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Signature .


~~Head of Legal & Democratic Services~~
Eastleigh Borough Council

Head of Legal Services

DATED 3rd ~~July~~ ^{JUNE} 2021 ^{AW.}

- (1) EASTLEIGH BOROUGH COUNCIL
- (2) SOUTHAMPTON INTERNATIONAL AIRPORT LIMITED
- (3) CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK

PLANNING OBLIGATION BY AGREEMENT
RELATING TO LAND AT
SOUTHAMPTON AIRPORT



Pinsent Masons

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THIS DEED OF AGREEMENT is made on 3rd June 2021

BETWEEN:-

- (1) Eastleigh Borough Council of Eastleigh House, Upper Market Street, Eastleigh SO50 9YN (the "**Council**");
- (2) Southampton International Airport Limited (No 02431858) whose registered office is at Wide Lane, Southampton, SO18 2NL (the "**Owner**"); and
- (3) Credit Agricole Corporate and Investment Bank (incorporated in France, UK registration no. FC008194) of Broadwalk House, 5 Appold Street, London EC2A 2DA (the "**Mortgagee**").

WHEREAS:-

- (A) The Council is the local planning authority for the Airport Site (other than the area shown hatched in black on Plan 1) and can enforce the obligations contained in this Deed.
- (B) The Owner is the freehold and leasehold owner of the Airport Site described in Schedule 1 to this Deed and shown edged red on Plan 1 at Appendix 1.
- (C) The Mortgagee is a Party entering into this Deed as a mortgagee of the Airport Site.
- (D) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating or facilitating the Development as set out in this Deed. For the purposes of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) the Council is satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, that they are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.
- (E) The Parties enter into this Deed to secure the planning obligations contained in it and to enable the Council to grant the Planning Permission.

IT IS AGREED as follows:-

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed (which includes the Recitals, Schedules and Appendices to it) the following words and expressions have the following meanings:-

- | | |
|---------------------------------|---|
| "1990 Act" | means the Town and Country Planning Act 1990; |
| "1992 Agreements" | means the two agreements made under section 106 of the 1990 Act and dated 18 December 1992 and made between Airports UK (Southampton) Limited (1) and Eastleigh Borough Council (2) relating to planning permission reference 7535/11 and regulating the use of Southampton Eastleigh Airport Eastleigh in Hampshire, as amended by a supplemental agreement dated 20 August 1996 and made between Eastleigh Borough Council (1) Southampton International Airport (2) and Osprey Aviation Limited (3); |
| "Air Transport Movement" | means an Aircraft or helicopter take-off or landing at the Airport Site including 'touch and go' operations provided that one arrival and one departure will constitute two movements; |
| "Aircraft" | means an aircraft with a fixed wing and which is powered by propellers or turbo jet engine or turbofan engine; |

"Airport"	means the airport known as Southampton International Airport and which is located at the Airport Site;
"Airport Consultative Committee"	means the Airport Consultative Committee for the Airport that is established in accordance with the requirements of section 35 of the Civil Aviation Act 1982 and is constituted and chaired in accordance with current Government guidance on Airport Consultative Committees, which at the time of writing is the Department for Transport's ' <i>Guidelines for Airport Consultative Committees</i> ', April 2014;
"Airport Monitoring Year"	means the period of a year running from 1 March to the last day of February with the quarters being: <ul style="list-style-type: none"> (a) March, April, May; (b) June, July, August; (c) September, October, November; and (d) December, January, February;
"Airport Passenger"	means a person arriving at or departing from the Airport Site by way of an Air Transport Movement;
"Airport Site"	means the land edged red on Plan 1 at Appendix 1;
"Application"	means the application for full planning permission for the Development validated by the Council on 20 November 2019 and allocated reference number F/19/86707;
"Capacity Declaration Strategy"	means the plan developed by the Owner ahead of each winter and summer airport Operational Season to determine the number of slots for Air Transport Movements that it will declare to Airport Coordination Limited (No. 02603583) that can be used at the Airport in the upcoming Operational Season, including the proportion of ad-hoc slots;
"Commence"	means to initiate the Development by carrying out a material operation as defined in section 56(4) of the 1990 Act. Where used in the context of part of the Development, commence means the carrying out of a material operation on that part. The terms " Commencement " and " Commenced " and " Commence Development " and " Commencement of Development " and " Commencement Date " are to be construed accordingly. The following matters do not constitute a material operation and consequently shall not individually or together constitute Commencement of Development:- <ul style="list-style-type: none"> (a) site investigations, testing or surveys; (b) the provision of infrastructure boreholes permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 or any amendment or replacement thereof; (c) the provision of underground drainage and sewers and the laying and diversion of other services and service medium;

