li>▪ the means whereby the achievement of the aspirational targets of the Travel Plan can be reviewed and (if necessary) the objectives updated</li> </ul>
“Unit(s)”	A Unit(s) within the Development
“Use”	Use of the Development for the purposes for which the Permission has been granted
“Working Day(s)”	Days on which banks in the City of London are open to the public
“Zero Carbon”	<ul style="list-style-type: none"> <li>▪ Zero Carbon is zero or negative regulated CO<sub>2</sub> emissions from the Development,</li> <li>▪ Tonnes CO<sub>2</sub> per annum x £210, capped at a maximum of £3 per square metre of development floor space.</li> </ul>
“Zero Carbon Contribution”	A contribution to the Council’s Carbon Offset Fund based on £210 per tonne of regulated CO <sub>2</sub> emissions emitted in the first year of development.

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 2.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.6 The headings and contents list are for reference only and shall not affect construction.

## **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and the Enabling Powers.

- 3.2 The covenants, restrictions and requirements imposed upon the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority

#### **4 CONDITIONS PRECEDENT**

This Deed is conditional upon the Commencement of Development save for the provisions of this Clause 4 and Clauses 1 to 3 and 5 to 25 which shall come into effect immediately upon completion of this Deed.

#### **5 THE DEVELOPER'S AND THE GUARANTOR'S COVENANTS**

- 5.1 The Developer and the Guarantor **HEREBY** covenant with the Council that they will observe and perform the covenants on their part contained in Schedule Two.
- 5.2 Unless otherwise agreed by the Council, not to Commence the Development in respect of the Area unless and until all interests in the Land which comprise that Area are bound by the terms of this Deed.

#### **6 THE COUNCIL'S COVENANTS**

Subject to the performance by the Developer and the Guarantor of their obligations under this Deed the Council hereby covenants with the Developer that it will observe and perform the covenants on its part set out in Schedule Three.

#### **7 RELEASE AND LAPSE**

- 7.1 It is hereby agreed that neither the Developer nor the Guarantor shall be liable for a breach of any of their obligations under this Deed (save for antecedent breaches) after they shall have parted with all of their respective interests in the Land.
- 7.2 It is further agreed that this Deed shall lapse and be of no further effect if:
- 7.2.1 the Permission shall lapse without having been Commenced; or
  - 7.2.2 the Permission shall be varied or revoked other than with the consent of the Developer; or
  - 7.2.3 the Permission is quashed following a successful legal challenge
- 7.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.4 This Deed shall not be enforceable against Statutory Undertakers.

#### **8 LOCAL LAND CHARGE**

- 8.1 This Deed is a local land charge and shall be registered as such by the Council.

8.2 Upon the full satisfaction of all the terms of this Deed the Developer shall request that the Council procure that all entries in the register of local land charges relating to it other than those obligations which are of continuing effect be removed as soon as reasonably practicable.

## **9 DUTY TO ACT REASONABLY**

All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any deed consent approval or expression of satisfaction is due from one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

## **10 NO FETTER ON DISCRETION OR WAIVER**

10.1 Nothing contained or implied in this Deed 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 their functions as a local authority.

10.2 Nothing in this Deed shall impose any contractual or other obligations on the Council to grant the Permission.

10.3 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

## **11 WARRANTY AS TO TITLE**

The Developer and Guarantor **hereby warrant** to the Council that the title details referred to in Recitals B C and D are complete and accurate in every respect and that no person other than themselves and the Council has an interest in the Land for the purposes of section 106 of the Act.

## **12 SEVERABILITY**

It is agreed that if any part of this Deed shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

## **13 THE COUNCIL'S COSTS**

13.1 The Developer hereby covenants with the Council that it will on completion of this Deed pay the Council's reasonable Legal Costs.

13.2 The Developer hereby covenants with the Council that it will on or before the date of this Deed pay the Council's Monitoring Charge.

