

DATED

2020

BIRMINGHAM CITY COUNCIL (1)

and

EUTOPIA LAND LIMITED (2)

and

AREO S.A.R.L (3)

SECTION 106 AGREEMENT

relating to

193 Camp Hill, Birmingham

Appeal Ref: 2018/09467/PA
Application Ref: APP/P4605/W/20/3250072193

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THE DEED is made on _____ day of _____ 2020

BETWEEN:-

- (1) **BIRMINGHAM CITY COUNCIL** of the Council House Birmingham B1 1BB ("**the Council**")
- (2) **EUTOPIA LAND LIMITED** (Company Number 10857677) whose registered office is situated at 40 Craven Street, London WC2N 5NG ("**the Owner**")
- (3) **AREO S.A.R.L** (incorporated in Luxembourg) whose registered office is situated at 55 Avenue Pasture L-2311 Luxembourg ("**the Mortgagee**")

WHEREAS

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Development Site is situated
- (B) The Owner is interested in the Development Site as:-
 - (a) the freeholder of that part of that part of the Site shown edged red on the Site Plan and registered under title number WM816486;
 - (b) the long leaseholder of those parts of the Site shown:-
 - (i) hatched blue on the Site Plan and registered under title number WM694798; and
 - (ii) hatched brown on the Site Plan and registered under title number WM915358
- (C) The Owner wishes to secure the development of the Development Site but the Council refused to grant the Planning Application on 13 February 2020 and the Owner has appealed to the Secretary of State to determine the Application
- (D) The Parties consider that in the event that the Secretary of State grants the Planning Permission the Development should be subject to the planning obligations contained in this Deed
- (E) The Mortgagee has the benefit of a legal charge over the Development Site dated 30 April 2018

NOW THIS DEED WITNESSES as follows:-

1. STATUTORY PROVISIONS

This Deed is made pursuant to the provisions of Section 106 of the Act and all other powers enabling which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with intent to bind the Owner's interest in the Development Site and the covenants in this Deed on the part of the Owner are planning obligations for the purposes of the Act

2. INTERPRETATION

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

- “Act”** the Town and Country Planning Act 1990 (as amended)
- “Affordable Housing Register”** a register maintained by the Council for the purpose of providing access to buy or rent properties at less than market value for persons who cannot afford to buy properties generally available on the open market
- “Affordable Workspace”** means 1480 square metres of floorspace for the commercial uses (comprising the uses in classes A1, A2, A3, B1, B2, B8 and D1), permitted by the Planning Permission to be located within each phase of the Development to be provided in accordance with and as specified in the Affordable Workspace Management Plan and to be located as shown on the plan(s) annexed hereto as Appendix 5
- “Affordable Workspace Management Plan”** means the detailed management plan setting out how the Affordable Workspace will be managed and let, including but not limited to:
- (a) the Owner's proposed workspace provider selected by the Owner and first agreed with the Council in accordance with the Affordable Workspace Marketing Strategy (in the event that the Owner elects to provide the Affordable Workspace through a workspace provider as an alternative to managing and letting the Affordable Workspace itself)
 - (b) the proposed unit sizes within the Affordable Workspace;
 - (c) a construction programme for the delivery of the Affordable Workspace each phase of the Development to Shell and Core standard with frontage, detailing the phased delivery of the Affordable Workspace;
 - (d) the specification to which the Affordable Workspace will be constructed and fitted out to Shell and Core with a frontage;
 - (e) arrangements for letting the Affordable Workspace to the approved workspace provider on a long lease which provides for sub-letting or other occupational arrangements:
 - (i) for start-ups and SME tenants only (including proposed lease structures);
 - (ii) at a rent of no more than 50% of Open

Market Value;

- (iii) subject to an Affordable Workspace Service Charge

“Affordable Workspace Marketing Strategy”

means the marketing plan setting out the marketing of the Affordable Workspace to proposed providers of Affordable Workspace including:

- (a) a marketing strategy for the Affordable Workspace which sets out how the Affordable Workspace will be marketed, including proposed marketing channels
- (b) the proposed general leasehold terms offered to potential workspace providers including:
 - (i) indicative fit out (Shell and Core finish with frontage);
 - (ii) indicative details of the proposed Affordable Workspace Service Charge;
 - (iv) the proposed rent levels which shall not exceed 50% of Open Market Value; and
- (c) a timetable for marketing of the Affordable Workspace to proposed providers of the Affordable Workspace

