

(1) THURROCK COUNCIL

and

(2) PORT OF TILBURY LONDON LIMITED

**DEVELOPMENT CONSENT OBLIGATION BY
AGREEMENT**
relating to the proposed expansion of the Port of Tilbury
(‘Tilbury2’)

Planning Inspectorate Reference: TR030003



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BETWEEN:-

- (1) **THURROCK COUNCIL** of Civic Offices, Grays, RM17 6SL ("the **Council**"); and
- (2) **PORT OF TILBURY LONDON LIMITED** (Company No. 02659118) whose registered office is at Leslie Ford House, Tilbury Freeport, Tilbury, Essex, RM18 7EH ("the **Owner**").

RECITALS:-

- (A) The Council is the local planning authority for the area within which the Site is located and can enforce the obligations contained in this Deed.
- (B) The Owner is the freehold owner of the Site under registered title numbers EX932756 and EX953808.
- (C) The Owner applied on 31 October 2017 to the Secretary of State under the Planning Act 2008 for an order providing development consent to build, operate and maintain new port facilities on the Site (known as "**Tilbury2**").
- (D) The Parties enter into this Deed to secure the development consent obligations (within the meaning of section 106(14) of the 1990 Act, as inserted by section 174(2) of the Planning Act 2008) contained in it.

IT IS AGREED as follows:-

OPERATIVE PROVISIONS

1. { TC "1 DEFINITIONS AND INTERPRETATION" \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 unless the context requires otherwise:-

- | | |
|----------------------------------|--|
| "the 1980 Act" | means the Highways Act 1980; |
| "the 1990 Act" | means the Town and Country Planning Act 1990; |
| "the 2011 Act" | means the Localism Act 2011; |
| "the Active Travel Measures" | means improvements to be provided pursuant to Schedule 1 (as listed in Appendix 4 and shown on the Active Travel Plan) to Highways and other transport infrastructure, to include pedestrian and cycle facilities for the purpose of enhancing access from both Tilbury Town railway station and Tilbury Town to Tilbury Fort and the Tilbury riverside and " Measure " shall be construed accordingly; |
| "the Active Travel Plan" | means the plan attached to this Deed as Appendix 2; |
| "Active Travel Measures Details" | means the written details (including plans if the context admits) of the Active Travel Measures to be agreed between the Owner and the Council under Schedule 1 in respect of those Active Travel Measures listed in Table 2 of Appendix 4 only which, inter alia, may include the following: |

- Scope of the works;
- Timing of the works;
- Designs and specifications;
- Maintenance details;
- Adoption (if/where appropriate) details;
- Remaining details of footpath stopping up;
- Timetables such as for highways agreements and other relevant matters;
- Costings for each of the Measures and
- Other relevant details reasonably required by the Council.

"Commence"	has the same meaning as in article 2 of the Order (and "Commencement" 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;
"the Contributions"	means any one or more of the financial contributions payable by the Owner to the Council under this Deed, as referred to in clause 6 (and including any payment in lieu of provision pursuant to Schedule 1), excluding the Council's legal costs payable pursuant to Clause 13; and "Contribution" shall be construed accordingly;
"Deed"	means this Deed made under section 106 of the 1990 Act and all other enabling powers;
"the Development"	means the development authorised by the Order;
"the 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 either of them, at their joint expense, by or on behalf of the President for the time being of the Law Society;
"First Operation of the Development"	means the first time a commercial vessel moors (other than in an emergency following a direction from the Port of London Authority) at the Roll On / Roll Off berth or the Construction Materials & Aggregates Terminal and loads and off-loads goods to the landside terminal, as facilitated by the Order, and "First Operational Use" shall be construed accordingly;
"the Gravesend – Tilbury Ferry"	means the existing passenger ferry service which operates between Tilbury (from the Tilbury Riverside Pontoon) and Gravesend (from the Town Pier);