## **14 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Council without the consent of any such third party.

## **15 NOTIFICATION OF COMMENCEMENT/OCCUPATION**

The Developer covenants with the Council that they will:

- 15.1 notify the Council in writing of the date of Commencement of the Development within five Working Days of it occurring; and
- 15.2 notify the Council in writing of the date of Occupation for the first time of any part of the Development within five Working Days of it occurring;
- 15.3 pay to the Council upon written demand its reasonable fees for additional monitoring caused by the Developers non-compliance with 15.1 or 15.2.

## **16 NOTICES**

Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post or by facsimile transmission in the following manner:

- 16.1 on the Council at the address shown above marked "for the attention of the Planning Agreements Officer" and bearing the reference " s106 Agreement – Test Lane – 14/01911/FUL".
- 16.2 on the Developer at the address as detailed above or as notified by the Developer in writing to the Council; and
- 16.3 on the Guarantor at the address as detailed above or as notified by the Guarantor in writing to the Council.

## **17 CALCULATION OF THE ADDITIONAL AMOUNT**

The formulae in Clause 17.1 and 17.3 shall apply in relation to the Contributions specified in Clauses 17.1 and 17.3.

### **17.1 Site Specific Transport Contribution**

The Additional Amount for the Site Specific Transport Contribution shall be calculated as follows:-

The Additional Amount shall comprise the aggregate of the amount calculated by the application of the formula below for each such element:

$$\text{Amount after variation} = A \times (B \div C) - A$$

Where:

A = the contribution

B = the Engineering Index as at the date the Contribution is due; and

C = the Engineering Index as at being the date 8<sup>th</sup> May 2015 when the works were costed.

**17.2 The Payment of the Additional Amount**

The Additional Amount shall only be payable on or after 8<sup>th</sup> May 2016 if the Site Specific Transport Contribution remains unpaid at that time.

**17.3 The Zero Carbon Contribution and the Recreational Land Loss Mitigation Contribution**

In the event of any increase (but not decrease) in the Inflationary Index the Additional Amount shall be the difference between the amount of the whole or any part of the relevant Contribution and the sum calculated as follows:-

$$\text{Amount after variation} = A \times (\frac{B}{C}) - A$$

Where:-

A = the relevant Contribution to be varied;

B = the Inflationary Index at the date at which the relevant Contribution was paid; and

C = the Inflationary Index at the date of this Deed

**18 PAYMENT OF THE CONTRIBUTIONS**

18.1 The Developer must pay the Contributions and the Additional Amount (if any) as detailed in Schedule 2 to the Council by either:

18.1.1 cheque made payable to Southampton City Council;

18.1.2 by BACS or telegraphic transfer

18.2 All payments must state the Application reference number and the address to which this Deed relates.

18.3 Payment by either method referred to in 18.1 must be identified as a Section 106 Payment and be made for the attention of the relevant Planning Agreements Officer at Southampton City Council Civic Centre Civic Centre Road Southampton SO14 7LY.

18.4 Payment by either BACS or TT must also include in its reference that it is a Section 106 Payment and is for the attention of the Planning Agreements Officer

**19 INTEREST ON LATE PAYMENTS**

Any amount due from the Developer under this Deed which is not paid on the due date shall be payable with Interest in addition to the Additional Amount.

**20 CONSENT OF THE DEVELOPER AND GUARANTOR**

20.1 The Developer hereby consents to this Deed being entered into and to the obligations becoming binding on the Land notwithstanding any registration by

or on behalf of the Developer to protect its interest in the Land pursuant to the conditional contract referred to in Recital C.

20.2 The Guarantor hereby consents to this Deed being entered into and to the obligations becoming binding on the Land notwithstanding any registration by or on behalf of the Guarantor to protect its interest in the Land pursuant to the conditional contract referred to in Recital D.

## **21 NOTIFICATION OF SUCCESSORS IN TITLE**

The Developer and the Guarantor covenant with the Council that they will give immediate written notice to the Council of any change of ownership of the Land if at such time the obligations contained within this Deed have not fully been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

## **22 VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

## **23 CONFIRMATORY DEED**

The Developer covenants not to Commence Development on the Land until such time as the Confirmatory Deed substantially in the form attached at Appendix 1 has been entered into with the Council in relation to the Development.

