



Registration of a Charge

Company Name: **BIRMINGHAM HIGHWAYS LIMITED**

Company Number: **07064140**



XBYQV7WX

Received for filing in Electronic Format on the: **06/03/2023**

Details of Charge

Date of creation: **23/02/2023**

Charge code: **0706 4140 0004**

Persons entitled: **BIRMINGHAM CITY COUNCIL**

Brief description: **NO SPECIFIC LAND, SHIP, AIRCRAFT OR INTELLECTUAL PROPERTY HAS BEEN CHARGED. FOR FULL DETAILS OF THE CHARGES, PLEASE REFER TO THE CHARGING DOCUMENT DIRECTLY.**

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A TRUE, COMPLETE AND CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

**NEEL GOVIND LALWANI, SOLICITOR, DLA PIPER LLP UK,
BIRMINGHAM**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7064140

Charge code: 0706 4140 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd February 2023 and created by BIRMINGHAM HIGHWAYS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th March 2023 .

Given at Companies House, Cardiff on 7th March 2023

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

Execution Version

DATED 23 FEBRUARY 2023

(1) BIRMINGHAM HIGHWAYS LIMITED
as Chargor

- and -

(2) BIRMINGHAM CITY COUNCIL
as Authority

**SUPPLEMENTAL SECURITY
AGREEMENT**

to a security agreement dated 29 June 2019

This Supplemental Security Agreement is subject to and has the benefit of an Intercreditor Agreement dated 6 May 2010, as amended and restated from time to time, and made between, among others, (1) the Chargor, and (2) the Authority as each such term is defined in the Security Agreement.



I CERTIFY THAT, SAVE FOR MATERIAL REDACTED
PURSUANT TO s859G OF THE COMPANIES ACT 2006,
THIS IS A TRUE, COMPLETE AND CORRECT COPY
OF THE ORIGINAL INSTRUMENT

DATE 6 MARCH 2023

SIGNED NEEL LALWANI
DLA PIPER UK LLP.

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THIS SUPPLEMENTAL SECURITY AGREEMENT is made on 23 FEBRUARY 2023

BETWEEN:

- (1) **BIRMINGHAM HIGHWAYS LIMITED**, a company incorporated and registered under the laws of England and Wales with registered number 07064140 having its registered office at Unit G1 Ash Tree Court, Nottingham Business Park, Nottingham, England, NG8 6PY (the "Chargor"); and
- (2) **BIRMINGHAM CITY COUNCIL** of the Council House, Victoria Square, Birmingham B1 1BB (the "Authority").

BACKGROUND:

- A The Chargor is a party to the Security Agreement (as defined below) under which it granted security over all its present and future assets as security for the Secured Obligations (as defined in the Security Agreement).
- B The Chargor enters into this Deed pursuant to clause 17 (*Further assurances*) of Security Agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed (including the recitals to it):

- (a) terms defined in or construed for the purposes of the Security Agreement (as defined below) have the same meanings when used in this Deed (unless otherwise defined in this Deed); and
- (b) the following terms have the following meanings:

"Account Bank" means Lloyds Bank plc.

"Insurance Proceeds Account" means the insurance proceeds account held by the Chargor with the Account Bank with account number [REDACTED] 005 and sort code [REDACTED]

"Interim Funding and Accounts Agreement" means the agreement initially between the Lloyds Bank Plc, the Authority and the Chargor dated 29 June 2019 and as amended and restated from time to time, setting out the process for, consents and restrictions in relation to, payments into and withdrawals from the accounts of the Chargor.

"Interim Services Contract" has the meaning given to such term in the PA Supplemental Agreement, including the Interim Services Contract Supplemental Deed (as defined in the PA Supplemental Agreement) and as such agreement may be amended and supplemented from time to time.

"IRW Design Agreement" has the meaning given to such term in the PA Supplemental Agreement.

"IRW Works Agreement" has the meaning given to such term in the PA Supplemental Agreement.

"PA Supplemental Agreement" means the agreement between the Chargor and the Authority dated 29 June 2019 amending and supplementing certain terms of the Project Agreement as amended and restated from time to time.

"Security Agreement" means the security agreement dated 29 June 2019 and made between (1) the Chargor and (2) the Authority.

"Tarmac Surfacing Subcontract" has the meaning given to such term in the PA Supplemental Agreement.