“Affordable Workspace Service Charge”

means a service charge calculated in accordance with the RICS service charge code of practice limited to a fair proportion of:-

- (a) the costs associated with:
 - (i) the services provided to the building as a whole, including but not limited to the maintenance and security of the building and any gardens, as well as the cleaning and lighting of the building; and
 - (ii) the entrance to and internal common parts of the building over which occupiers of the Affordable Workplace have rights; and
- (b) the costs associated with the use and maintenance of the Affordable Workspace and the communal facilities available to its occupiers including (if any):
 - (i) the use of the office furnishings and any communal business equipment;
 - (ii) high speed internet;
 - (iii) business rates, lighting, heating and hot

water;

(iv) security; and

(v) secure cycle facilities; and cleaning

“Application” planning application reference 2018/09467/PA

“Chargee” means any mortgagee in possession or chargee in possession or the successors in title to such mortgagee in possession or chargee in possession or any receiver (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or the Housing and Planning Act 2016

“Chief Housing Officer” the head of the Council’s Housing Department or such other person performing that duty for the time being

“Commencement of Development” means the carrying out of a material operation at the Property as defined by Section 56(2) and (4) (a)-(d) Section 56 of the Planning Act SAVE FOR the purposes of this Deed only operations or works consisting all or any of the following (which FOR THE AVOIDANCE OF DOUBT shall include all works up to and including completion of the ground floor slab) and where used by reference to any part of the Development shall refer to the relevant act for that part:-

- (a) demolition works;
- (b) excavation;
- (c) archaeological works;
- (d) site surveys;
- (e) site clearance and preparation;
- (f) environmental preparatory works;
- (g) the erection of fencing and/or hoardings to enclose the Development or any part of the Development;
- (h) laying or provision of any services and/or services diversion works to on or under the Development or any part of the Development;
- (i) the laying out of roads for construction purposes;
- (j) temporary buildings moveable structures and the erection of site buildings for construction purposes;
- (k) contamination tests;

- (l) remediation or trial pits;
- (m) works of decontamination and/or remediation;
- (n) the construction installation and/or use of works planned and/or machinery;
- (o) storage areas required temporarily in connection with and for the duration of operations in on over or under the Property and temporary access to the same;
- (p) temporary display of Development Site advertisements and notices; and
- (q) works to create the ground floor slab

“Development”	redevelopment of the Development Site to provide 480 homes, a hotel (Use Class C1), and flexible business/commercial units (Classes A1, A2, A3, B1, B2, B8 and D1), together with car parking, landscaping and associated works including an energy centre to provide for combined heat and power and plant to serve the development
“Development Site”	all that land shown edged red on the Plan
“Development Site Plan”	the plan annexed hereto as Appendix 2 showing (for the purpose of identification only) the Development Site edged red
“Discount Market Sale Units”	24 (twenty four) Residential Units with parking spaces comprised in the Development on the Development Site comprising of 11 one bedroom units, 11 two bedroom units, 1 three bedroom unit and one townhouse (or such other figure as otherwise agreed between the parties and Chief Housing Officer in writing) the location of which is to be first agreed with the Council such units to be constructed to an agreed specification which shall be no less favourable than the Open Market Dwellings and the term “Discount Market Sale Unit” shall be construed accordingly
“Discounted Price”	80% of the Open Market Value (or such other figure as otherwise agreed between the parties in writing)
“Dispute Resolution Procedure”	means the procedure referred to in Clause 10 and set out in the Third Schedule hereto
“First Occupation”	means the first Occupation of any part of the Development and references to "First Occupy" or "First Occupied" shall be construed accordingly

“Implementation Notice”	the notice in writing to be served upon the Council by the Owner notifying it of the Owner’s intention to commence the Implementation Works in the form of the draft notice annexed hereto as Appendix 4
“Independent Valuer”	a member of the Royal Institution of Chartered Surveyors appointed by the Owner at its own cost but first approved by the Council
“Marketing Strategy”	the proposals for the marketing of the of the Discount Market Sale Units to find a suitable purchaser or tenant
“Occupy” “Occupation” and “Occupied”	means physical occupation for the intended beneficial purpose but does not include occupation for the purposes of construction fitting-out decoration landscaping marketing sales security or management of any part of the Development and for the avoidance of doubt in the case of a sale of a freehold or a long leasehold interest to a third party Occupation shall be treated as commencing on the date of legal completion and disposition of title either by way registered transfer or lease
“Open Market Dwellings”	all those dwellings except the Discount Market Sale Units constructed as part of the Development and intended for sale or rent in the private housing market at open market value, and the phrase Open Market Dwelling shall be construed accordingly
“Open Market Value”	the average of the figure considered by each of two Independent Valuers to be the best price at which:- <ul style="list-style-type: none"> (i) (in relation to a Discount Market Sale Unit) the sale of an unencumbered freehold interest or long leasehold interest (which here shall mean a leasehold interest in excess of 99 years at a premium or a peppercorn rent) would have been completed unconditionally (as if it were an Open Market Dwelling) on the date of valuation assuming:- <ul style="list-style-type: none"> (a) willing seller and a willing buyer; and (b) that prior to the date of valuation the property was freely exposed to the market there had been a reasonable period within which to negotiate the sale (having regard to the nature of the property and the state of the market) and that values remained static throughout that period; and (c) that no account is taken of any bid by a prospective purchaser with a special interest; and