## **24 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

## **25 DELIVERY**

This Deed is for the purposes of the Regulatory Reform (Execution of Deeds and Documents) Order 2005 a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until it has been dated by the respective parties' appointed legal representatives or in the absence of one or more parties appointing a legal representative by the parties directly.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

## **SCHEDULE ONE**

("the Land")

All that freehold land known as Test Lane north of Gover Road, Redbridge, Southampton shown for identification purposes only edged with a red line on the Plan 1

The Plan (not to scale)



## **SCHEDULE TWO**

("the Obligations")

The Developer and the Guarantor covenant with the Council as follows:-

### **1 Site Specific Transport Contributions**

- 1.1. No Development shall Commence until the Site Specific Transport Contribution plus the Additional Amount is paid to the Council.

### **Site Specific Transport Works**

- 1.2. No Development shall Commence until detailed plans for the provision of the Site Specific Transport Works has been submitted to the Council for its subsequent approval and the Developer has paid all the Council's reasonable and properly incurred administrative charges in connection therewith.
- 1.3. No Occupation of the Development shall take place until the Developer enters into an agreement (or more than one agreement if required) under Section 278 of the Highways Act 1980 with the Council as the local highway authority in order to procure the Site Specific Transport Works if so required.
- 1.4. Not to Occupy the Development until all the Site Specific Transport Works have been completed to the satisfaction of the Council.

### **2 Carbon Management Plan**

- 2.1 No Development shall Commence until the Carbon Management Plan has been submitted to and approved by the Council and that approval has been communicated in writing to the Developers by the Council.
- 2.3 To implement the approved Carbon Management Plan and promote the objectives of the Carbon Management Plan and ensure that (as far as is reasonably practicable) the objectives are met.
- 2.4 In the event that the Emissions Level approved under the Carbon Management Plan does not reach Zero Carbon not to Occupy the Development until the Zero Carbon Contribution is paid to the Council including the Additional Amount (if any).

### **3 Highway Condition Survey and Post Development Highway Condition Survey**

- 3.1 No Development shall Commence until a Highway Condition Survey has been submitted to and approved by the Council.
- 3.2 No Occupation of the Development until the Post Development Highway Condition Survey has submitted to and approved by the Council.
- 3.3 If required to secure the repairs identified in the Post Development Highway Condition Survey to rectify damage caused by vehicles using the adopted

highway to access the Land in connection with the construction of the Development to the adopted highway during the construction of the Development in line with the Council's quality standards by complying with either 3.3.1 or 3.3.2 below:

- 3.3.1 to carry out the repair works identified in the Post- Development Highway Condition Survey by no later than a date to be approved in writing by the Council; or
- 3.3.2 No Occupation of the Development shall take place until a financial contribution (the amount of which is to be agreed between the Council and the Developer to pay for the repair works identified in the Post Development Highway Condition Survey or such later date as may be agreed in writing.

#### **4 Public Art**

- 4.1 No Development shall Commence until the Public Art Scheme has been submitted to and approved by the Council.
- 4.2 No Occupation of the Development until the approved Public Art Scheme has been carried out in full to the Council's reasonable satisfaction at the Developer's cost and in accordance with the approved Public Art Scheme.

#### **5 Employment and Skills Plan**

- 5.1 Prior to submission of the Employment and Skills Plan the Developer shall attend a meeting with the Council to specify the provision for employment and training opportunities and other initiatives for the Development.
- 5.2 Prior to Commencement of the Development to submit to the Council for approval the Employment and Skills Plan and not to Commence the Development or permit Commencement of the Development until the Employment and Skills Plan has been approved by the Council.
- 5.3 Following approval of the Employment and Skills Plan by the Council Developer will implement and where necessary procure the implementation and promote the objectives of the approved Employment and Skills Plan and ensure that so far as is reasonably practicable the targets are met.

