



**THIS SUPPLEMENTAL DEED** is made on [ ]

**BETWEEN:-**

- (1) **SHEPWAY DISTRICT COUNCIL** of Castle Hill Avenue, Folkestone, Kent, CT20 2QY (the "**Council**");
- (2) **LONDON ASHFORD AIRPORT LIMITED** (No 04140620) whose registered office is at Lydd Airport, Lydd, Kent, TN29 9QL (the "**Airport Operator**"); and
- [(3) [ ] (the "**Mortgagee**")]

**WHEREAS:-**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Airport Site is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Airport Operator is the Relevant Airport Operator of the Airport.
- (C) On [ ] 2011 the Council the Airport Operator and HSBC Bank Plc entered into the Principal Agreement.
- (D) Since entering into the Principal Agreement the Airport Operator has acquired the Interest.
- (E) This Deed is entered into for the purposes of ensuring that the covenants and obligations contained in the Principal Agreement are binding on the Interest for the purposes of section 106 of the 1990 Act.

**NOW IT IS HEREBY AGREED and WITNESSED** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 Save where provided otherwise words and expressions used in this Deed have the meaning assigned in the Principal Agreement.
- 1.2 For the purposes of this Deed the following words and expressions have the following meanings:-

**"Interest"** means [*details to be inserted of legal interest acquired*] in the Part;

**"Part"** means that part of the Airport Site shown for illustrative purposes only coloured [ ] on the plan attached at Appendix 1 [and which is registered at the Land Registry under title number [ ]];

**"Principal Agreement"** means the agreement dated [ ] 2011 between the Council (1) the Airport Operator (2) and HSBC Bank Plc (3) entered into pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and all other powers them enabling.

- 1.3 Unless the context otherwise requires:-

- 1.3.1 reference in this Deed to any Recital, Clause or Appendix is a reference to the Recital, Clause or Appendix in this Deed so numbered;

- 1.3.2 words importing the singular meaning include the plural meaning and vice versa;
- 1.3.3 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 interchangeably in that manner;
- 1.3.4 any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;
- 1.3.5 references to any party to this Deed shall include the successors in title to that party and any person deriving title through or under that party and in the case of the Council the successors to its statutory functions; and
- 1.3.6 headings where they are included are for convenience only and are not intended to influence the interpretation of this Deed.

## **2. OPERATION OF THIS DEED**

- 2.1 This Deed is supplemental to the Principal Agreement.
- 2.2 This Deed is made pursuant to section 106 of the 1990 Act and section 111 of the Local Government Act 1972 and all other powers them enabling.
- 2.3 The obligations on the part of the Airport Operator contained in this Deed constitute (as far as capable) planning obligations for the purposes of section 106 of the 1990 Act and so as to bind the Airport Operator Land and the Interest and otherwise shall take effect as personal covenants pursuant to section 111 of the Local Government Act 1972 and subject to clauses 5.1 and 9.1 of the Principal Agreement the said obligations are entered into with the intent that they shall be enforceable by the Council against the Airport Operator.
- 2.4 The parties to this Deed agree that the terms of the Principal Agreement (including the rights, remedies and burdens of the parties thereto) shall apply to the supplementary provisions in this Deed.

## **3. ENTRY INTO FORCE**

This Deed shall take effect on the date hereof.

## **4. SUPPLEMENTARY PROVISIONS**

- 4.1 The Airport Operator covenants with the Council to observe and perform the obligations undertakings covenants and agreements on the part of the Airport Operator contained in the Principal Agreement (and in the case of the Interest as if the Interest had been bound by the Principal Agreement when entered into) as if the said obligations undertakings covenants and agreements in the Principal Agreement were set out herein in full.
- 4.2 The Council covenants with the Airport Operator in respect of the Interest to observe and perform the obligations undertakings covenants and agreements on its part contained in the Principal Agreement.

## **5. LOCAL LAND CHARGE**

This Deed shall be registered as a local land charge by the Council, and the Council shall immediately after the date of this Deed register it as such.

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

Nothing in this Deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

7. **JURISDICTION AND LEGAL EFFECT**

This Deed shall be governed by and interpreted in accordance with the law of England.

8. **[THE MORTGAGEE**

The Mortgagee acknowledges and declares that:-

8.1 this Deed has been entered into by the Airport Operator with the Mortgagee's consent;  
and

8.2 the Interest shall be bound by the provisions in this Deed.]

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

**EXECUTED** as a Deed (but not delivered until )  
dated) by affixing the Common Seal of )  
**SHEPWAY DISTRICT COUNCIL** in the presence )  
of:-

Authorised Officer

**EXECUTED** as a Deed (but not delivered until )  
dated) by **LONDON ASHFORD AIRPORT** )  
**LIMITED** acting by:- )

Director

Director/Secretary

**[EXECUTED** as a Deed (but not delivered until )  
dated) by **[MORTGAGEE]** acting by:- )

Director

Director/Secretary]

**APPENDIX 1**

**THE PART**