Date: 13th June 2023

The District Council of Adur

as District Council

Brighton & Hove City Council

as First Freehold Owner

Borough Council of Worthing

as Second Freehold Owner

Industrials UK Trustee 1 Limited and Industrials UK Trustee 2 Limited as trustees of the Industrials UK Property Unit Trust

as Trustee Companies

Brighton City Airport Limited

as Lessee

Supplementary Agreement

under section 106A of the Town & Country Planning Act 1990 relating to land at Shoreham Airport (also known as Brighton City Airport), Cecil Pashley Way, Shoreham-by-Sea, BN43 5FF

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THIS DEED is made the [.....13.....] day of [.....June.....] 2023

BETWEEN:

(1) **THE DISTRICT COUNCIL OF ADUR** of Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA (the "**District Council**");

(2) **BRIGHTON & HOVE CITY COUNCIL** of Town Hall, Norton Road, Hove, BN3 3BQ (the "**First Freeholder Owner**");

(3) **BOROUGH COUNCIL OF WORTHING** of Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA (the "**Second Freehold Owner**");

(4) **INDUSTRIALS UK TRUSTEE 1 LIMITED** a company registered in Jersey whose registered office is at 47 Esplanade, St Helier, Jersey, JE1 0BD, trustee of the Unit Trust (acting in its capacity as trustee of the Unit Trust) and **INDUSTRIALS UK TRUSTEE 2 LIMITED** a company registered in Jersey whose registered office is at 47 Esplanade, St Helier, Jersey, JE1 0BD, trustee of the Unit Trust (acting in its capacity as trustee of the Unit Trust) (the "**Trustee Companies**");

(5) **BRIGHTON CITY AIRPORT LIMITED** a company registered in England (company registration no. 08556136) whose registered office is at Main Terminal Building, Brighton City Airport, Cecil Pashley Way, Shoreham Airport, Shoreham-By-Sea, West Sussex, England, BN43 5FF (the "**Lessee**");

together the "**Parties**".

BACKGROUND:

(A) The District Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Land is situated.

(B) The Freehold Owners are the freehold owners of the Land registered at the Land Registry under title number WSX320015 subject to the 350 year lease to the Trustee Companies commencing on 6 November 2018 and registered at the Land Registry under title number WSX404920.

(C) The lease set out at Recital (B) above is subject to a sub-lease to the Lessee for part of the Land registered at the Land Registry under title number WSX367233.

(D) On 18 October 1989, the Freehold Owners and West Sussex County Council entered into the Original Agreement.

(E) On 20 October 1998, the Freehold Owners and West Sussex County Council entered into the First Variation.

(F) On 20 December 2019, the District Council, West Sussex County Council, the Freehold Owners, Albemarle Shoreham Airport Limited (in administration), Albemarle (Shoreham) LLP (in administration), Longbow Investment No 3 S.A.R.L and Simon James Underwood and David Robert Thurgood entered into the Second Variation.

(G) The District Council resolved on 3 April 2023 to grant the Planning Permission subject to the prior completion of this Deed.

(H) Without prejudice to the terms of the other covenants contained in the Original Agreement the Parties have agreed to vary the terms of Original Agreement in relation to the Land as set out in this Deed.

(I) This Deed is made under Section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

IT IS AGREED:

1. Interpretation

The following definitions and rules of interpretation apply in this Deed.

1.1 Definitions:

"**Deed**" means this deed of variation;

"**Freehold Owners**" means the First Freehold Owner and the Second Freehold Owner;

"**First Variation**" means the agreement made under Section 106A of the TCPA 1990 dated 20 October 1998 between the Freehold Owners and West Sussex County Council;

"**Land**" means all that land comprised in planning applications made to the District Council bearing references L/8/01/TP AND AWDM/0018/23;

"**Original Agreement**" means the agreement made under Section 52 of the Town and Country Planning Act 1971 dated 18 October 1989 between West Sussex Council and the Freehold Owners as varied by the First Variation and Second Variation;

"**Plan 2**" means the plan annexed at Schedule 1 of this Deed to replace Plan 2 in the Original Agreement;

"**Planning Application**" means the application for planning permission submitted to the District Council for the extension of airport apron and use of spoil to re-level land and allocated reference number AWDM/0018/23;

"**Planning Permission**" means the planning permission subject to conditions to be granted by the District Council pursuant to the Planning Application;

"**Second Variation**" means the agreement made under Section 106A of the TCPA 1990 dated 20 December 2019 between the District Council, West Sussex County Council, the Freehold Owners, Albemarle Shoreham Airport Limited (in administration), Albemarle (Shoreham) LLP (in administration), Longbow Investment No 3 S.A.R.L and Simon James Underwood and David Robert Thurgood;

"**TCPA 1990**" means the Town and County Planning Act 1990 (as amended); and

"**Unit Trust**" means Industrials UK Property Unit Trust.

1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.

1.3 Clause headings shall not affect the interpretation of this Deed.

1.4 A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the District Council the successors to its respective statutory functions.

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 Unless the context otherwise requires, references to clauses are to the clauses of this Deed.

