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MZZC/RYP/115040.00497/81351678.5

Deed of Unilateral Undertaking relating to the Network Rail
(Oxford Station Phase 2 Improvements (Land Only)) Order
202[X]

Dated

Given By

Network Rail Infrastructure Limited
(Network Rail)

To

Kenmare Estates Limited
(the Owner)

Midcounties Co-operative
(the Co-op)

Dentons UK and Middle East LLP
One Fleet Place
London EC4M 7WS
United Kingdom

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Deed of Unilateral Undertaking

Dated

Given By

- (1) **Network Rail Infrastructure Limited** of 1 Eversholt Street, London, NW1 2DN (**Network Rail**).

To

- (2) **Kenmare Estates Limited (Industrial and Provident Society No.30170R)** of Registered Office, Co-Operative House, Gallows Hill, Warwick Technology Park, Warwick CV34 6DA (the **Owner**)
- (3) **Midcounties Co-operative** of Co-operative House, Warwick Technology Park, Warwick, CV34 6DA (the **Co-op**)

Recitals

- A Network Rail made an application to the Secretary of State for the Department of Transport on 4 June 2021 for the Network Rail (Oxford Station Phase 2 Improvements (Land Only)) Order 202[X] (the **Order**)
- B The proposed Order would authorise Network Rail to compulsorily purchase land and interests in land for the purpose of altering and improving Oxford Station through the Oxford Station Phase 2 Improvements Project (**OSP2 Project**)
- C The Owner is the freehold owner of 1 Roger Dudman Way, Oxford, OX1 1HW registered at the Land Registry under title number ON301972 (the **Property**)
- D The Co-op is the occupier of the Property from which it runs the Business
- E As part of the proposed Order Network Rail seeks to compulsorily purchase the Property. Network Rail also proposes to temporarily relocate the Business from the Property whilst the OSP2 Project works are being carried out and return to the Owner the Modified Property upon completion of the OSP2 Project
- F Network Rail has agreed to enter into this Deed with the intention that the obligations in Schedule 1 of this Deed are enforceable by the Co-op and the Owner against Network Rail and those deriving title through or under it

It is agreed:**1 Interpretation****1.1** In this Deed unless the context otherwise requires

"Agreed Terms"	means a repairing and yielding up lease or sub-lease (reasonable and appropriate for the period and nature of occupation) for the Co-op's benefit at nil rent for a specified period to cover the period in which the Co-op has vacated the Property and before the Co-op may return to the Modified Property and with a break clause in favour of the Co-op
"Business"	means a children's day nursery operated by the Co-op
"CPO Compensation Code"	means the obligations to pay CPO Compensation in accordance with the principles derived from the body of statute and case law and established practice applicable to the ascertainment, payment of determination of compensation in relation to compulsory acquisition including (but not limited to) the Land Compensation Act of 1961 and 1973, the Compulsory Purchase Act 1965, the Planning and Compensation Act 1991 the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008 in each case as amended from time to time
"Land Plans"	means the land plans deposited with the application for the Order
"Modified Property"	<u>means the modified nursery building following completion of the Works as comprised in</u> plot 10 as identified on the Land Plans
"Property"	means the land edged red on Plan 1 of Schedule 2
"Temporary Premises"	means a property from which the Co-op will be able to continue the Business before the Modified Property is available to the Co-op to be no less commodious in terms of size, amenities and rights than the Property
"Transfer Land"	means together plot 11a and plot 11 as identified on the Land Plans
"Works"	means the works required to create the Modified Property to enable the Co-op to run the Business

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1.2 Where the context so requires:

- (a) The singular includes the plural
- (b) References to any party shall include the successors in title of that party
- (c) Where a party includes more than one person any obligations of that party shall be joint and several only where expressly stated to be so
- (d) References to clauses and schedules are references to clauses and schedules in this Deed
- (e) Any reference to an Act of Parliament shall include any statutory modification extension or re-enactment of that Act for the time being in force
- (f) Words importing gender shall include the masculine, feminine and neuter genders
- (g) Words importing persons shall include firms, companies and corporations and vice versa
- (h) "including" means "including, without limitation"

2 Legal Effect

- 2.1 This Deed is made so that it shall bind Network Rail and its successor~~s~~.
- 2.2 The obligations in clause 3 and the Schedule to this Deed are conditional upon the Order being made by the Secretary of State.
- 2.3 If the Order having been made by the Secretary of State expires or is revoked or otherwise withdrawn or quashed following a successful legal challenge this Deed shall cease to have effect.

2.4 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.

2.5 This Deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act.

2.6 Nothing in this Deed shall prevent Network Rail from implementing any of its powers of compulsory acquisition or temporary possession in relation to any part of the Property.

3 Covenants

Network Rail, covenants with the Co-op and the Owner to comply with the covenants restrictions and obligations in Schedule 1.

4 Governing Law

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

Deleted: in title to each and every part of the Property and their assigns.