(d) that both parties to the transaction had acted knowledgeably prudently and without compulsion; and

(e) that the property is in its existing state of repair

(a)

(ii) (in relation to a unit within the Affordable Workspace) the letting of a tenancy (for a term of not less than 12 months) would have been completed unconditionally (as if it were to be let as a commercial business unit with no discount on rent) on the date of valuation assuming:-

(b) Willing landlord and willing tenant; and

(c) that prior to the date of valuation the property was freely exposed to the market there had been a reasonable period within which to negotiate the letting (having regard to the nature of the property and the state of the market) and that values remained static throughout that period; and

(d) that no account is taken of any bid by a prospective tenant with a special interest; and

(e) that both parties to the transaction had acted knowledgeably prudently and without compulsion; and

(f) that the property is in its existing state of repair

“Planning Permission” the planning permission granted by the Secretary of State on appeal

“Practical Completion” means issue of a certificate by the Owner’s architect, civil engineer or chartered surveyor as appropriate certifying that the Development or a relevant part thereof (depending on the context of the Deed) is for all practical purposes sufficiently complete to be put into use and **“Practically Completed”** shall be construed accordingly

“Residential Units” all dwellings including Discount Market Sale Units and Open Market Units constructed as part of the Development

“Shell and Core Finish” means constructed to shell and core standard (in accordance with such Building Regulations requirements applicable at the time), being construction of the base structure and foundations, installation of beams, columns,

floor slabs and roof structure, provision of the building envelope with exterior walls, exterior glazing, roof and area separation walls, lighting, heating, hot water, drainage and sanitation

“SME” means a business that has fewer than 50 employees and either a turnover of up to £10 million or a balance sheet total of up to £10 million

2.2 In this Deed where the context so requires:-

2.2.1 the singular includes the plural and vice versa

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

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

2.2.4 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force

2.2.5 the expression the “Owner” shall include persons successors in title to the Owner and its assigns and all persons deriving title to all or part of the Development Site under or through it

3. **COMMENCEMENT**

The provisions of this Deed shall be conditional upon:-

3.1 the grant of the Planning Permission by the Secretary of State;

3.2 Commencement of Development

Save for clauses [4.1] to [5.2] which shall come into effect upon the date of the grant of Planning Permission

4. **COVENANTS BY THE OWNER**

4.1 The Owner covenants that it will serve the Implementation Notice on the Council’s Director of Inclusive Growth before the date of Commencement of Development

4.2 The Owner covenants with the Council not to Commence Development before the service of the Implementation Notice

5. **FURTHER COVENANTS BY THE OWNER**

5.1 The Owner covenants with the Council to observe and perform the obligations contained in the First and Second Schedules of this Deed

5.2 Unless and until the Council has issued notice under clause [7] the Owner shall provide the Council with a certified copy (including a plan if appropriate) of any conveyance transfer lease assignment mortgage or other disposition (“Disposition”) of all or any part of the Development Site (save to the owner and/or occupier of a single Residential Unit

or mortgagee thereof) including the name and address of the person to whom the Disposition was made and the nature and extent of the interests disposed of to them within twenty one days of such Disposition

6. COVENANT BY THE MORTGAGEE

The Mortgagee or any other Chargee shall not be liable for the obligations on the part of the Owner contained in this Deed unless it takes possession of the of the Development Site and/or undertakes the Development

7. COVENANTS BY THE COUNCIL

The Council will upon the written request of the Owner (or its successors in title) at any time after the obligations on the part of the Owner contained herein have been fulfilled issue confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges

8. MISCELLANEOUS

8.1 This Deed shall forthwith be registered as a Local Land Charge for the purposes of the Local Land Charges Act 1975

8.2 This Deed shall be enforceable against the Owner to the extent specified in Section 106(3) of the Act and against any person for the time being deriving title from the Owner as provided in Section 106 of the Act but PROVIDED THAT the Owner has first provided to the Council all relevant information pursuant to Clause 5.2, the Owner shall not (in accordance with Section 106(4) of the Act) have any further liability under this Deed (but without prejudice to the rights of either party in respect of any antecedent breach) in respect of any period during which the Owner (or as the case may be such other person) no longer has an interest in the Site or the relevant part of the Site to which the obligation in issue relates

8.3 Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

8.4 If the Planning Permission is quashed revoked or otherwise withdrawn or expires within the meaning of Sections 91 92 and 93 of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act without the consent of the Owner this Deed shall cease to have effect (but without prejudice to the rights of either party against the other in respect of any antecedent breach)

8.5 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the obligations terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner

8.6 Unless otherwise specified where any agreement consent approval or expression of satisfaction is to be obtained from any party under the terms of this Deed the parties hereby agree that the same shall not be unreasonably withheld or delayed

8.7 The provisions contained in this Deed shall not bind nor be enforceable against:-

8.7.1 any Statutory Undertaker which acquires an interest in the Site for the purpose of undertaking its statutory functions

8.7.2 any owner or occupier of an Open Market Dwelling including its mortgagees or successors in title

8.8 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

9. NOTICES

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

9.1.1 if to the Council, [either] to (i) Director of Inclusive Growth Birmingham City Council Department of Planning and Development PO Box 28 Birmingham B1 1TR for the attention of the Projects Co-ordinator (or such other officer for the time being performing those functions); [or (ii) Birmingham City Council Housing Regeneration and Development Team PO Box 16572 Birmingham B2 2GL for the attention of the Chief Housing Officer as appropriate]

9.1.2 if to either of the other parties to its address specified above

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

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

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

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

and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be

10. DISPUTE RESOLUTION

10.1 Any dispute between the parties under the terms of this Deed may be referred to an expert under the Disputes Resolution Procedure

10.2 The decision of any expert appointed under the Disputes Resolution Procedure shall be final and binding on all of the parties to the dispute except in the case of manifest error

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

12. LEGAL COSTS

The Owner shall upon completion of this Deed pay the Council's reasonable and proper legal costs in connection with the preparation and completion of this Deed together with the sum of £1500 in respect of the Council's monitoring and administration of the planning obligations contained in this Deed

13. JURISDICTION

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

FIRST SCHEDULE

Affordable Housing Provision – Discount Market Sale Units

Part 1

1. Following Commencement of Development the Owner shall:-
 - 1.1. provide 24 Discount Market Sale Units on the Development Site and shall offer each of the same on a long leasehold interest (which shall mean a leasehold interest in excess of 99 years) or transfer the freehold for not more than the Discounted Price in accordance with the provisions set out in Part II of this First Schedule
2. Not to Occupy or cause or permit the Occupation of more than 50% of the Open Market Dwellings prior to notifying the Council in writing that the Discount Market Sale Units have been completed and are available for occupation in accordance within Part II of this First Schedule

Part II

Discount Market Sale Housing

1. The Discount Market Sale Units are to be constructed and completed on the Development Site and shall be:-
 - (a) First offered for sale to and for exclusive occupation by persons on the Affordable Housing Register who shall own and occupy the Discount Market Sale Units as his or her or their sole residence, and then;
 - (b) after three months of the relevant unit being completed and available in accordance with paragraph (a) above any Discount Market Sale Unit without an unconditional contract for sale having been entered into may also be offered for sale to and for exclusive occupation by a single person with a gross annual income not exceeding £30,000 or two persons with a gross annual income not exceeding £45,000 (or, following a review in accordance with the Council's policy for the time being such other figure specified by the Council) who shall own and occupy the Discount Market Sale Unit as his or her or their sole residence
2. In order that the future ownership and selling price of the Discount Market Sale Units shall be controlled so as to ensure that the Discount Market Sale Units will remain as affordable housing, the Owner shall include within the lease of each Discount Market Sale Unit the clauses set out in Appendix 1 and including within the transfer of each Discount Market Sale Unit the clauses set out in Appendix 4
3. The Marketing Strategy shall be agreed with the Chief Housing Officer no later than twenty eight days before marketing commences and no Discount Market Sale Units shall be marketed for the first time until the written approval of the Chief Housing Officer to the Marketing Strategy has been given PROVIDED THAT:-
 - (a) such approval or agreement shall be deemed to be given unless refused within two calendar months of the receipt of the Marketing Strategy by the Council; and