#### **6 Travel Plan**

- 6.1 No Occupation of the Development shall take place until the Travel Plan has been submitted to and approved by the Council.
- 6.2 To implement from and upon Occupation of the Units the approved Travel Plan and promote the objectives of the Travel Plan and ensure that (so far as is reasonably practicable) the objectives are met.

- 6.3 In the event that the Travel Plan identifies a requirement for any off-site or on-site works to be undertaken in order to meet the objectives then (unless otherwise agreed in writing with the Council) those works shall be carried out by the Developer at its own cost in accordance with a timescale to be included within the Travel Plan with all necessary consents required.

## **7 Construction Traffic Management Plan**

- 7.1 No Development shall Commence until the Construction Traffic Management Plan has been submitted to and approved by the Council.
- 7.2 During the construction of the Development to direct and ensure that all contractors' delivery vehicles and construction traffic going to and from the Land comply with the terms of the approved Construction Traffic Management Plan.

## **8 Lorry Routing Agreement**

- 8.1 No Development shall Commence until the Lorry Routing Agreement has been submitted to and approved by the Council.
- 8.2 To ensure that the Lorry Routing Agreement is implemented in full from the Commencement of the Development.

## **9 Air Quality Management Plan**

- 9.1 No Development shall Commence until the Air Quality Management Plan has been submitted to and approved by the Council.
- 9.2 To implement and promote the objectives of the Air Quality Management Plan and ensure that (so far as reasonably practicable) the objectives are met.
- 9.3 In the event that the Air Quality Management Plan identifies a requirement for any off-site or on-site works to be undertaken in order to meet the objectives the (unless otherwise agreed in writing with the Council) those works shall be carried out by the Developer at its own cost in accordance with the timescale to be included in the Air Quality Management Plan.

## **10 Recreation Land Loss Mitigation Contribution**

- 10.1 Prior to Commencement to pay to the Council the Recreation Land Loss Mitigation Contribution plus any Additional Amount payable.

## **11 Linear Park Scheme of Works**

- 11.1 No Development shall Commence until the Linear Park Scheme of Works has been submitted to for the written approval of the Council.
- 11.2 On approval from the Council to construct the Linear Park in accordance with the approved Linear Park Scheme of Works.
- 11.3 No Occupation of the Development until the Linear Park has been constructed in full to the satisfaction of the Council.

## **12 Linear Park Management Plan**

- 12.1 No Development shall Commence until the Linear Park Management Plan which shall include details of the means of ensuring future maintenance of the Linear Park has been submitted to and approved by the Council.
- 12.2 On approval from the Council to implement the Linear Park Management Plan in full to the satisfaction of the Council.
- 12.3 If the Council requires the transfer of the Linear Park the Developer shall:
  - 12.3.1 transfer to the Council the Linear Park free from encumbrances and for nil consideration; and
  - 12.3.2 to pay the Council upon the transfer of the Linear Park the Linear Park Commuted Sum towards the future maintenance costs of the Linear Park along with a location plan showing the extent of the Linear Park.

13 **Commuter Car Parking Initial Survey and Commuter Car Parking Repeat Survey(s)**

- 13.1 No Development shall Commence until the Commuter Car Parking Initial Survey is submitted to the Council for approval.
- 13.2 Within six months of Occupation of each Unit a Commuter Car Parking Repeat Survey shall be provided to the Council; if on submission the repeated survey shows a 10% increase in overspill parking from the new Development at any one time during one day then the Developer shall:
  - 13.2.1 submit a scheme of works to mitigate the identified commuter overspill and no further Occupation of the Development shall take place until the submitted scheme is approved in writing by the Council and the scheme is actioned by the Developer
  - 13.2.2 pay all costs (up to a maximum of £25,000.00) for the implementation of a controlled parking permit zone and/or traffic calming measures for the benefit of the local residents if required

### SCHEDULE THREE

(Council's Covenants)