“the Gravesend Escrow Account”	means a separately identifiable interest-bearing account to be set up by the Council into which the Gravesend Heritage Contribution shall be paid and held for the purposes set out in this agreement;
"the Gravesend Heritage Contribution"	means the contribution in the sum of £29,000 (to be adjusted in accordance with clause 18) pursuant to Schedule 4 for the purpose of implementing measures to enhance the interpretation of heritage assets, such measures to be located within the town of Gravesend;
"Highway"	has the same definition as in the 1980 Act;
"the Index"	means the 'All Items Index of Consumer Prices' issued by the Office for National Statistics or in the event that the Office of National Statistics shall cease to compile or publish the said 'Consumer Price Index' such other index as the Parties hereto shall agree or in default of agreement such index as shall be determined for the purposes of this Agreement as being an index which gives an accurate indication of the rate of inflation of prices in the United Kingdom from month to month;
"Interest"	means interest at 3% above the base lending rate from time to time of Barclays Bank PLC from time to time;
"the Judicial Review Period"	means the six week period starting on the day after the day on which the Order is published by the Secretary of State;
"the Operational Phase"	means any time after First Operation of the Development has occurred;
“the Order”	means a development consent order made under the Planning Act 2008 authorising the construction, operation and maintenance of Tilbury2 in the form in which it is made by the Secretary of State;
"the Parties"	means the parties to this Deed (and their successors) and " Party " shall be construed accordingly;
“Pre-Commencement Obligations”	means any action or thing required by this Deed to be done or put in place before Commencement
"Reasonable Endeavours"	means attempts to fulfil the relevant obligation by expending effort and money as in all the circumstances may be reasonable to expect, which may include engaging professional and other advisers as appropriate but does not require a Party to take proceedings (including any appeal) in any court, public inquiry, or other hearing (unless specified to the contrary);
“Seven Day LIBID Rate”	an assessment of the rate of interest the Council can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow eurocurrency deposits or such other rate as approved by the Council;

"the Site"	means the land against which this Deed may be enforced and is shown edged red on the plan attached at Appendix 1 to this Deed, being the land comprised in title numbers EX932756 and EX953808 in which the Owner has a freehold interest;
"the Skills and Employment Strategy"	means the Skills and Employment Strategy attached to this Deed at Appendix 3 and referred to in Schedule 5 which relates to the construction and Operational Phase only;
"the Tilbury Ferry Contribution"	means the contribution in the sum of £50,000 (to be adjusted in accordance with clause 18) to be paid by the Owner in respect of information boards for the Gravesend - Tilbury Ferry, as detailed in Schedule 3;
"the Tilbury Ferry Escrow Account"	means a separately identifiable interest-bearing account to be set up by the Council into which the Tilbury Ferry Contribution shall be paid and held for the purposes set out in this agreement;
"the Tilbury Fort Escrow Account"	means a separately identifiable interest-bearing account to be set up by the Council into which the Tilbury Fort Heritage Contribution shall be paid and held for the purposes set out in this agreement;
"the Tilbury Fort Heritage Contribution"	means the contribution in the sum of £112,000 (to be adjusted in accordance with clause 18) pursuant to Schedule 2 for the purpose of implementing measures to realise tourism and heritage benefits at Tilbury Fort;
"Unexpended"	<p>in respect of the Gravesend Heritage Contribution and the Tilbury Fort Heritage Contribution, means monies (if any) remaining in the Gravesend Escrow Account or the Tilbury Fort Escrow Account where (pursuant to Schedule 2 and/or Schedule 4 as the context admits) the Council has received insufficient (or has not received any) valid request(s) for payment from respectively Gravesend Council and/or English Heritage. Timescale is set in clause 20. Should not be repeated here. Slightly contradicts clause 20; and</p> <p>All this definition should do is way what Unexpended means re these contributions; and</p> <p>in respect of any monies paid to the Council in lieu pursuant to Schedule 1, means the amount not spent or committed or allocated to be spent respectively on the Active Travel Measures; and</p> <p>In in respect of the Tilbury Ferry Contribution means the amount not spent or committed or allocated to be spent respectively on the purchase, installation and maintenance of the equipment referred to in the Schedule 3;</p>
"Utilities"	means mains services including gas, electricity, potable water, telecommunications and ducting to facilitate high speed broadband; and