- (d) construction of temporary accesses and/or highway works to facilitate the carrying out of the Development;
- (e) archaeological investigations and digs;
- (f) ecological surveys, investigations or assessments (including, for the avoidance of doubt, investigations or assessments relating to bats);
- (g) decontamination and remediation works;
- (h) site preparation;
- (i) the construction of boundary fencing or hoardings (including the erection of an enclosure for the purpose of site security), erection of temporary facilities for security personnel and the erection of security cameras;
- (j) interim landscaping works;
- (k) erection of boards advertising the Development;
- (l) the construction of a temporary site compound and welfare facilities/buildings/enclosures;
- (m) works and operations to enable any of the foregoing to take place;

"Commencement of Operations"

means the use of the Runway Extension by Aircraft departing from and/or landing at the Airport Site for scheduled flights and **"Commence Operations"** shall be construed accordingly;

"Comply"

means comply, perform, fulfil and/or discharge or procure compliance, performance, fulfilment and/or discharge, and **"Compliance"** shall be construed accordingly;

"Deed"

means this Deed made under section 106 of the 1990 Act and all other enabling powers;

"Development"

means the Runway Extension, associated blast screen to the north of the Runway Extension, removal of existing bund and the reconfiguration and extension of existing long stay car parking to the east and west of Mitchell Way to provide additional long stay spaces as more fully described in the Application;

"Expert"

means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the Parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society;

"HCC"

means Hampshire County Council;

"Operational Season"

means the six (6) month airport operational season of either winter (October to March) or summer (April to September) in any given Airport Monitoring Year;

"Parties"

means the parties to this Deed and **"Party"** shall mean any one of the parties to this Deed as the context so requires;

"Plan 1"	means the plan attached at Appendix 1 and marked "Plan 1";
"Plan 2"	means the plan attached at Appendix 1 and marked "Plan 2";
"Planning Permission"	means the planning permission for the Development numbered F/19/86707, a draft of which is attached at Appendix 2;
"Runway"	means the runway shown hatched in green on Plan 2, and the Runway Extension;
"Runway Extension"	means the extension of the existing runway at the Airport Site by 164 metres at the northern end as more fully described in the Application and as shown tinted blue on Plan 2;
"SCC"	means Southampton City Council;
"Utilities"	means mains services including gas, electricity, portable water, telecommunications;
"Working Day"	means a day other than a Saturday or Sunday or public holiday in England.

1.2 In this Deed, unless otherwise indicated, reference to any:-

- 1.2.1 Recital, Clause, sub-clause, paragraph number, Schedule, Appendix or plan is a reference to a Recital, Clause or sub-clause of, paragraph number of, Schedule to, Appendix to or plan annexed to this Deed;
- 1.2.2 paragraph number within a Schedule to this Deed is to the corresponding paragraph number of that Schedule;
- 1.2.3 words importing the singular meaning include the plural meaning and vice versa;
- 1.2.4 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner; and
- 1.2.5 Act of Parliament shall include any amendment, modification, extension, consolidation or re-enactment of that Act for the time being in force and in each case shall include all statutory instruments, orders, regulations and directions for the time being made, issued or given under that Act or deriving validity from it.

1.3 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Deed.

1.4 Any notice, notification, consent, approval, agreement, request or statement or details to be made, given or submitted under or in connection with this Deed shall be made or confirmed in writing.

1.5 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.

1.6 Each of the Parties to this Deed shall act in good faith and shall co-operate with each of the other Parties to facilitate the discharge and performance of all obligations on them contained in this Deed and the Owner shall Comply with any reasonable requests of the Council to provide documentation within its possession (such documentation to be provided by the Owner at its own expense) for the purposes of monitoring Compliance with the obligations contained in this Deed.