- (b) FOR THE AVOIDANCE OF DOUBT it is confirmed that this requirement shall not apply to the second or any subsequent vendor of a Discount Market Sale Unit
- 4. The provisions of this schedule shall not be binding on a Chargee PROVIDED THAT such a Chargee exercising any power of sale or leasing shall first have used reasonable endeavours over a period of twelve weeks, to dispose of the Discount Market Sale Unit(s) at the Discounted Price and in accordance with the provisions of this schedule AND FURTHER PROVIDED THAT at all times the rights and obligations in this Schedule shall not require the Chargee to act contrary to their duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage

SECOND SCHEDULE

Affordable Workspace

1. Affordable Workspace
1. The Owner will:
 - 1.1. prior to the date which is six (6) months after the Commencement of Development, submit to for the Council's approval in writing the Affordable Workspace Marketing Strategy and the Affordable Workspace Management Plan;
 - 1.2. not Occupy or permit or suffer Occupation of the Development unless the Affordable Workspace Marketing Strategy and the Affordable Workspace Management Plan have been submitted to and approved in writing by the Council PROVIDED ALWAYS THAT such approval shall be deemed to be given if not refused within three months after the date on which the said strategy and plan is received by the Council
 - 1.3. market the Affordable Workspace in accordance with the approved Affordable Workspace Marketing Strategy
 - 1.4. not Occupy or permit or suffer Occupation of more than 50% of the Open Market Dwellings within any phase of the Development unless and until the Affordable Workspace Marketing Strategy and the Affordable Workspace Management Plan for that phase has been submitted to and approved by the Council PROVIDED ALWAYS THAT such approval shall be deemed to be given if not refused within three months after the date on which the said strategy and plan is received by the Council
 - 1.5. Not Occupy or permit or suffer Occupation of more than 75% of the Open Market Dwellings in a phase unless and until:-
 - 1.5.1. the Affordable Workspace for that phase has been Practically Completed to Shell and Core finish with a frontage; and
 - 1.5.2. the Owner has entered into an agreement for lease of the Affordable Workspace for that phase with a workspace provider, in the event that the Owner elects to provide the Affordable Workspace through a workspace provider as an alternative to managing and letting the Affordable Workspace itself
2. Provide and operate the Affordable Workspace in each phase in accordance with the Affordable Workspace Management Plan approved by the Council pursuant to Paragraph 1.2 of this Schedule 2 for the lifetime of the Development
3. Subject to the provisions of paragraph 4 below, the Owner shall provide that the Affordable Workspace is not Occupied otherwise than in accordance with the terms of the approved Affordable Workspace Marketing Strategy and the Affordable Workspace Management Plan for the lifetime of the Development
4. Nothing in this Schedule 2 shall prevent the Owner from Occupying or leasing any part of the Affordable Workspace at a rent of no more than 50% of Open Market Value on a rolling temporary basis (each temporary sub-letting not to exceed 3 months) during any period when the Owner and Council agree (acting reasonably and providing each other with copies of all relevant documentation) that there is no demand for the relevant part of the Affordable Workspace and in such circumstances, the Owner shall take all steps necessary to make such Affordable Workspace available for lease and Occupation by a workspace provider in accordance with the Affordable Workspace Management Plan as

soon as practicable after the Owner and the Council agree acting reasonably and providing each other with copies of all relevant documentation) that demand has returned for the Affordable Workspace

THIRD SCHEDULE

Dispute Resolution Procedure

1. General

All differences and questions that arise between the parties arising out of or connected with this Deed shall be referred to an expert

2. Choice of Expert

2.1. If the difference or question relates to the construction of rights and liabilities of any party or to the terms or conditions to be embodied in any deed or document appertaining thereto it shall be referred to a solicitor or barrister agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the Chairman from time to time of the Bar or any person in an equivalent subsequent role

2.2. If the difference or question relates to the occupancy of any dwelling it shall be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors or any person in an equivalent subsequent role

3. No Further Submissions

After delivery of counter submissions or (if none) after submission of written submissions no party shall be entitled to make any further submissions and the expert shall forthwith deliberate and deliver to every party to the dispute their decision in writing within a reasonable time of closing submissions or counter submissions

4. Restriction on Terms of Decision

The expert shall be restricted in settling the dispute to choosing between one of the proposals submitted by the parties or elements compatible with one another from the submissions of different parties to the dispute

5. Costs

Each Party shall bear their own costs except in so far as directed by the Expert

EXECUTED AS A DEED the day and year first written

EXECUTED AS A DEED by affixing

the **COMMON SEAL**

of **BIRMINGHAM CITY COUNCIL**

hereunto

in the presence of:

.....