"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 words and expressions in this Deed have the same meaning as they have in the Order;
 - 1.2.2 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;
 - 1.2.3 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 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. { TC "2 LEGAL BASIS" \11 } **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 2011 Act, 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 development consent obligations for the purposes of section 106 of the 1990 Act and so bind the Owner's interest in the Site. Subject to Clause 9, 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 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 its statutory powers, duties, or discretions in relation to the Site or otherwise.
3. { TC "3 CONDITIONAL ENTRY INTO FORCE" \11 } **CONDITIONAL ENTRY INTO FORCE**
- 3.1 Subject to Clause 3.2 this Deed is conditional upon and will not take effect until the Order comes into force.
- 3.2 ~~Pre-Commencement Obligations and~~ Clauses 3, 4, 9, 10 and 12 - 17 come into effect on the date of this Deed.
4. { TC "4 DURATION" \11 } **DURATION**
- 4.1 This Deed will end (to the extent it has not already been complied with), if :-
- 4.1.1 the Order is quashed or revoked in its entirety;
- 4.1.2 the Order expires, in terms of the ability to exercise its powers, before Commencement; or
- 4.1.3 the Owner gives an irrevocable undertaking to the Council that it will not Commence the Development.
- 4.2 Where this Deed ends pursuant to clause 4.1 the Council shall as soon as reasonably practicable:-
- 4.2.1 remove all entries made in the Register of Local Land Charges in respect of this Deed within 20 Working Days ceasing to have effect; and
- 4.2.2 repay any unspent Contributions as set out in this Deed.
5. { TC "5 ACTIVE TRAVEL MEASURES" \11 } **ACTIVE TRAVEL MEASURES**
- 5.1 The provisions contained in **Schedule 1** to this Deed have effect.
6. { TC "6 CONTRIBUTIONS" \11 } **CONTRIBUTIONS**
- 6.1 The provisions contained in **Schedule 2** (Tilbury Fort Heritage Contribution), **Schedule 3** (Tilbury Ferry Contribution) and **Schedule 4** (Gravesend Heritage Contribution) to this Deed have effect.
7. { TC "7 SKILLS AND EMPLOYMENT STRATEGY" \11 } **SKILLS AND EMPLOYMENT STRATEGY**
- 7.1 The provisions contained in **Schedule 5** to this Deed have effect.
8. { TC "8 COVENANTS OF THE PARTIES" \11 } **COVENANTS OF THE PARTIES**
- 8.1 The Parties must at all times act reasonably and in particular must not unreasonably withhold or delay the giving of any approval or expression of satisfaction which is required under this Deed.
- 8.2 At any time after any or all of the obligations in this Deed are fulfilled and upon written request from any person who is at that time responsible for carrying out the relevant development consent obligation, the Council must issue written confirmation of the development consent obligation being carried out, fulfilled or satisfied as appropriate.

9. **{ TC "9 SUCCESSORS IN TITLE AND RELEASE" \1 }SUCCESSORS IN TITLE AND RELEASE**

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

9.2 Subject to Clauses 9.3 and 9.4, references to the Owner include its heirs, assigns, successors in title and persons deriving title through or under it except where there is an obligation on the Council to repay any unspent portions of a Contribution, in which case the reference to the Owner is to the person which paid the relevant Contribution to the Council.

9.3 Except for restrictive covenants, the obligations in this Deed are not binding on or enforceable against any:-

9.3.1 statutory undertaker or other person who acquires any part of the Site or any interest in it for the sole purposes of supplying Utilities or public transport services;

9.3.2 occupier, lessee or licensee of part of the Site (who is not also the Owner or other person envisaged by Clause 9.2); but shall be enforceable against an occupier, lessee or licensee of the whole of the Site or such part(s) of the Site affected by Schedule 1 (Active Travel Measures).

9.4 If the Owner or any person disposes of its entire interest in the 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 Site or that part of the Site disposed of, except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar PROVIDED ALWAYS that where the Owner has granted a lease but retained the freehold of any part of the Site the Owner shall remain liable for all the planning obligations herein

9.5 The release of the Owner or any person under Clause 9.4 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.

9.6 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 9.

9.7 Any lessee (as the context admits) shall be deemed to have consented to the Owner (or Council) taking steps to comply with Schedules 1 (Active Travel Measures); Schedule 3 (Tilbury Ferry Contribution) and Schedule 5 (Skills and Employment Strategy).

10. **{ TC "10 OTHER DEVELOPMENT" \1 }OTHER DEVELOPMENT**

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 Order) granted (whether or not on appeal) after the date of this Deed.

