

KMBC SECTION 106 AGREEMENT FOR A SOCIAL VALUE STRATEGY

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

Planning Act 1990

relating to Imagination 3, Image Business Park, Acornfield Road, Knowsley, Liverpool

Dated 20]

(1) Knowsley Metropolitan Borough Council

(2) Knowsley (Image Business Park) Limited]

(3) Seybourne Estates Limited]

TABLE OF CONTENTS

INTRODUCTION

CLAUSES

1	DEFINITIONS
2	CONSTRUCTION OF THIS DEED
3	LEGAL BASIS
4	CONDITIONALITY
5	THE OWNER'S COVENANTS
6	THE COUNCIL'S COVENANTS
7	MISCELLANEOUS
8	MORTGAGEE'S CONSENT
9	WAIVER
10	CHANGE IN OWNERSHIP
11	INDEXATION
12	INTEREST
13	VAT
14	DISPUTE PROVISIONS
15	JURISDICTION
16	DELIVERY

THE SCHEDULES

FIRST SCHEDULE Details of the Owner's Title, and description of the Site

SECOND SCHEDULE Owner's Covenants with the Council

THIRD SCHEDULE Council's Covenants

FOURTH SCHEDULE The Draft Planning Permission

EXECUTION OF DEED

DATE

201[]

PARTIES

- (1) KNOWSLEY METROPOLITAN BOROUGH COUNCIL of Municipal Buildings Archway Road Huyton Knowsley Merseyside L36 9YU ("Council")
- (2) **KNOWSLEY (IMAGE BUSINESS PARK) LIMITED**, a company incorporated and registered in England and Wales with company number 10477678, whose registered office is at New Derwent House, 69-736 Theobalds Road, London, WC1X 8TA ("Head Tenant")
- (3) **SEYBOURNE ESTATES LIMITED**, a company incorporated and registered in England and Wales with company number 08018692, whose registered office is at Hyde House The Hyde, Edgware Road, London, NW9 6LA ("Owner")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Council is the freehold owner of the Site.
- 3 The Head Tenant has a head leasehold interest in the Site
- 4 The Owner has an underlease of the Site and is proposing to redevelop the Site
- 5 [The Mortgagee is the mortgagee of the Site]. [*The Seybourne lease is not charged. The Head tenant's interest is in charge but that is about to be redeemed*].
- 6 The Owner 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.
- 7 The Council resolved on [] to grant planning permission subject to the prior completion of this Deed.
- 8 The parties to this Agreement agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
- 9 The Head Tenant is a party to this agreement merely to consent to the arrangements hereunder.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

“Act”	the Town and Country Planning Act 1990.
“Application”	the application for [full] [outline] planning permission submitted to the Council for the Development and allocated reference number [REDACTED].
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (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 and “Commence Development” shall be construed accordingly.
“Development”	the Development of the Site with for industrial purposes as set out in the Application.
“Dwelling”	any dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission if any.
“Index”	All Items Index of Retail Prices issued by the Office for National Statistics.
“Interest”	interest at 3% (three per cent) above the base lending rate of National Westminster Bank PLC from time to time.
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including temporary occupation by personnel engaged in construction, fitting out or decoration or temporary occupation for marketing or display or in relation to security operations.
“Plan”	the plan attached to this Deed.
“Planning Permission”	the planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Fourth Schedule.

“Site”

the land against which this Deed may be enforced as shown edged red on the Plan and described in the First Schedule.

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 importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 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.
- 2.5 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.
- 2.6 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 its respective statutory functions.
- 2.7 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, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.1, 10, 14, 15 and 16 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Second Schedule.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Third Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 Not used.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 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.
- 7.12 And any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party as detailed in this agreement or such other address notified in writing to the other party from time to time.

8 [MORTGAGEE'S CONSENT]

- 8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the 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 Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.]

9 WAIVER

No waiver (whether expressed or implied) by the Council or Owner 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 or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have 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 Site or unit of occupation purchased by reference to a plan.