2. **LEGAL BASIS**

2.1 This Deed is made under:-

2.1.1 section 106 of the 1990 Act; and

2.1.2 section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other enabling powers that may be relevant to the enforcement of the obligations contained in this Deed.

2.2 The obligations, covenants and undertakings on the part of the Owner in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and so bind the Owner's interest in the Airport Site as described in Schedule 1 (other than the area shown hatched black on Plan 1). Subject to Clause 8, the obligations, covenants and undertakings on the part of the Owner are entered into with the intent that they are enforceable not only against the Owner but also against any successors in title or assigns of the Owner and any person claiming through or under the Owner an interest or estate in the Airport Site or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it.

2.3 Insofar as any obligations, covenants and undertakings in Clause 2.2 are not capable of falling within section 106 of the 1990 Act they are entered into in pursuance of the relevant powers referred to in Clause 2.1.2.

2.4 So far as the obligations, covenants and undertakings in this Deed are given by or to the Council, they are entered into under the relevant powers referred to in Clause 2.1 and those obligations, covenants and undertakings are enforceable by or against the Council.

2.5 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of their statutory powers, duties, functions or discretions in relation to the Airport Site or otherwise.

3. **CONDITIONAL ENTRY INTO FORCE**

3.1 Clauses 1, 2, 3, 4, 5.1, 5.3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 and Schedule 1, Schedule 2 (save for paragraphs 4 and 11), Schedule 3 and Schedule 4 to this Deed come into effect on the date of this Deed.

3.2 Clauses 5.2, 5.4, 5.5, paragraphs 4 and 11 of Schedule 2, Schedule 5, Schedule 6, Schedule 7, Schedule 8, Schedule 9, Schedule 10 and Schedule 11 are conditional upon and will not take effect until Planning Permission has been granted and Development has Commenced.

3.3 Schedule 12 is conditional upon and will not take effect until Planning Permission has been granted.

4. **DURATION**

4.1 The obligations in Clauses 5.2, 5.4, 5.5, paragraphs 4 and 11 of Schedule 2, Schedule 5, Schedule 6, Schedule 7, Schedule 8, Schedule 9, Schedule 10, Schedule 11 and Schedule 12 to this Deed will end (to the extent they have not already been complied with), if the Planning Permission:-

4.1.1 is quashed, revoked or otherwise withdrawn at any time so as to render such obligations or any part of such obligations irrelevant, impractical or unviable; or

4.1.2 is modified by any statutory procedure without the consent of the Owner; or

4.1.3 expires before Commencement.

4.2 Where the obligations in Clauses 5.2, 5.4, 5.5, paragraphs 4 and 11 of Schedule 2, Schedule 5, Schedule 6, Schedule 7, Schedule 8, Schedule 9, Schedule 10, Schedule 11 and Schedule 12 to this Deed end in the circumstances set out in Clause 4.1 the Council must update all entries made

in the Register of Local Land Charges in respect of this Deed to reflect the fact that those Schedules are of no further effect.

5. OWNER'S COVENANTS WITH THE COUNCIL

5.1 The Owner, on behalf of itself and its successors in title to its interest in the Airport Site as described in Schedule 1, covenants with the Council to Comply with each obligation, covenant and undertaking in Clause 5.3, Schedule 1, Schedule 2, Schedule 3, Schedule 4 to this Deed.

5.2 The Owner, on behalf of itself and its successors in title to its interest in the Airport Site as described in Schedule 1, covenants with the Council to Comply with each obligation, covenant and undertaking in Clauses 5.4, 5.5, Schedule 5, Schedule 6, Schedule 7, Schedule 8, Schedule 9, Schedule 10, Schedule 11 and Schedule 12 to this Deed.

5.3 In the event of the Owner acquiring a legal estate in the land shaded brown on Plan 1:-

5.3.1 the Owner will notify to the Council in writing the fact of such acquisition within fourteen days of the date of such acquisition; and

5.3.2 the Owner will enter into an agreement with the Council supplemental to this Deed in order that the covenants on the part of the Owner herein contained and applicable to the Airport Site shall also relate to and be binding on the land shaded brown on Plan 1 to the extent of the legal estate of the Owner therein.