The Council covenants with the Developer as follows:-

- 1 It will issue the Permission as soon as is reasonably practicable after the date of this Deed.
- 2 Where any payment referred to in Schedule Two is paid for a particular purpose it will not be used by the Council otherwise than for that purpose..
- 3 In the event that the Contributions or any element or part of the Contributions remains unspent or committed unconditionally to be spent within 5 (five) years after the date on which it is paid to the Council then the Council shall on written demand return to the Developer the unexpended or uncommitted (as the case may be) part of the Contributions together with any interest accrued thereon.
- 4 Upon written request from the Developer and upon payment of the Council's reasonable administration fee the Council shall provide to the Developer such evidence as it considers is reasonable to confirm the expenditure of the sums paid by the Developer under this Deed.
- 5 At the written request of the Developer and upon payment of the Council's reasonable administrative fee the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

**APPENDIX 1**

**CONFIRMATORY DEED**

BETWEEN:

- (2) **SOUTHAMPTON CITY COUNCIL** of Civic Centre Southampton SO14 7PE (“the Council”)
- (2) **TRANSEUROPEAN V (SOUTHAMPTON) LIMITED** a company registered in Jersey (registration number 115193) whose registered office is First Island House, Peter Street, St Helier, Jersey JE2 4SP (“the Owner”)
- (3) **ROCKSPRING TRANSEUROPEAN PROPERTY (GENERAL PARTNER) V LIMITED** a company registered in England (registration number 07840887) whose registered office is at 166 Sloane Street, London, SW1X 9QF in its capacity as General Partner of the **ROCKSPRING TRANSEUROPEAN PROPERTIES LIMITED PARTNERSHIP V** (registration number LPO14764) whose registered office is at 166 Sloane Street, London, SW1X 9QF (“the Guarantor”)

## 1. BACKGROUND

- 1.1 The Land is subject to the Planning Agreement and the planning obligations it contains which the parties entered into on [date].
- 1.2 Under the terms of the Planning Agreement, the Owner (defined as the Developer in the Planning Agreement) undertook to ensure that when it purchased the Land that it would enter into a Confirmatory Deed.
- 1.3 This Confirmatory Deed is required pursuant to Clause 23 of the Planning Agreement to enable the Development to be carried out on the Land and for the purpose of ensuring that the agreements, covenants and obligations contained in the Planning Agreement are binding on the Owner and the Guarantor and the Land insofar as they remain to be complied with and relate to the Land.
- 1.4 The Owner agreed to purchase the Land from the Council under a conditional contract dated 6<sup>th</sup> June 2014.
- 1.5 The Owner has acquired the Site from the Council and is now the legal freeholder of the Land.

- 1.6 The Guarantor is party to the conditional contract for the sale of the Land dated 6<sup>th</sup> June 2014 as Guarantor for the Owner.
- 1.7 This Confirmatory Deed is supplemental to the Agreement and contains obligations which are planning obligations for the purposes of Section 106 of the Act.
- 1.8 The Council is the Local Planning Authority for the purposes of the Act and is the local planning authority by whom the planning obligations contained in the Planning Agreement (insofar as they are relevant and applicable to the Land and its Development in accordance with the Planning Permission) and this Confirmatory Deed are intended to be made enforceable by the Council against the Owner and the Guarantor and to binding in respect of the Land in accordance with this Confirmatory Deed and the Planning Agreement.

**OPERATIVE PROVISIONS**

**IT IS AGREED AS FOLLOWS:**

**2. DEFINITIONS**

- 2.1 This Confirmatory Deed adopts the definitions in clause 1 of the Planning Agreement and the interpretation provisions of clause 2 of the Planning Agreement unless stated otherwise.
- 2.2 For the purposes of this Confirmatory Deed the following words and expressions have the following meanings:

"Planning Agreement"	The agreement dated 201 pursuant to Section 106 of the Act relating to land at Test Lane to the north of Gover Road, Redbridge, Southampton
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**3. STATUTORY AUTHORITY**

- 3.1 This Confirmatory Deed is supplemental to the Planning Agreement and is made under Section 106 of the Act and any other enabling provisions.
- 3.2 Each covenant and obligation in this Confirmatory Deed is a planning obligation for the purposes of Section 106 of the Act enforceable by the Council against the Owner and any person deriving title in the Land and is registerable as a local land charge.
- 3.2 This Deed shall take effect upon the date hereof.