11. **{ TC "11 ENFORCEMENT PROTOCOL" \1 }ENFORCEMENT PROTOCOL**

11.1 Where a breach of any of the provisions of this Deed has occurred (or will occur due to circumstances beyond the control of the Owner) the Owner may without delay approach the Council to discuss the breach with the Council and proposals (including reasonable timescale) for remedying the breach.

11.2 Where the Council has been approached by the Owner pursuant to Clause 11.1:

the Council will give the Owner the opportunity to discuss the breach and the timescale and steps to remedy the same. The Council will take into account any reasonable representations made by the Owner.

- 11.3 Subject always to any bond or guarantee or surety or other financial provision (which the Council may enforce as soon as the terms of such arrangement permits) where a breach has occurred and the Council has not been approached by the Owner pursuant to clause 11.1:

Before taking action to enforce any of the provisions of this Deed the Council will give written notice to the Owner stating the nature of the breach, the steps required to remedy the breach and may specify a reasonable timescale for the Owner to remedy the breach (for the avoidance of doubt the Council shall not be fettered by a requirement to impose an informal timescale that could have the effect of fettering or deferring its discretion to take enforcement or other appropriate action)

- 11.4 If the breach is not remedied as requested by the Council (including if the context admits is not remedied within the stated time period or such longer or shorter period as agreed with the Council) the Council will be able to pursue any other remedies.

12. { TC "12 DISPUTE RESOLUTION" \11 } **DISPUTE RESOLUTION**

- 12.1 If a dispute between the Parties persists beyond 10 Working Days and relates to any matter contained in this Deed (but excluding any matter of law), the dispute may be referred to the Expert by either Party. The Expert will act as an expert and not as an arbitrator. His decision shall be final and binding on the Parties.

- 12.2 Each Party will bear its own costs and the Expert's costs will be paid as determined by him.

- 12.3 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 20 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.

- 12.4 The Expert will be required to give notice to each of the Parties, inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to the Parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material.

13. { TC "13 LEGAL COSTS" \11 } **LEGAL COSTS**

As soon as practicable following completion of this Deed the Owner will pay to the Council the reasonable legal costs incurred in the negotiation, preparation and execution of this Deed of no more than £4,500.

14. { TC "14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT" \11 } **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

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. { TC "15 NOTICES" \11 } **NOTICES**

- 15.1 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:-

15.1.1 if delivered by hand, the next Working Day after the day of delivery;

15.1.2 if sent by post, the day 2 Working Days after the date of posting; or

15.1.3 if sent by recorded delivery, at the time delivery was signed for.

- 15.2 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.
- 15.3 The address for any notice or other written communication shall be within the United Kingdom.
- 15.4 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.
- 15.5 A notice or communication will be served or given:-
- 15.5.1 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 Peter Ward (Commercial Director);
- 15.5.2 on the Council at Civic Offices, New Road, Grays, RM17 6SL or such other address notified in writing to the Owner from time to time, marked for the attention of Development Management; Place Services (ref. Tilbury2); and
- 15.5.3 on any successor in title to the Owner at that successor in title's last known address.
- 15.6 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. { TC "16 LOCAL LAND CHARGE AND LAND REGISTRY REGISTRATION" \11 } **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.
17. { TC "17 JURISDICTION AND LEGAL EFFECT" \11 } **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. { TC "18 INDEXATION, LATE PAYMENT AND VAT" \11 } **INDEXATION, LATE PAYMENT AND VAT**
- 18.1 Any sum to be paid to the Council under this Deed will be adjusted by an amount equivalent to the change in the Index from the date of this Deed to the date on which such sum is paid.
- 18.2 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.
- 18.3 The Parties to this Deed acknowledge and agree in accordance with the guidance set out in HMRC Reference: Notice 742 (June 2012) and in particular paragraphs 8.4 and 8.6 that whilst such guidance remains applicable the Contributions in this Deed are not subject to VAT treatment and no VAT should be charged or recoverable in addition to the amount of the Contributions specified in the Deed.
19. { TC "19 NOTIFICATION" \11 } **NOTIFICATION**