1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to the **"Chargor"** or the **"Authority"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees.
- (b) The principles of construction set out in clause 1.2 (*Interpretation*) of the Security Agreement shall apply to this Deed, with any necessary changes, as if they were set out in full in this Deed.

1.3 Incorporation of provisions

Clauses 1.3 (*Third party rights*), 1.4 (*Effect as a deed*) and 24 (*Notices*) of the Security Agreement are incorporated into this Deed, with any necessary changes and as if references in them to the *"Security Agreement"* or *"this Deed"* were references to this Deed, as if they were set out in full in this Deed.

2. GRANT OF SECURITY

2.1 Nature of security

All Security and dispositions created or made by this Deed are created or made:

- (a) in favour of the Authority;
- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994; and
- (c) as continuing security for payment of the Secured Liabilities.

2.2 Fixed charges

The Chargor charges and agrees to charge to the Authority, by way of first fixed charge, all of its present and future right, title and interest in the Insurance Proceeds Account and all monies at any time standing to the credit of the Insurance Proceeds Account together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing.

2.3 Notice of charge - immediate notice

Promptly following execution of this Deed the Chargor shall deliver a duly completed notice to the Account Bank and use reasonable endeavours to procure that the Account Bank executes and delivers to the Authority an acknowledgement, in the form set out in Schedule 1 (*Form of notice to and acknowledgement from Account Bank*).

2.4 Operation of Insurance Proceeds Account

The Chargor shall not withdraw or attempt or be entitled to withdraw (or direct any transfer of) all or any part of the monies in the Insurance Proceeds Account unless expressly permitted to do so under the Authority Finance Documents.

2.5 Assigned Agreements

For the avoidance of doubt, each document set out in Schedule 2 (*Additional Assigned Agreements*) shall be "Assigned Agreement" for the purpose of the Security Agreement.

2.6 Application of Security Agreement provisions

The Security created by this Deed is created "*pursuant to the Security Agreement*" and:

- (a) all references in the Security Agreement to the "Assigned Agreement" include the agreements set out in Schedule 2 (*Additional Assigned Agreements*);
- (b) all references in the Security Agreement to the "Security Assets" include the assets charged by this Deed, and to "this Security" includes the Security created by or pursuant to this Deed; and
- (c) all provisions of the Security Agreement relating to the "Security Assets" or "this Security" (including, without limitation, obligations of the Chargor and rights of enforcement) apply respectively to the assets charged by this Deed and to the Security created by this Deed.

3. SUPPLEMENTAL DEED

3.1 Security Agreement

- (a) This Deed is supplemental to the Security Agreement.
- (b) This Deed is an Authority Finance Document.
- (c) From the date of this Deed the provisions of the Security Agreement and of this Deed shall be read and construed as one and all references to the Security Agreement shall be deemed to incorporate the provisions and amendments contained in this Deed.

3.2 Continuance in force

For the avoidance of doubt, the provisions of the Security Agreement and the other Authority Finance Documents (except as amended by this Deed) continue to apply and remain in full force and effect.

4. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Deed.

5. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

IN WITNESS of which this Deed has been duly executed by the Chargor as a deed and duly executed by the Authority and has been delivered on the first date specified on page 1 of this Deed by the Chargor.

**SCHEDULE 1: FORM OF NOTICE OF SECURITY TO AND ACKNOWLEDGEMENT
FROM ACCOUNT BANK**

Part 1: Form of Notice to Account Bank regarding Charge over Insurance Proceeds Account

To: Lloyds Bank plc

[address]

Date: [♦]

Dear Sirs

Account number [REDACTED] 005, sort code [REDACTED] (the "Insurance Proceeds Account")

We refer to our above account with you, as it may from time to time be re-designated or re-numbered.

We give you notice that, by a supplemental security agreement (the "**Charge**") dated [♦] between us and Birmingham City Council plc (the "**Authority**") supplementing the Security Agreement dated 29 June 2019 between us and the Authority, we have charged by way of fixed charge in favour of the Authority all monies at any time standing to the credit of the Insurance Proceeds Account which are at any time owned by us, or in which we from time to time have an interest, together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing (the "**Account Rights**").