5.4 The Owner covenants that it will investigate title to the land shaded brown on Plan 1 and report to the Council on the outcome of the title investigation within 6 months of Commencement of Development.

5.5 If it is agreed between the Owner and the Council that it would be appropriate for the Owner to submit an application for adverse possession of the land shaded brown on Plan 1 the Owner covenants to submit an application within a further 3 months of the report referred to in Clause 5.4.

6. THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner:-

6.1.1 to Comply with any Council covenants contained in the Schedules to this Deed; and

6.1.2 following a written request from the Owner, made at any time after any obligation under this Deed has been fulfilled and which contains appropriate evidence that it has been fulfilled, provided that the Council agrees that the obligation has been fulfilled, to issue a letter of release in respect of that obligation within 20 Working Days after the date on which it receives the request. Where this Deed or any document referred to herein provides for any agreement, consent, approval or direction on the part of the Council, the Council agrees that such agreement, consent, approval or direction shall not be unreasonably withheld or delayed.

7. MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Airport Site as described in Schedule 1 shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Airport Site shall take effect subject to this Deed provided that the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Airport Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

8. SUCCESSORS IN TITLE AND RELEASE

8.1 References in this Deed to the Council include the successors to its respective statutory functions and include persons deriving title through or under them.

- 8.2 Subject to Clauses 8.3 and 8.4, references to the Owner or any other person include its heirs, assigns, successors in title and persons deriving title through or under them.
- 8.3 The obligations in this Deed are not binding on or enforceable against any statutory undertaker or other person who acquires any part of the Airport Site or any interest in it for the purposes of supplying Utilities or public transport services.
- 8.4 If the Owner or any person disposes of its entire interest in the Airport Site or in any part of it, that Owner or person will be released from its obligations in this Deed which will no longer be enforceable against that Owner or person in relation to the Airport Site or that part of the Airport Site disposed of, except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar.
- 8.5 The release of the Owner or any person under Clause 8.4 is without prejudice to any subsisting liability for any antecedent breach or antecedent failure to Comply with its obligations arising before parting with that interest.
- 8.6 Nothing in this Deed will prevent Compliance with any obligation under it before that obligation comes into effect and early Compliance will not amount to a waiver of the effect of this Clause 8.

9. **OTHER DEVELOPMENT**

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

10. **PREVIOUS OBLIGATIONS**

The Council releases and cancels all previous planning obligations in respect of the Airport Site made under section 106 of the 1990 Act or similar predecessor enactments including the 1992 Agreements.

11. **DISPUTE RESOLUTION**

- 11.1 In the event of any dispute arising between the Parties in respect of any matter contained in this Deed the same may be referred to the Expert by any Party notifying the other Party of such intention (the "Notice").
- 11.2 The Notice must specify:-
- 11.2.1 the nature, basis and a brief description of the dispute;
 - 11.2.2 the Clause of this Deed or paragraph of a Schedule of this Deed to which the dispute has arisen; and
 - 11.2.3 the proposed Expert.
- 11.3 The Expert will act as an expert and not as an arbitrator. His decision shall be final and binding on the Parties.
- 11.4 Each Party will bear its own costs and the Expert's costs will be paid as determined by him.
- 11.5 The Expert will be appointed subject to an express requirement that he must reach his decision and communicate it to the Parties within the minimum practical timescale allowing for the nature and complexity of the dispute, and in any event not more than 40 Working Days from the date of his appointment to act. His decision will be given in writing with reasons and in the absence of manifest error will be binding on the Parties.
- 11.6 The Expert will be required to give notice to each of the Parties inviting each of them to submit to him within 20 Working Days written submissions and supporting material and will afford to the Parties an

opportunity to make counter submissions within a further 10 Working Days in respect of any such submission and material. The Expert shall consider (inter alia) any written representations made on behalf of any Party but shall not be bound by them.

- 11.7 If the Expert shall be or become unable or unwilling to act then the above procedure for the appointment of an Expert may be repeated as often as necessary until a decision is obtained.