Authorised Signatory

SIGNED AS A DEED

by **EUTOPIA LAND LIMITED**

acting by:

Signature of Director

.....

Print name of Director

.....

SIGNED AS A DEED

by **AREO S.A.R.L** acting by:

Signature of Director

.....

Print name of Director

.....

APPENDIX 1

Standard Lease Provisions

- 1.1 In this clause the following further expressions have where the context admits the following meanings:-
- 1.1.1 “the Assumptions” are:-
- 1.1.1.1 that there is a willing seller and a willing buyer; and
 - 1.1.1.2 that prior to the date of valuation the Premises were freely exposed to the market and there had been a reasonable period within which to negotiate the sale (having regard to the nature of the Property and the state of the market) and that values remained static throughout that period; and
 - 1.1.1.3 that no account is taken of any bid by any prospective purchaser with a special interest; and
 - 1.1.1.4 that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
 - 1.1.1.5 that the Premises are in their existing state of repair and sold with vacant possession;
 - 1.1.1.6 that the deed of assignment or transfer does not contain any provisions that are not standard or usual in residential leasehold transactions
 - 1.1.1.7 the S106 Agreement does not apply to the Premises
- 1.1.2 The “Council” means Birmingham City Council of the Council House Birmingham B1 1BB
- 1.1.3 “the Council’s Affordable Housing Register” means the list maintained by Birmingham City Council for the purpose of providing access to properties at less than market value for persons who cannot afford to buy properties generally available on the open market (or any successor to the list that may be introduced by the Council)
- 1.1.4 the “Discounted Price” means no more than 80% of the Open Market Value of the Premises (or such other figure as otherwise agreed with the Council in writing)
- 1.1.5 “Independent Valuer” means a member of the Royal Institution of Chartered Surveyors appointed by the Leaseholder at his own cost but first approved by the Council”
- 1.1.6 “Open Market Value” means the value as determined by an Independent Valuer to be the best price at which the lease can be sold on the date of valuation taking into account the Assumptions
- 1.1.7 “Qualifying Person” means a person or persons on the Council’s Affordable Housing Register
- 1.1.8 A “Sale” of the Premises occurs in every case where there is a transfer or assignment of the Premises except when the transfer or assignment is:-

- (i) executed in pursuance of an order of a court on granting in respect of the parties a decree of marriage or judicial separation; or
- (ii) executed in pursuance of an order of a court which is made in connection with the dissolution or annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such a decree; or
- (iii) executed at any time in pursuance of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or their judicial separation; or
- (iv) executed by personal representatives of the Leaseholder for the purpose of transferring or assigning the Premises into the sole ownership of the spouse of the Leasehold; or
- (v) executed by personal representatives of a joint tenant and the surviving tenant for the purpose of transferring or assigning the Premises into the sole ownership of the surviving tenant

1.1.9 "S106 Agreement" means the agreement dated [] between [] a copy of which is annexed hereto

1.2 Subject to the provisions of clause 1.6 the Leaseholder hereby covenants with:-

1.2.1 the Council; and

1.2.2 as a separate covenant with the Landlord (but not so as to render the Leaseholder liable to the Landlord after the Leaseholder shall have parted with its interest in the Premises); that:

1.2.2.1 any Sale of the Premises shall only be for the Discounted Price;

1.2.2.2 any Sale of the Premises shall be to a Qualifying Person SAVE FOR the circumstances set out in clause 1.2.3.5

1.2.2.3 the Premises shall at all times be the sole residence of the Leaseholder;

1.2.2.4 the Leaseholder shall not effect a Sale unless, at least seven days prior to the marketing of the Premises, the Leaseholder obtains the written approval of the Council to the proposed Sale, for which approval the Council may charge a fee PROVIDED THAT this fee shall not amount to more than 1% of the sale price of the Premises;

1.2.2.5 the Leaseholder shall not effect a Sale unless the Council has been allowed a period of ten weeks in which to nominate a purchaser for the Premises from the Council's Affordable Housing Register PROVIDED THAT if a suitable purchaser shall not have been nominated by the Council by the end of the tenth week the Premises may be sold to another person, subject to the restrictions contained within this Lease