1.11 Any words following the terms "including", "include"," in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Statutory provision

This Deed is made pursuant to the provisions of Sections 106 and 106A of the TCPA 1990, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers.

3. Variations to the original agreement

The Parties agree to the following variations:

3.1 Plan 2 as defined within the Original Agreement shall be replaced with Plan 2 annexed at Schedule 1 of this Deed.

3.2 Clause 2(x) of the Original Agreement shall be deleted in its entirety and be replaced with:

"Building development shall not take place outside the areas edged and coloured blue on Plan 2".

3.3 In all other respects, the Original Agreement remains in full force and effect.

4. Local land charge

This Deed shall be registered as a local land charge by the District Council.

5. Third party rights

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

6. Trustee Companies' liability

6.1 The Trustee Companies are entering into this Deed solely in their capacity as trustee(s) of the Unit Trust and not in the Trustee Companies respective personal corporate capacities and as such, any liability on the part of the Trustee Companies under or pursuant to this Deed, or any

part of it, or otherwise relating to it or its subject matter, whether in contract, in negligence or other tort, under statute or otherwise, is limited to the assets held on trust for the time being of the Unit Trust which are in its possession or under their control in their capacity as trustees of the Unit Trust.

6.2 Notwithstanding any other provision of this Deed, the Trustee Companies have no obligation to meet any claim or liability under or pursuant to this Deed or any part of it, or otherwise relating to it or its subject matter, whether in contract, in negligence or other tort, under statute or otherwise, save to the extent that such claim or liability can properly be met by the Trustee Companies out of assets held by them on behalf of the Unit Trust.

6.3 The other parties hereto acknowledge that the effect of this clause is that they shall have no recourse to any assets of the Trustee Companies other than to those assets which are in their possession or under their control in their capacity as trustee(s) of the Unit Trust.

6.4 The Parties acknowledge that references in this Deed to the Trustee Companies are references to the Trustee Companies in their capacity as trustee(s) of the Unit Trust and references in whatever terms to their actions and obligations and liabilities are references to their actions and obligations and liabilities in such capacity only and not to any other capacity whatsoever.

6.5 All representations, warranties, undertakings, obligations and covenants in this Deed to which the Trustee Companies is party are made, given, owed or agreed by or in relation to the assets of the Unit Trust in the Trustee Companies' capacity as the trustee(s) of the Unit Trust and for the avoidance of doubt shall not be construed to be made, given owed or agreed by or in relation to the Trustee Companies in their capacity as the trustee(s) of any other trust, or in Trustee Companies' personal capacities or in relation to any other assets whatsoever unrelated to the assets of the Unit Trust.

6.6 If any act or omission of Trustee Companies in their performance of their obligations under this Deed constitutes wilful misconduct, fraud, breach of trust or gross negligence in the discharge of their powers or duties as trustee(s) of the Unit Trust and results in a loss to the other parties hereto, the Trustee Companies will not be liable to the other parties in their corporate, or any other, capacity for any direct loss suffered by the other parties in connection with that act or omission if the assets of the Unit Trust are insufficient to enable Trustee Companies as trustee(s) of the Unit Trust to meet their obligations in full.

7. Governing law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

This Deed has been entered into on the date stated at the beginning of this document.

Schedule 1

Plan 2

EXECUTED as a **DEED** by affixing the common seal of **THE DISTRICT COUNCIL OF ADUR** in the presence of:

1809

.....

Authorised signatory

EXECUTED as a **DEED** by affixing the common seal of **BRIGHTON & HOVE CITY COUNCIL** in the presence of:

928/36

.....

Authorised signatory

EXECUTED as a **DEED** by affixing the common seal of **BOROUGH COUNCIL OF WORTHING** in the presence of:

10532

Authorised signatory

EXECUTED as a **DEED** by **INDUSTRIALS UK TRUSTEE 1 LIMITED**, a company incorporated in Jersey, acting by

PHILIP BAIGENT ..... (Print Full Name)

who, in accordance with the laws of that territory, is acting under the authority of the company (in its capacity as trustee of the Industrials UK Property Unit Trust)

Signature in the name of the company: **INDUSTRIALS UK TRUSTEE 1 LIMITED**

.....

Signature of Authorised Signatory

EXECUTED as a **DEED by INDUSTRIALS UK TRUSTEE 2 LIMITED**, a company incorporated in Jersey, acting by

PHILIP BAIGENT ..... (Print Full Name) who, in accordance with the laws of that territory, is acting under the authority of the company (in its capacity as trustee of the Industrials UK Property Unit Trust)

Signature in the name of the company: **INDUSTRIALS UK TRUSTEE 2 LIMITED**

.....

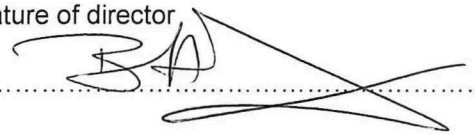
Signature of Authorised Signatory

EXECUTED as a **DEED** by **BRIGHTON CITY AIRPORT LIMITED** acting by two directors:



.....

Signature of director



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Signature of [secretary][director]