12. **INDEXATION**

It is agreed between the Parties that the Annual Monitoring Contribution, the Ecological Mitigation Contribution and the Annual Community Health and Wellbeing Contribution to be paid to the Council by the Owners under Schedule 9, Schedule 11 and Schedule 12 of this Deed is required to be index linked and in this respect each relevant payment shall be increased by the percentage by which the Retail Prices Index (excluding mortgages) ("RPIX") published by the Office for National Statistics (or amendment or replacement thereof) increased from and including the date of this Deed to the date the relevant payment is received by the Council.

13. **LEGAL COSTS**

As soon as practicable following completion of this Deed the Owner will pay to the Council the proper legal costs and disbursements and other costs incurred in the negotiation, preparation and execution of this Deed.

14. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing in this Deed will create any rights in favour of or be enforceable by any person who is not a Party to this Deed under the Contracts (Rights of Third Parties) Act 1999.

15. **NOTICES**

- 15.1 The Owner will notify the Council:-

- 15.1.1 upon Commencement; and
- 15.1.2 upon Commencement of Operations.

- 15.2 Any notice or other written communication to be served on a Party or given by one Party to any other under the provisions of this Deed will be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the Party on whom it is to be served or to whom it is to be given and will conclusively be deemed to have been received on:-

- 15.2.1 if delivered by hand, the next Working Day after the day of delivery;
- 15.2.2 if sent by post, the day 2 Working Days after the date of posting; or
- 15.2.3 if sent by recorded delivery, at the time delivery was signed for.

- 15.3 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

- 15.4 The address for any notice or other written communication shall be within the United Kingdom.

- 15.5 Where proceedings have been issued in the Courts of England the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

- 15.6 A notice or communication will be served or given:-

- 15.6.1 on the Owner at its registered office from time to time, or such other address as notified in writing to the Council from time to time, marked for the attention of the Managing Director;

15.6.2 on the Council at Eastleigh House, Upper Market Street, Eastleigh SO50 9YN or such other address notified in writing to the Owner from time to time, marked for the attention of the Executive Head of Planning and Economy or such equivalent post holder; and

15.6.3 on any successor in title to the Owner at that successor in title's last known address.

15.7 Any notice or other written communication to be given by the Council will be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

16. LOCAL LAND CHARGE AND LAND REGISTRY REGISTRATION

16.1 The Council must register this Deed as a local land charge immediately after the date of this Deed.

16.2 The Council must cancel all entries made in the Register of Local Land Charges relating to this Deed as soon as all obligations under this Deed have been satisfied or as required under Clause 4.2.

16.3 The Owner agrees to the registration of this Deed against the title to the Airport Site at HM Land Registry.

17. JURISDICTION AND LEGAL EFFECT

17.1 This Deed will be governed by and interpreted in accordance with English Law.

17.2 If any provision of this Deed is found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not affect the validity or enforceability of the remaining provisions of this Deed.

17.3 No waiver (whether expressed or implied) by the Council of any breach or default by the Owner in Complying with any obligation, covenant or undertaking in this Deed will constitute a continuing waiver and no waiver will prevent the Council from enforcing any obligation, covenant or undertaking or from acting upon any subsequent breach or default of any obligation, covenant or undertaking by the Owner.

18. COUNTERPARTS

18.1 This Deed may be executed in any number of separate counterparts, each of which when executed and delivered shall be an original, and such counterparts taken together shall constitute one and the same Deed.

18.2 This Deed shall not be effective until each Party has executed and delivered one counterpart.

EXECUTED AS A DEED by the Parties on the date which first appears in this Deed.

Executed as a Deed (but not delivered until the date of this Deed) by **SOUTHAMPTON INTERNATIONAL AIRPORT LIMITED** acting by

JOHN BRUEN

Full Name (Director)

[Redacted Signature]

Signature of Director

STEPHEN SZACHY

Full Name (Director)

[Redacted Signature]

Signature of Director

Executed as a Deed (but not delivered until the date of this Deed) by affixing the common seal of **EASTLEIGH BOROUGH COUNCIL** in the presence of

.....
Authorised Signatory



Common Seal

Executed as a Deed (but not delivered until the date of this Deed) by **CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK** acting by

.....
Full Name (Authorised Signatory)

.....
Signature of Authorised Signatory

.....
Full Name (Authorised Signatory)

.....
Signature of Authorised Signatory