1.2.2.6 the Leaseholder shall not sell the Premises without

1.2.3.6.1 procuring that any transferee or assignee enters into a covenant with the Council to observe and perform the covenants set out in this clause 1; and

1.2.3.6.2 delivering to the Council the covenant referred to in clause 1.2.3.6.1 on the sale of the Premises

1.3 To the intent that no transfer or assignment of this Lease shall take place otherwise than in accordance with this Clause [] of this Lease the Leaseholder shall at the Leaseholders expense apply to the Chief Land Registrar to enter the following restriction on the register of the title to the Lease such restriction to remain on the Register during its subsistence:-

“NO disposition of the Registered Estate (other than a Charge) by the Proprietor of the Registered Estate is to be registered without a Certificate signed by Birmingham City Council of the Council House Victoria Square Birmingham B1 1BB that the provisions of Schedule/Clause [] of this registered Lease have been complied with”

1.4 Not less than fourteen days prior to the Leaseholder entering into a binding agreement for the sale of the Premises the Leaseholder shall certify and provide evidence to the Council that the proposed sale of the Premises is in compliance with clause 1.2 of this Lease

1.5 The Council shall have the benefit of the right to enforce the covenants contained in [this Appendix] of this lease pursuant to the Contracts (Rights of Third Parties) Act 1999

1.6 If this Lease becomes vested in a mortgagee or chargee in possession (or any receiver or administrative receiver appointed thereby) of the whole of the Premises the provisions of clause 1.2.3.2 shall not apply PROVIDED THAT such a mortgagee or chargee in possession (or any receiver or administrative receiver appointed thereby) exercising any power of sale or leasing shall first have used reasonable endeavours over a period of twelve weeks, in consultation with the Council, to dispose of the Premises to a Qualifying Person on the terms contained in clauses 1.1 to 1.5 hereto

APPENDIX 2

Site Plan

APPENDIX 3
Implementation Notice

IMPLEMENTATION NOTICE

NOTICE TO BIRMINGHAM CITY COUNCIL OF COMMENCEMENT OF IMPLEMENTATION WORKS

Planning Permission Reference:

Development Site:

.....

Description of Development:

.....

.....

.....

Date of s.106 Agreement:

Notice is hereby given to Birmingham City Council that works to implement the above planning permission will commence on

Signed:

For and on behalf of :

Contact name and telephone no.

Contact e-mail address:

Date:

Complete and send this form to the 's.106 Projects Team' at the address below together with the Section 106 Payment Form if also paying in monies:

S106 Team

Department of Planning and Regeneration

Birmingham City Council

PO Box 28

Birmingham B1 1TR

(Tel. 0121-303-3515/9886)

APPENDIX 4

Standard Transfer Provisions

- 1.1 In this clause the following further expressions have where the context admits the following meanings:-
- 1.1.1 “the Assumptions” are:-
- 1.1.1.1 that there is a willing seller and a willing buyer; and
 - 1.1.1.2 that prior to the date of valuation the Property was freely exposed to the market and there had been a reasonable period within which to negotiate the sale (having regard to the nature of the Property and the state of the market) and that values remained static throughout that period; and
 - 1.1.1.3 that no account is taken of any bid by any prospective purchaser with a special interest; and
 - 1.1.1.4 that both parties to the transaction had acted knowledgeably prudently and without compulsion; and
 - 1.1.1.5 that the Property is in its existing state of repair and sold with vacant possession;
 - 1.1.1.6 that the transfer does not contain any provisions that are not standard or usual in residential freehold transactions
 - 1.1.1.7 the S106 Agreement does not apply to the Premises
- 1.1.2 The “Council” means Birmingham City Council of the Council House Birmingham B1 1BB
- 1.1.3 “the Council’s Affordable Housing Register” means the list maintained by Birmingham City Council for the purpose of providing access to properties at less than market value for persons who cannot afford to buy properties generally available on the open market (or any successor to the list that may be introduced by the Council)
- 1.1.4 the “Discounted Price” means no more than 80% of the Open Market Value of the Property (or such other figure as otherwise agreed with the Council in writing)
- 1.1.5 “Independent Valuer” means a member of the Royal Institution of Chartered Surveyors appointed by the Transferee at his own cost but first approved by the Council”
- 1.1.6 “Open Market Value” means the value as determined by an Independent Valuer to be the best price at which the Property can be sold on the date of valuation taking into account the Assumptions
- 1.1.7 “Qualifying Person” means a person or persons on the Council’s Affordable Housing Register
- 1.1.8 “Property” means the freehold residential unit at []