- 19.1 The Owner shall provide the Council with not less than ten (10) Working Days written notice [in advance](#) of each of the following events:
- 19.1.1 Commencement of the Development; and
- 19.1.2 First Operation of the Development.
- 19.2 If either of the said events set out in Clause 19.1 do not take place on the date stated on the relevant notice the Owner shall notify the Council in writing and of provide the Council with an anticipated revised date for the relevant event and this procedure shall be repeated as often as necessary.
20. { TC "20 COUNCIL'S COVENANTS" \11 } **COUNCIL'S COVENANTS**
- 20.1 In respect of the Gravesend Heritage Contribution and the Tilbury Fort Contribution, the Council covenants as follows:
- 20.1.1 Upon receipt from the Owner of the Gravesend Heritage Contribution (pursuant to Schedule 4) and/or the Tilbury Fort Heritage Contribution (pursuant to Schedule 2) respectively:
- (a) to set up (as the context admits) (a) the Gravesend Escrow Account and/or (b) the Tilbury Fort Escrow Account; and
- (b) to pay the monies received from the Owner into the relevant account in full.
- 20.1.2 Once the funds have been cleared in the relevant account stated in clause 20.1.1:
- (a) In respect of the Gravesend Heritage Contribution, to inform Gravesham Borough Council that the Gravesend Heritage Contribution has been received by the Council and:
- (i) invite them to identify one or more specific project(s) which will enhance the interpretation of heritage assets within the town of Gravesend; and
- (ii) require them at the time of nomination of a project or projects to inform the Council how much of the relevant Contribution should be applied towards the nominated project or projects.
- (b) In respect of the Tilbury Fort Heritage Contribution, to inform English Heritage that the Tilbury Fort Heritage Contribution has been received by the Council and:
- (i) invite them to identify one or more specific project(s) to realise tourism and heritage benefits at Tilbury Fort; and
- (ii) require them at the time of nomination of a project or projects to inform the Council how much of the relevant Contribution should be applied towards the nominated project or projects.
- 20.1.3 To hold each of the said Contributions for the purposes of making an onward payment respectively to (a) Gravesham Borough Council and (b) English Heritage.
- 20.1.4 Following receipt by the Council of a written application for payment from Gravesham Borough Council or English Heritage that is accompanied by appropriate details and costings of one or more suitable specific project(s), to forward to them the relevant amount of the Contribution as soon as practicable and notify the Owner of the payment.
- 20.1.5 Upon receipt of a request in writing to do so to be received by the Council no sooner than the tenth (10th) anniversary of the date of payment of the relevant Contribution to return

to the party who deposited the said Contribution the Unexpended whole or as the case may be the Unexpended part of the relevant Contribution together with interest on the Unexpended whole or Unexpended part (as the case may be) calculated at the average Seven Day LIBID Rate for the period the funds have been held by the Council.

- 20.2 Gravesham Borough Council and English Heritage may continue to nominate a project or projects until the funds in the Gravesend Escrow Account and/or the Tilbury Fort Escrow Account as relevant are spent, up until the tenth (10th) anniversary of the date of payment of the relevant Contribution as stated in clause 20.1.5.
- 20.3 The Council shall have discharged all liability under Schedule 2 and Schedule 4 upon payment of the relevant Contribution in full to English Heritage or Gravesham Borough Council respectively (or such amount received) and notifying the Owner that onward payments have been made in full.
- 20.4 In respect of the Tilbury Ferry Contribution, the Council covenants as follows:
- 20.4.1 upon receipt from the Owner of the Tilbury Ferry Contribution, to set up the Tilbury Ferry Escrow Account and to pay the monies received from the Owner into that account in full.
- 20.4.2 to apply the Tilbury Ferry Contribution solely towards the purchase, installation and maintenance of real-time information boards at Tilbury and Gravesend and associated ferry-based equipment as described herein in Schedule 3.
- 20.4.3 Upon receipt of a request in writing to do so to be received by the Council no sooner than the tenth (10th) anniversary of the date of payment of the Tilbury Ferry Contribution to return to the party who deposited the said Contribution the Unexpended whole or as the case may be the Unexpended part of the said Contribution together with interest on the Unexpended whole or Unexpended part (as the case may be) calculated at the average Seven Day LIBID Rate for the period the funds have been held by the Council.
21. { TC "21 COUNTERPARTS" \1 } **COUNTERPARTS**
- 21.1 This agreement may be executed in any number of counterparts which, taken together, constitute the same agreement.