11 INDEXATION

Any sum referred to in the Schedules shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

12 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

13 VAT

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

14 DISPUTE PROVISIONS

- 14.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
- 14.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

15 JURISDICTION

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

16 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

All that land known as Imagination 3, Image Business Park, Acornfield Road, Knowsley, Liverpool comprised within a lease dated 14 October 2020 and made between (1) Knowsley (Image Business Park) Limited and (2) Seybourne Estates Limited which is in the course of registration at HM Land Registry but which has been allocated title number MS686105, and as shown edged red on the attached plan.

SECOND SCHEDULE

The Owner's Covenants with the Council

SOCIAL VALUE

Local Policy Background

These obligations are entered into in accordance with the Knowsley Local Plan Core Strategy, including policies CS2: Development Principles, CS4: Economy and Employment and CS27: Planning for and Paying for New Infrastructure (2016), and the terms of the Council's current Adding Social Value to Development: Employment and Skills Supplementary Planning Document (2018) and the Developer Contributions Supplementary Planning Document (2016) and associated documents.

Interpretation

- 1 In this Schedule the following words and phrases shall have the meanings:
 - 1.1 **"Social Value Strategy"** means a construction based social value strategy which seeks to maximise opportunities for residents of Knowsley through:
 - 1.1.1 The creation of job opportunities;
 - 1.1.2 The provision of skills training;
 - 1.1.3 The means for advertising all vacancies (including subcontractor organisation vacancies) both which arise during the construction and the end use;
 - 1.1.4 Identify appropriate training courses and assist applicants for employment who are not currently qualified for a particular vacancy to obtain the necessary training and qualifications;
 - 1.1.5 The means of recruitment of local staff through Knowsley Works, Job Centre Plus and other professional recruitment partners, and
 - 1.1.6 The means of ensuring and promoting equal opportunities as part of the employment process.
 - 1.2 **"Social Value Contribution"** shall mean the sum of £[] ([] thousand [] hundred and [] pounds and [] pence) as a contribution towards supporting the provision of social value delivery relevant to the Development approved under the Application.
 - 1.3 **"Social Value Monitoring Fee"** shall mean the sum of £[] ([] thousand [] hundred and [] pounds and [] pence) as a contribution towards the approval of the Social Value Strategy and monitoring social value delivery

relevant to the Development approved under the Application payable in accordance with the 2018 SPD.

Covenant

The Owner covenants with the Council as follows –

1. Prior to the Commencement of Development the Developer shall pay the Social Value Contribution and the Social Value Monitoring Fee to the Council and the Developer shall not Commence the Development until the Social Value Contribution has been paid to the Council
2. Prior to the Commencement of Development the Developer shall submit to and obtain the Council's approval to a Social Value Strategy covering the period from the approval of the Social Value Strategy to the completion of the construction phase of the Development which will seek to maximise the employment and training opportunities arising in the course of the construction of the Development for the benefit of the residents of Knowsley and the surrounding areas which may include
 - 2.1 provision of on-site construction training and work experience, which may include apprenticeships
 - 2.2 the recruitment of construction and other workers through local recruitment partners (such as Fusion21, Knowsley Works and Job Centre Plus) in the first instance but the Developer shall with the written approval of the Council be permitted to extend this to national recruitment partners or agencies where the Owner has provided evidence to the Council that sufficient numbers of suitably skilled and qualified workers cannot be identified using local recruitment partners.
 - 2.3 the use of agreed means of advertising employment vacancies locally to maximise the opportunities for local residents to secure employment during the construction of the Developmentand the Developer shall not Commence the Development until the Social Value Strategy has been approved by the Council.
4. The Developer shall thereafter implement the approved Social Value Strategy and shall provide regular reports when reasonably requested by the Council or its authorised agents on the employment and training opportunities arising in the course of the construction of the Development.
5. The Developer shall co-operate with the Council and its authorised agents and otherwise facilitate the monitoring by the Council of the delivery by the Developer of the Social Value Strategy.

THIRD SCHEDULE

Council's Covenants

Use and repayment of financial contributions

- 1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- 2 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within five (5) years of the date of receipt by the Council of the payments such payments together with interest at the National Westminster Bank PLC base rate from time to time for the period from the date of payment to the date of refund.
- 4 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

FOURTH SCHEDULE

The Draft Planning Permission

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

Authorised Signatory:

[EXECUTION CLAUSE FOR OWNER]

[EXECUTION CLAUSE FOR MORTGAGEE]