1.1.9 A "Sale" of the Property occurs in every case where there is a transfer of the Property except when the transfer is:-

- (i) executed in pursuance of an order of a court on granting in respect of the parties a decree of marriage or judicial separation; or
- (i) executed in pursuance of an order of a court which is made in connection with the dissolution or annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such a decree; or
- (iii) executed at any time in pursuance of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or their judicial separation; or
- (iv) executed by personal representatives of the Transferee for the purpose of transferring the Property into the sole ownership of the spouse of the Transferee; or
- (v) executed by personal representatives of a joint tenant and the surviving tenant for the purpose of transferring the Property into the sole ownership of the surviving tenant

1.1.10 "S106 Agreement" means the agreement dated [] between [] a copy of which is annexed hereto

1.1.11 "The Transferee" means a buyer of the Property and successors in title

1.1.12 "The Transferor" means the [Preferred Partner RP]

1.2 Subject to the provisions of clause 1.6 the Transferee hereby covenants with:-

1.2.1 the Council; and

1.2.2 as a separate covenant with the Transferor (but not so as to render the Transferee liable to the Transferor after the Transferee shall have parted with its interest in the Property); that:

1.2.2.1 any Sale of the Property shall only be for the Discounted Price;

1.2.2.2 any Sale of the Property shall be to a Qualifying Person SAVE FOR the circumstances set out in clause 1.2.2.5

1.2.2.3 the Property shall at all times be the sole residence of the Transferee;

1.2.2.4 the Transferee shall not effect a Sale unless, at least seven days prior to the marketing of the Property, the Transferee obtains the written approval of the Council to the proposed Sale, for which approval the Council may charge a fee PROVIDED THAT this fee shall not amount to more than 1% of the sale price of the Property;

1.2.2.5 the Transferee shall not effect a Sale unless the Council has been allowed a period of ten weeks in which to nominate a purchaser for the Property from the Council's Affordable Housing Register PROVIDED THAT if a suitable purchaser shall not have been nominated by the

Council by the end of the tenth week the Premises may be sold to another person, subject to the restrictions contained within this Lease

1.2.2.6 the Transferee shall not sell the Property without

1.2.2.6.1. procuring that any transferee enters into a covenant with the Council to observe and perform the covenants set out in this clause 1; and

1.2.2.6.2. delivering to the Council the covenant referred to in clause 1.2.2.6.1 on the sale of the Property

1.3 To the intent that no transfer of the Property shall take place otherwise than in accordance with this Clause [] of this Transfer the Transferee shall at the Transferee's expense apply to the Chief Land Registrar to enter the following restriction on the register of the title to the Freehold such restriction to remain on the Register during its subsistence:-

"NO disposition of the Registered Estate (other than a Charge) by the Proprietor of the Registered Estate is to be registered without a Certificate signed by Birmingham City Council of the Council House Victoria Square Birmingham B1 1BB that the provisions of Schedule/Clause [] of this Transfer have been complied with"

1.4 Not less than fourteen days prior to the Transferee entering into a binding agreement for the sale of the Property the Transferee shall certify and provide evidence to the Council that the proposed sale of the Property is in compliance with clause [] of this Transfer

1.5 The Council shall have the benefit of the right to enforce the covenants contained in this Transfer pursuant to the Contracts (Rights of Third Parties) Act 1999

1.6 If this Transfer becomes vested in a mortgagee or chargee in possession or any receiver (or administrative receiver) appointed thereby (or any successors in title thereto) of the whole of the Property the provisions of clause 1.2.2.2 shall not apply PROVIDED THAT such a mortgagee or chargee in possession or any receiver (or administrative receiver) appointed thereby (or any successors in title thereto) exercising any power of sale or leasing shall first have used reasonable endeavours over a period of twelve weeks, in consultation with the Council, to dispose of the Property to a Qualifying Person on the terms contained in covenants 1.1 to 1.5 hereto AND FURTHER PROVIDED THAT at all times the rights and obligations in this Schedule shall not require the mortgagee or chargee in possession or any receiver (or administrative receiver) appointed thereby (or any successors in title thereto) to act contrary to their duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the mortgagee or chargee in possession or any receiver (or administrative receiver) appointed thereby (or any successors in title thereto) in respect of monies outstanding under the charge or mortgage

APPENDIX 5

Affordable Workspace Plans