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

Executed as a deed by
By **PORT OF TILBURY LONDON LIMITED** Director
acting by a director in the presence of a
witness:

WITNESS:

Signature:

Name (block capitals):

Address:

Occupation:

The **COMMON SEAL of THURROCK**)
BOROUGH COUNCIL was hereunto)
Affixed in the presence of:-)

Authorised Officer

.....

SCHEDULE 1{ TC "SCHEDULE 1" \14 }

SCHEDULE 1

ACTIVE TRAVEL MEASURES

PLANNING OBLIGATIONS

1. The following provisions apply in respect of all Active Travel Measures listed in Appendix 4.
2. The Owner shall provide the Council with written notification 90 days prior to the Commencement of each of the Active Travel Measures.
3. The Owner shall permit the Council reasonable access on written notice to inspect and/or supervise the construction and completion of each of the Active Travel Measures.

Active Travel Measures – Table 1 of Appendix 4

4. Paragraph 5 applies in respect of the Active Travel Measures listed in Table 1 of Appendix 4.
5. The Owner shall complete the relevant Active Travel Measures in accordance with the details stated in column 3, Table 1 to the reasonable (written) satisfaction of the Council.

Active Travel Measures - Table 2 of Appendix 4

6. Paragraphs 7 to ~~44-15~~ apply in respect of the Active Travel Measures listed in Table 2 of Appendix 4.
7. The Owner and the Council, both acting reasonably, will agree the Active Travel Measures Details in respect of those Active Travel Measures listed in Table 2 of Appendix 4 by a date no later than 28 days beginning with the last day of the Judicial Review Period, unless otherwise agreed between the Parties and in any event prior to First Operation of the Development.
8. The Owner will not allow or permit First Operation of the Development until paragraph 7 has been complied with or the Council has received payment in lieu for those Measures which have not been agreed.
9. The Owner shall carry out the relevant Active Travel Measures in accordance with the Active Travel Measures Details to the reasonable satisfaction of the Council.
10. The Owner shall use Reasonable Endeavours to complete the relevant Active Travel Measures in accordance with the timeframe stated for each Active Travel Measure stated in column 3, Table 2 of Appendix 4 but completing the Active Travel Measures within the stated timeframes also shall be subject to:
 - 10.1 where necessary, the Owner securing permission from any relevant landowners; and
 - 10.2 where necessary, the Owner securing any necessary consents and agreements including from or with the relevant highway authority.
11. In using Reasonable Endeavours in respect of paragraph 10, the Owner may make any reasonable requests for assistance to the Council and the Council shall assist the Owner in respect of those requests to the extent that is reasonable in the circumstances.
12. Paragraph 13 shall apply in the following circumstances provided always that the Council has been informed in writing of the circumstances and reasons and the Council acting reasonably has accepted the same in writing:

- 12.1 where the Owner is unable to implement one or more of the Active Travel Measures (for example where they are unable to obtain consent of any relevant landowner); or
- 12.2 where one or more of the relevant Active Travel Measures has not been constructed and completed within the timescale referred to in Appendix 4 and there is little or no prospect of the said Measure(s) being completed within 28 Working Days of the relevant timescale.
13. ~~4.~~The Owner shall within 28 Working Days of the Council's written acceptance (pursuant to paragraph 12) make payment in lieu to the Council in respect of any of the Measures to which paragraph 12 applies in order that the Council can carry out the relevant Active Travel Measure, such sum(s) and timing(s) of the payment(s) to be agreed between the Parties acting reasonably.
14. ~~2. a~~ A payment made in full pursuant to paragraph 13~~4~~ in respect of the relevant Measure shall be deemed as compliance with paragraph 12 in respect of the said Measure ~~Deals with potential inconsistency.~~
15. ~~44.~~In the event that the Council does not carry out any relevant Active Travel Measure pursuant to paragraph 13~~,~~ the Council must return the money it has received from the Owner in respect of a specific Active Travel Measure and clause 20.1.5 shall apply in respect of the amount and timing of the repayment by the Council to the Owner.
16. ~~45.~~

SCHEDULE 2{ TC "SCHEDULE 2" \14 }

TILBURY FORT HERITAGE CONTRIBUTION

PLANNING OBLIGATIONS

Owner's covenants

The Owner covenants as follows:

1. To pay to the Council the Tilbury Fort Heritage Contribution prior to First Operation of the Development.
2. Not to allow or permit First Operation of the Development until the Tilbury Fort Heritage Contribution has been paid to the Council in full.

SCHEDULE 3{ TC "SCHEDULE 3" \14 }

TILBURY FERRY CONTRIBUTION

1. The Owner shall pay to the Council the Tilbury Ferry Contribution in full prior to the Commencement of the Development.
2. Not to allow or permit Commencement of the Development until the Tilbury Ferry Contribution has been paid to the Council in full ~~Clear cut and within the Owner's control.~~

~~The Council requires for purposes of enforcement.~~

3. The Council shall use the Tilbury Ferry Contribution for the purposes of the purchase, installation and maintenance of the following equipment and software (including electrical connection and supply):
 - 3.1 Real time information boards at each of the following locations:
 - 3.1.1 the landside entrance to the Town Pier in Gravesend;
 - 3.1.2 the Port of Tilbury landing stage; and
 - 3.1.3 Tilbury Town railway station on the St Andrew's Road side of the station and/or at the entrance of the station, the choice between which is to determined as the Council (acting reasonably) sees fit.
 - 3.2 Equipment to be installed on the Gravesend-Tilbury Ferry required to enable real-time communication with the real-time passenger boards referred to above.
4. The obligation on the Council in respect of paragraph 3 is subject to relevant landowner and/or operator consent and any necessary regulatory consent.
5. As the context allows the Owner consents to the Council carrying out installation or maintenance works on any land within its ownership or control described in this Schedule.
6. The Council shall use all reasonable endeavours to complete the installation of each of the real-time information boards stated at paragraphs 3.1.1 to 3.1.3 within 6 months of the date of First Operation of the Development.
7. The Council shall maintain each of the real-time information boards stated at paragraphs 3.1.1 to 3.1.3 and the equipment stated at paragraph 3.2 for a minimum of 5 years from the relevant date of installation of each information board.
8. All the boards installed pursuant to paragraphs 3.1.1 to 3.1.3 shall be compatible with relevant equipment operated on the Gravesend-Tilbury Ferry associated with producing real-time information and referred to in paragraph 3.2 above.

SCHEDULE 4{ TC "SCHEDULE 4" \14 }

GRAVESEND HERITAGE CONTRIBUTION

PLANNING OBLIGATIONS

Owner's Covenants

The Owner covenants as follows:

1. To pay to the Council the Gravesend Heritage Contribution in full prior to the Commencement of the Development.
2. Not to allow or permit Commencement of the Development until the Gravesend Heritage Contribution has been paid to the Council in full.

SCHEDULE 5{ TC "SCHEDULE 5" \14 }

SKILLS AND EMPLOYMENT STRATEGY

PLANNING OBLIGATIONS

1. The Owner shall:
 - 1.1 implement the requirements of the Skills and Employment Strategy;
 - 1.2 implement and promote the objectives of the Skills and Employment Strategy; and
 - 1.3 ensure (so far as is reasonably practicable) the said objectives are met.
2. The Owner or the Council may at any time submit to the Council for its consideration and approval (such approval not to be unreasonably withheld or delayed) an amended Skills and Employment Strategy for the Operational Phase of the Development PROVIDED THAT the Owner shall submit no more than one amended Employment and Skills Strategy in any calendar year (unless otherwise agreed with the Council).

Appendix 1{ TC "APPENDIX 1" \14 }

APPENDIX 1

PLAN

[Appendix 2](#){ TC "APPENDIX 2" \14 }

APPENDIX-2

ACTIVE TRAVEL PLAN

[Appendix 3](#){ TC "APPENDIX 3" \14 }

APPENDIX-3

SKILLS AND EMPLOYMENT STRATEGY

[Appendix 4](#){ TC "APPENDIX 4" \14 }

APPENDIX 4

ACTIVE TRAVEL MEASURES

APPENDIX 5 NOT USED OR REFERRED TO — SUGGEST DELETE

NB the spec might be incorrect/incompatible/inappropriate

TILBURY FERRY CONTRIBUTION INFORMATION BOARD SPECIFICATION