Regardless of any previous authorisations or instructions which we may have given you and without making any enquiry as to the justification for the matter, we irrevocably authorise and instruct you:

- (a) to disclose to the Authority any information relating to us, the Insurance Proceeds Account and the Account Rights which the Authority may from time to time request you to disclose to it;
- (b) to hold the Account Rights to the order of the Authority, and, other than as authorised by the Authority, not permit the whole or any part of:
 - (i) the monies standing to the credit of the Insurance Proceeds Account to be withdrawn by us; or
 - (ii) any other amounts payable pursuant to the Account Rights to be paid to us;
- (c) to pay or release all or any part of the monies standing to the credit of the Insurance Proceeds Account and any other amounts payable pursuant to the Account Rights, and generally to act in relation to the Account Rights, only in accordance with the written instructions of the Authority; and
- (d) to comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the Insurance Proceeds Account or the Account Rights which you may receive from the Authority.

The instructions and authorisations contained in this letter may not be revoked or varied without the written agreement of the Authority.

This letter is governed by English law.

Please acknowledge and confirm the above to the Authority in the form attached with a copy to us.

Yours faithfully,

for and on behalf of Birmingham Highways Limited

Copy to: the Authority

Part 2: Form of acknowledgement and confirmation from Account Bank

To: Birmingham City Council (the "Authority")

[address]

Attention: Assistant Director, Highways and Infrastructure

Date: [♦]

Dear Sirs

Account number [REDACTED] 005, sort code [REDACTED] (the "Insurance Proceeds Account")

We acknowledge receipt of a notice (the "Notice") from Birmingham Highways Limited (the "Chargor") dated [♦] that under the Charge referred to in the Notice it has charged by way of fixed charge in favour of the Authority all monies at any time standing to the credit of the Insurance Proceeds Account which are at any time owned by it, or in which it from time to time has an interest, together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing (the "Account Rights").

We confirm that:

- (e) we accept the authorisations and instructions contained in the Notice and we undertake to comply with its terms;
- (f) other than in respect of a fixed and floating security agreement dated 29 June 2019 between the Chargor and the Authority, we have not received notice of:
 - (i) any other assignment of or encumbrance over the Insurance Proceeds Account or the Account Rights; or
 - (ii) any interest, claim or right in or to either of them by any third party,and we shall promptly give you notice of any such actual, potential or asserted assignment, encumbrance, interest, claim or right of which we become aware;
- (g) we do not, and will not, hold or otherwise have the benefit of any security interest or other encumbrance over the Insurance Proceeds Account or the Account Rights; and
- (h) in our capacity as Account Bank, we will not exercise any right of combination, consolidation, merger or set-off which we may have in respect of the Account Rights.

We are aware that you are relying on this letter in connection with your rights to the Insurance Proceeds Account and the Account Rights.

This letter is governed by English law.

Yours faithfully

for and on behalf of Lloyds Bank plc as Account Bank

copy: Birmingham Highways Limited

Unit G1 Ash Tree Court, Nottingham Business Park, Nottingham, England, NG8 6PY

SCHEDULE 2: ADDITIONAL ASSIGNED AGREEMENTS


1. the Interim Services Contract and any ancillary agreements in connection with the Interim Services Contract;
2. the IRW Design Agreement;
3. any IRW Works Agreement (including the Tarmac Surfacing Subcontract);
4. any performance bond, retention bond and/or similar security provided to the Chargor securing the obligations of any party to any Assigned Agreement; and
5. each guarantee granted in favour of the Chargor guaranteeing the obligations of any party to any Assigned Agreement

EXECUTION PAGE


THE CHARGOR

Executed as a deed by **BIRMINGHAM**)
HIGHWAYS LIMITED acting by:)
)

Director Robert Wiggins

Witness signature: 

Witness name: Tim White

Witness address: 

Address: Unit G1 Ash Tree Court
Nottingham Business Park, Nottingham
England, NG8 6PY

Attention: Richard Knight, Kashif Rahuf,
Chris Tanner, Amit Thakrar and
Bob Wiggins

THE AUTHORITY

THE Common Seal of **BIRMINGHAM**)
CITY COUNCIL was hereunto affixed in the)
presence of)
)

Authorised Signatory

Address: Council House
Victoria Square
Birmingham B1 1BB

Facsimile No: 0121 303 6599

Attention: Assistant Director
Highways and Infrastructure