Deleted: <#>The parties do not intend that anyone should be able to enforce the terms of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999. ¶

Deleted: The Owner

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5 Notices

5.1 Any notice in writing that under the terms of this Deed is to be given to Network Rail shall be deemed effectively served if and only if addressed to Network Rail and delivered by hand or sent by recorded delivery or registered post to Temple Point Redcliffe Way, Bristol, BS1 6NL or such other address(es) and sent to notices@networkrail.co.uk marked with project reference 163390 as Network Rail may from time to time specify instead for that purpose and notify to the Owner and/or Co-op

IN WITNESS whereof Network Rail has executed this as a Deed and it is delivered on the date first above written

Schedule 1– Network Rail's Covenants

Network Rail covenants with the Co-op and the Owner as follows:

1 Temporary Premises

- 1.1 as soon as reasonably possible to identify and confirm to the Co-op the proposed location of the Temporary Premises which at the date of this Deed has been identified as being located within Plot 40 as identified on the Land Plans.
- 1.2 to use reasonable endeavours to agree a specification for the Temporary Premises with the Co-op to a standard and level of build that is commensurate with the Property and as is reasonably required for the Co-op to continue the Business (**Agreed Specification**)
- 1.3 to use reasonable endeavours to agree layout plans for the Temporary Premises with the Co-op prior to the relocation of the Business to the Temporary Premises
- 1.4 to fit out at Network Rail's own cost the Temporary Premises in accordance with the Agreed Specification and make the Temporary Premises available to the Co-op on the Agreed Terms for the Business prior to the Co-op vacating the Property
- 1.5 to meet the reasonable costs of the Co-op securing the necessary Ofsted approvals (up to a sum of £1000) and sign off in advance of the Temporary Premises being required for the Business by the Co-op
- 1.6 to use reasonable endeavours to agree terms for the payment of Co-op's reasonable and proper relocation costs to the Temporary Premises

2 Modified Property

- 2.1 as soon as reasonably possible and at Network Rail's own cost provide to the Co-op and Owner detailed drawings and specification of the Modified Property to a standard and level of build that is commensurate with the Property to enable the Co-op to occupy the Modified Property for the purpose of the Business and to agree a programme of works and method statement with the Co-op and Owner and to use reasonable endeavours to minimise disruption to the Property (the **Approved Modified Property Specification**).
- 2.2 to use reasonable endeavours to agree terms and enter into appropriate documentation with the Owner (and if required Co-op) which provides for the following:
 - (a) arrangements for entering onto the Property for the purposes of carrying out the Works and handback provisions following completion of the Works including appropriate notice periods for commencement of works, timings for vacating of the Property to the Temporary Premises and for relocating the Business to the Modified Property following completion of the Works;
 - (b) the carrying out of Works in accordance with the Approved Modified Property Specification at Network Rail's costs for the carrying out of such Works;
 - (c) to keep the Co-op and Owner updated on the progress of the Works;
 - (d) to procure at Network Rail's own cost collateral warranties in favour of the Owner in relation to the Works prior to handover of the Modified Property;

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(e) to use reasonable endeavours to identify and agree terms of the payment of Co-op's reasonable relocation costs to the Modified Property from the Temporary Premises;

(e) to agree arrangements not to acquire or take possession of the Transfer Land by way of General Vesting Declaration or Notice to Treat and Notice to enter until the Property has been vacated;

(f) to agree an easement on appropriate terms over the Modified Property for a right of access for the benefit of Network Rail for the purpose of maintaining the Transfer Land.

- 2.3 to meet the reasonable costs of Co-op obtaining the necessary Ofsted approvals up to £1,000 (one thousand pounds) and sign off in advance of the Modified Property being required for the Business by the Co-op

3 General

- 3.1 to be responsible for the Co-op and Owner's reasonable professional and legal costs properly incurred in relation to negotiations in connection with the Agreed Specification and Approved Modified Property Specification subject to estimates of such costs being agreed first in advance with Network Rail.
- 3.2 The provisions of this Deed shall be without prejudice to any claim the Owner and/or Co-op may be entitled to make pursuant to the Compensation Code.

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Schedule 2 – The Plans

Deleted: 4 Third party rights¶

Only the parties to this Deed may enforce the terms of this Deed and no third party may enforce such a term under the Contracts (Rights of Third Parties) Act 1999 provided always that any successors to the business of Cadent and/or Network Rail shall be entitled to the benefit of this Deed.¶

Deleted: Notices¶

Any notice given under or in relation to this Deed shall be in writing and shall refer to this Deed and shall be deemed to be sufficiently served if addressed to Network and sent by recorded delivery or registered post to the address of that party given in this Deed or to such other address as they may from time to time designate by written notice to the other.¶

Governing law and jurisdiction¶

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

The courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

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EXECUTED AS A DEED by)	
NETWORK RAIL INFRASTRUCTURE)	
LIMITED acting by its attorney)
.....)	Acting as attorney for NETWORK RAIL
in exercise of a power of attorney dated)	INFRASTRUCTURE LIMITED
in the presence of:)	

Signature of Witness:

Name:

Address:

I confirm that I was physically present when signed this deed

Signature of Witness:.....