#### **4. THE OPERATION OF THIS CONFIRMATORY DEED AND THE PLANNING AGREEMENT**

4.1 This Confirmatory Deed is executed by the Owner and the Guarantor so as to bind and subject its freehold interest in the Land (as detailed in the Schedule hereto) to the obligations, covenants and other provisions contained in the Planning Agreement and the Owner and the Guarantor agree that as from the date hereof the obligations and covenants in the Planning Agreement given by the Owner and Guarantor to the Council shall be binding on the Land pursuant to section 106 of the Act as if the said obligations and covenants, undertakings in the Planning Agreement shall be enforceable by the Council not only against the Owner and Guarantor but also against any successors in title to or assignees and any person claiming through or under it an interest or estate in the Lane as if it had been an original covenanting party in respect of the Land when the Planning Agreement was entered into.

4.2 The Council covenants with the Owner and the Guarantor to perform the obligations, covenants and undertakings on its part contained in the Planning Agreement.

#### **5. REGISTRATION**

5.1 This Confirmatory Deed is a local land charge and shall be registered as such by the Council.

#### **6. COSTS**

6.1 The Owner and Guarantor hereby covenant with the Council that it will before the date of this Deed pay the Council's reasonable Legal Costs in relation to this Confirmatory Deed.

#### **7. RELEASE**

7.1 It is hereby agreed that neither the Owner nor the Guarantor shall be liable for a breach of any of their obligations under this Confirmatory Deed and/or the Planning Agreement (save for antecedent breaches) after they shall have parted with all of their respective interests in the Land.

#### **8 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed

and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Council without the consent of any such third party.

**9 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

**10 DELIVERY**

This Deed is for the purposes of the Regulatory Reform (Execution of Deeds and Documents) Order 2005 a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until it has been dated by the respective parties' appointed legal representatives or in the absence of one or more parties appointing a legal representative by the parties directly.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

THE COMMON SEAL OF )

**SOUTHAMPTON CITY COUNCIL** )

was affixed in the presence of: )

Authorised Signatory:

EXECUTED AS A DEED by )

**TRANSEUROPEAN V (SOUTHAMPTON) LIMITED** )

in the presence of: )

Director:

Director/Secretary:

EXECUTED AS A DEED by )

**ROCKSPRING TRANSEUROPEAN PROPERTIES** )

**(GENERAL PARTNER) V LIMITED** )

in the presence of: )

Director:

Director/Secretary:

**SOUTHAMPTON CITY COUNCIL**

**and**

**TRANSEUROPEAN V (SOUTHAMPTON) LIMITED**

**and**

**ROCKSPRING TRANSEUROPEAN PROPERTY  
(GENERAL PARTNER) V LIMITED &  
ROCKSPRING TRANSEUROPEAN PROPERTIES  
LIMITED PARTNERSHIP V**

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**CONFIRMATORY DEED**

Relating to the Development at Test Lane to the north side  
of Gover Road, Redbridge, Southampton

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**Legal Services**

**Southampton & Fareham Legal Partnership**

**Southampton City Council**

**Civic Offices**

**Southampton**

**SO14 7LY**

**jp/EP06-01-00481**

THE COMMON SEAL OF )  
SOUTHAMPTON CITY COUNCIL )  
was affixed in the presence of: )

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EXECUTED AS A DEED by )  
**TRANSEUROPEAN V (SOUTHAMPTON) LIMITED** )  
in the presence of: )

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EXECUTED AS A DEED by )  
**ROCKSPRING TRANSEUROPEAN PROPERTIES** )  
**(GENERAL PARTNER) V LIMITED** )  
in the presence of: )

Director:

Director/Secretary: