

DATED 14th February 2001

- (1) RAILTRACK PLC
(2) MIDLAND MAIN LINE LIMITED
and
(3) DERBY CITY COUNCIL

FUNDING AGREEMENT

Relating to a footbridge and car park land at
Derby Midland Railway Station

ENGINEERING DESIGN
DATE RECEIVED

19 JAN 2005

REGISTRATION No.

REES & FRERES
1 The Sanctuary
Westminster
London SW1P 3JT

Tel: (020) 7222 5381
Fax: (020) 7222 4646
Ref: KEW/500000304

THIS AGREEMENT is made on the 14th day of February 2001

BETWEEN:

- (1) **RAILTRACK PLC** whose registered office is situate at Railtrack House Euston Square London NW1 2EE (“**Railtrack**”)
- (2) **MIDLAND MAIN LINE LIMITED** whose registered office is situate at 75 Davies Street London W1 (“**MML**”) and
- (3) **DERBY CITY COUNCIL** of the Council House, Derby DE1 2FS (“**the Council**”)

WHEREAS:

- (1) Railtrack is the owner for an estate in fee simple in possession and free from encumbrances of the land comprising (inter alia) both the site of the Footbridge and part of the Site of the Station Car Park (the “**Railtrack Land**”)
- (2) MML is lessee of that part of the Railtrack Land shown verged blue on the attached plan No.2 for the term granted by the Lease.
- (3) The Council is the owner for an estate in fee simple in possession of the land shown coloured red on the attached plan No.1
- (4) The parties hereto have agreed to enter into this Agreement in order to finance the Scheme and to observe their respective obligations as herein set out

1. DEFINITIONS AND INTERPRETATION

1.1. **IN THIS AGREEMENT** (including the Recitals) where the context so requires or admits the following words or expressions shall have the following meanings:-

- | | |
|-----------------------------------|--|
| 1.1.1. “Actual Cost of the Works” | The total cost of the Scheme paid by Railtrack including, without limitation, the net cost of the land transfers pursuant to the Land Exchange Agreement and any |
|-----------------------------------|--|

costs properly and reasonably expended by Railtrack professionals and being of a type taken into account in calculating the Estimated Costs of the Works

- 1.1.2. "MML Capital Funding Contribution" The sum of £250,000
- 1.1.3. "Council Capital Funding Contribution" The sum of £200,000 (subject to variation pursuant to clause 5.2)
- 1.1.4. "Project Board" Has the meaning given in clause 6.1
- 1.1.5. "Design Costs" In-house design costs in the sum of £70,000 incurred by the Council
- 1.1.6. "Future Design Costs" In-house design fees incurred by the Council after the date hereof (plus Value Added Tax if applicable).
- 1.1.7. "Council's Additional Capital Contribution" Means one third of the amount by which the Actual Cost of the Works exceeds the Estimated Cost of the Works
- 1.1.8. "MML's Additional Capital Contribution" Means one third of the amount by which the Actual Cost of the Works exceeds the Estimated Cost of the Works
- 1.1.9. "Works" The works to be carried out by Railtrack or which it is under an obligation to procure shall be carried out, to implement the Scheme
- 1.1.10. "Estimated Cost of the Works" The estimated cost of the Scheme as at the date hereof, being one million, seven hundred and thirty-six thousand pounds (£1,736,000), exclusive of value added tax

payable by Railtrack in connection with the Works, and for the avoidance of doubt this excludes the Design Costs but includes, without limitation, the net costs of anticipated land transfers pursuant to the Land Exchange Agreement and certain costs to be expended by Railtrack professionals

1.1.11. "MML Licence"

The licence granted by MML in favour of Railtrack for the purpose of carrying out the Works dated 2nd January 2001 and a copy of which is annexed to this Agreement as the Second Schedule

1.1.12. "Council Licence"

The licence which has been granted by the Council in favour of Railtrack for the purpose of carrying out the Works

1.1.13. "Lease"

A lease of Derby Midland Station dated 28th April 1996 made between (1) Railtrack and (2) MML

1.1.14. "Relevant Date"

31st December 2000

1.1.15. "Footbridge"

The overbridge which currently exists in part and which is being extended as part of the Works and which is shown (as extended) hatched green on plan No.1 and reference to the "Footbridge" shall mean the overbridge as extended

1.1.16. "the Redundant
Footbridge"

The redundant overbridge crossing the railway on part of Railtrack's land and which bridge is shown coloured yellow on plan No.1 and which subject to the

- procurement of any necessary consents, is to be removed in part by Railtrack as part of the Works
- 1.1.17. "Site of the Station Car Park" The car park to be created at Derby Station and in respect of which part of the Works will be carried out
- 1.1.18. "Scheme" a scheme of the Works as set out in the First Schedule and as varied from time to time
- 1.1.19. "Supplemental Franchise Lease" A lease supplemental to the Lease in such form as shall be agreed between Railtrack and MML
- 1.1.20. "1993 Act" The Railways Act 1993
- 1.1.21. "Land Exchange Agreement" Means an agreement for the exchange of land at Pride Park Derby made between Railtrack and the Council contemporaneously herewith
- 1.1.22. "Works Building Period" the period commencing on the date hereof and expiring on 31st December 2000
- 1.1.23. "Practical Completion" practical completion (evidenced so far as reasonably practicable by the issue of a certificate of practical completion under the relevant contract) of the Works so that the Footbridge and the Site of the Station Car Park are open to the general public for use respectively as a footbridge and a station car park

1.1.25 "Office of the Rail Regulator" has the meaning ascribed to it in the 1993 Act

- 1.2. Reference in this Agreement to any clause sub-clause schedule or Appendix without further designation shall (unless the context otherwise requires) be a reference to the clause or sub-clause of or schedule or Appendix to this Agreement so numbered.
- 1.3. Unless otherwise specified where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed but may only be given in writing and may be validly obtained only prior to the act or event to which it applies.

THIS DEED WITNESSES as follows:-

2. MML'S OBLIGATIONS

- 2.1. In consideration of the covenants in this Agreement by the other parties MML covenants with the other parties to this Agreement to pay the MML Capital Funding Contribution to Railtrack as follows:-
- (a) £200,000 paid on or before the date of this Agreement (receipt of which Railtrack acknowledges);
 - (b) £50,000 upon Practical Completion
- 2.2. To negotiate in good faith and with all due diligence with Railtrack with a view to agreeing a Supplemental Franchise Lease and entering into it as soon as reasonably practicable after Practical Completion. Amongst its other terms and conditions, the Supplemental Franchise Lease shall include the following:-

- (a) the Supplemental Franchise Lease shall take effect as at Practical Completion
- (b) the property to be incorporated into the Lease shall comprise the extension to the Footbridge resulting from the Works and the Site of the Station Car Park; and
- (c) subject to approval by the Office of the Rail Regulator the Long Term Charge (as defined in the Lease) shall increase by £132,458, per annum subject to review in accordance with the provisions of the Lease or in the absence of such approval such other sum or sums as shall be agreed between Railtrack and MML having regard to the guidelines on Adjustments to Station Long Term Charges entitled A Fair Deal and the Station Access General Approval (Franchised Station) (Long Term Charge) 1998 and the Actual Cost of the Works and as is/are approved by the Office of the Rail Regulator

As soon as reasonably practicable following agreement between Railtrack and MML on the draft form of the Supplemental Lease Variation, Railtrack and MML shall use their respective reasonable endeavours to implement the appropriate procedures under the station access conditions applicable to the lease and MML shall apply to the Shadow Strategic Rail Authority for its consent (as required under MML's franchising agreement) to MML entering into the Supplemental Lease Variation, and MML shall pursue its application with all due diligence with a view to securing such consent as soon as reasonably practicable following the submission of such application

3. COUNCIL'S OBLIGATIONS

In consideration of the covenants in this Agreement by the other parties the Council hereby covenants with the other parties to this Agreement:-

- 3.1. To pay the Council Capital Funding Contribution to Railtrack not less than 7 days before commencement of the Works

- 3.2. To waive its Design Costs PROVIDED that (and the parties hereby agree) if the Council is requested by Railtrack and/or MML in writing and agreed by the Project Board to carry out any design work after the date hereof in relation to the Scheme then the Council shall carry out such work and shall be entitled to be paid by Railtrack the resulting proper and reasonable Future Design Costs first approved by the Project Board. Any Future Design Costs so paid will comprise part of the cost of the Scheme and will be added to the Actual Cost of the Works and be recoverable as such in accordance with clause 5. It is agreed that since the date when the Council calculated the Design Costs and up to 31st March 2000 £33,000 plus VAT (if applicable) of additional design work has been carried out by the Council which shall be paid by Railtrack and will constitute part of the cost of the Scheme and be added to the Actual Cost of the Works accordingly
- 3.3. The Council covenants to Railtrack and MML to enter into immediately following the execution of this Agreement collateral agreements with each of them in an agreed form in respect of the design work which is the subject of the Design Costs or which is or will be the subject of the Future Design Costs

4. RAILTRACK OBLIGATIONS

In consideration of the covenants in this Agreement by the Council and MML Railtrack hereby covenants with the other parties to this Agreement:-

- 4.1. to use all reasonable endeavours to procure the carrying out and Practical Completion of the Works by the Relevant Date
- 4.2. to give to MML and the Council not less than 7 days' notice in writing before commencing the Works
- 4.3. to pay to the appropriate third party (including the main contractor) the costs of the Works as they fall due for payment in accordance with and subject to any contract entered into between Railtrack and such third party
- 4.4. to let and manage the contract for the Works as principal, and not as agent for MML or the Council

- 4.5. not to make or agree to any material alteration to the contract for the Works or the scope of the Scheme, or release the main contractor from any of its obligations thereunder, without the prior approval of the Project Board acting unanimously (and on the basis that the representative of each party is entitled to act in his absolute discretion with regard thereto) (and for the foregoing purpose, in assessing materially due regard shall be paid to the likely effects of any such alteration on the future operation of the Scheme with effect from Practical Completion)
- 4.6. to enforce with all due diligence any rights or remedies which Railtrack may have arising under the contract for the Works and to promptly lay out the net amount recovered as a result of such enforcement in rectifying the relevant default or making good the damages, losses or liabilities in respect of which such sum is recovered
- 4.7. to apply for all necessary consents for the removal of the Redundant Footbridge and to pursue such applications with all due diligence with a view to securing such consents as soon as reasonably practicable after the date hereof (provided that this clause shall not be taken as acceptance or an acknowledgement on the part of Railtrack that it has any existing liability or obligations apart from the provisions of this Agreement with regard to the Redundant Footbridge). MML covenants to Railtrack to lend all reasonable assistance to and co-operate with Railtrack in the submission and pursuit of such applications and not to obstruct the removal of the Redundant Footbridge
- 4.8. Subject to clause 5.1, in the event that the Actual Cost of the Works is less than the Estimated Cost of the Works then Railtrack, forthwith upon the whole or any part of the shortfall being ascertained, shall pay to each of MML and the Council a sum equal to one third of such shortfall. To the extent that such shortfall exceeds £600,000 such adjustments shall be made to the terms of this Agreement as are fair and reasonable to take account of such shortfall

5. FURTHER COST SHARING PROVISIONS

- 5.1. If as a result of the reception structure of the Footbridge being unable to be located as provided for in the Scheme as at the date hereof, it is necessary that

the Scheme is altered to a material extent (and in assessing materiality for this purpose due regard shall be paid to the likely effects of any such alteration on the future operation of the Scheme with effect from Practical Completion) and the Project Board acting unanimously (and on the basis that the representative of each party is entitled to act in his absolute discretion with regard thereto) does not give its approval to such alteration then the Scheme shall not proceed and Railtrack shall take all reasonable steps to terminate the Works on the best terms reasonably practicable in the circumstances. The cost of the Works incurred up to the time of such termination and any sums payable to the main contractor as a result of such termination shall be borne equally by the parties PROVIDED THAT in the case of MML and the Council their respective contributions towards such costs shall not exceed respectively the MML Capital Funding Contribution and the Council Capital Funding Contribution (with appropriate reimbursement by Railtrack to the extent that any earlier payments in respect of such Capital Funding Contributions made by a relevant party exceeds the amount of that party's contribution in accordance with this clause 5.1)

- 5.2. Railtrack shall provide the Project Board with all such information as is in its possession from time to time or as the Project Board may reasonably require in order to make an informed assessment of the cause of any excess of the Actual Cost of the Works over the Estimated Cost of the Works and as to the question of whether the excess should be authorised or not
- 5.3. Subject to clause 5.4 if the Actual Cost of the Works exceeds the Estimated Cost of the Works and such excess is approved by the Project Board in accordance with clause 6.8(c) then each of MML and the Council shall pay to Railtrack respectively the MML Additional Capital Contribution and the Council Additional Capital Contribution. Payment thereof shall be made within 14 days following the provision of evidence to the reasonable satisfaction of the Project Board that the excess has been incurred and paid by Railtrack

- 5.4. Neither of MML or the Council shall be obliged to pay to Railtrack by way of Additional Capital Contribution more than £200,000 unless the Project Board acting unanimously (and on the basis that the representative of each party is entitled to act in his absolute discretion with regard thereto) approves the Actual Costs of the Works exceeding the Estimated Cost of the Works to the extent that such excess would result in the Additional Capital Contribution of each of the Council and MML exceeding £200,000
- 5.5. If either of the Council or MML defaults in the payment of its Capital Contribution or its Additional Capital Contribution on the due date therefor then Railtrack shall be entitled to receive from the defaulting party interest on the amount overdue from time to time on a daily basis until payment is received by Railtrack at a rate of 2 per cent per annum above the base lending rate of HSBC Bank plc from time to time in force

6. PROJECT BOARD'S OBLIGATIONS

- 6.1. Forthwith upon the signing of this Agreement (to the extent that they have not already done so) each of the parties shall appoint a representative to a committee comprising such representatives (the "Project Board"). Each party may at any time remove its representative from the Project Board and appoint a replacement. The party appointing such replacement shall immediately give to the other parties notice in writing of such appointment together with appropriate details of his address, telephone and facsimile numbers for service of notices. Any representative unable to attend any meeting of the Project Board shall be entitled to send an alternate in his place
- 6.2. Railtrack's representative on the Project Board shall be the chairman thereof, but he shall not have any casting vote
- 6.3. Except as otherwise provided in this Agreement, decisions of the Project Board shall be made by majority voting. Unless it is expressly stated in this Agreement that a representative of a party on the Project Board may act in his

absolute discretion, each party shall procure that its representative shall act in a manner which is consistent with clauses 1.3 and 10

- 6.4. Any representative may convene a meeting of the Project Board at any time on giving not less than 3 working days' written notice thereof, except that in the case of an emergency not less than 1 working day's notice shall be sufficient. Railtrack's representative convene a meeting at not less than monthly intervals. Each such notice shall specify the time and place of the meeting (which shall be in Derby unless otherwise agreed) and the general nature of the business to be transacted PROVIDED THAT where such business includes any matter which requires the approval of the Project Board as envisaged in any of clauses 4.5, 5.1, 5.3 or 5.4 then such notice shall expressly identify the relevant item of business
- 6.5. The quorum for a meeting of the Project Board shall be all three representatives being present thereat. If such a quorum is not present within half an hour from the time appointed for the meeting but at least two representatives are present then they shall adjourn the meeting to such time and place as they may determine being not less than two complete working days thereafter. They shall promptly give notice of the adjournment to the absent representative. If at such adjourned meeting any representative is not present then the other two representatives shall further adjourn the meeting in accordance with the foregoing provisions of this clause. Subject to clause 6.6, if at the further adjourned meeting any representative is not present then the two representatives of the other parties present at the meeting shall constitute a quorum and any unanimous decision of those two representatives shall constitute a unanimous decision of the Project Board for the purposes of any of clauses 4.5, 5.1 or 5.4 provided such item of business was duly identified in the notice convening the meeting and any adjournment thereof. Any decision so taken shall be binding upon the party whose representative has been absent as envisaged in this clause
- 6.6. In respect of any item of business to be carried out at a meeting of the Project Board, including, without limitation, any of the matters requiring a unanimous decision pursuant to any of clauses 4.5, 5.1 and 5.4 any representative of a

party may cast his vote in respect of that matter by giving written notice thereof to the other representatives prior to the meeting in question and the representative casting his vote in such manner shall for the purposes of clause 6.5 be deemed to have been present at that meeting for that item of business. If a representative intends to be present at a meeting of the Project Board but due to any event or circumstance beyond his reasonable control he is prevented from doing so or such event or circumstance constitutes a reasonable excuse for his absence (and he gives notice thereof as soon as reasonably practicable following the occurrence of the event or circumstance in question) then the meeting shall be adjourned in accordance with clause 6.5

- 6.7. The Project Board shall remain in existence until Practical Completion or until such longer period as the parties shall agree
- 6.8. Without prejudice to Railtrack's obligations under clause 4, the role and powers of the Project Board are as follows:-
 - (a) to receive reports from Railtrack as to the progress of the Works;
 - (b) to review the accruing level of the Actual Cost of the Works as compared with the Estimated Cost of the Works;
 - (c) to approve or refuse the cost of the Works to be incurred exceeding the Estimated Cost of the Works;
 - (d) to approve or refuse any variations to the scope of the Scheme (including, without limitation, any variation in the circumstances envisaged in clause 5.1) and the resulting alterations in the cost thereof;
 - (e) to approve or refuse any matter as referred to in clause 4.5; and
 - (f) to conduct any other business which is considered to be reasonably incidental or reasonably necessary to the timely, efficient and economical carrying out of the Works and implementation of the Scheme

7. RAILTRACK'S AND MML'S COVENANT WITH REGARD TO THE FOOTBRIDGE

7.1. In consideration of the Council entering into this agreement MML hereby covenants with the Council to exercise all its powers from time to time as tenant of the Footbridge so as:-

- (a) to ensure that in respect of each day when Derby Midland Station ("the Station") is open and is available for access to the public for rail travel purposes that the Footbridge is open for use by the public prior to the first passenger train in the morning arriving at the Station continually up to and until after the last passenger train in the evening has left the Station except on Christmas Day and Boxing day and save in cases of emergency PROVIDED THAT in the event that MML either acting on advice from the police or where it reasonably apprehends that there may be concerns over public order or where temporary closure of the Footbridge or any part is required for safety purposes or in order to carry out essential works of safety maintenance repair and renewal of the Footbridge or any part, the Footbridge or any part thereof may be closed

PROVIDED THAT nothing herein is intended to or shall create a public right of way over the Footbridge or any part thereof

- (b) to ensure that the closures of the Footbridge pursuant to paragraph (a) above are for as short a period as is reasonably practicable and that the Footbridge is re-opened as soon as is reasonably practicable

7.2. In consideration of the Council entering into this Agreement and subject to compliance by MML with its obligations under clause 7.1 Railtrack hereby covenants with the Council as follows:

- (a) to ensure that in respect of each day when the Station is open and is available generally for access to the public for rail travel purposes that the Footbridge is open for use by the public prior to the first passenger train in the morning arriving at the Station continually up to and until after the last passenger train in the evening has left the Station except on Christmas Day and Boxing Day

and save in cases of emergency PROVIDED THAT in the event that Railtrack either acting on advice from the police or where it reasonably apprehends that there may be concerns over public order or where temporary closure of the Footbridge or any part is required for safety purposes or in order to carry out essential works of safety maintenance repair and renewal of the Footbridge or any part, the Footbridge or any part thereof may be closed

PROVIDED THAT (i) nothing herein is intended to or shall create a public right of way over the Footbridge or any part thereof; (ii) Railtrack shall be entitled as against the Council to close the Footbridge either temporarily or permanently if required to do so by its statutory obligations under the 1993 Act and/or H.M. Railway Inspectorate/Health & Safety Executive; and (iii) nothing in this clause 7.2 shall have the effect as between Railtrack and MML of interfering with or varying the rights, obligations, powers, remedies and privileges of MML under the Lease (as varied by the Supplemental Franchise Lease)

- (b) to ensure that the closures of the Footbridge pursuant to paragraph (a) above are for as short a period as is reasonably practicable and that the Footbridge is re-opened as soon as is reasonably practicable

PROVIDED THAT in the case of a permanent closure as envisaged in subparagraph (ii) of the proviso to paragraph (a) above Railtrack shall use its reasonable endeavours to secure a re-opening of the Footbridge if reasonably practicable

8. **FAST TRACK DISPUTES PROCEDURE**

- 8.1. If any dispute or difference shall arise between any of the parties to this Agreement as to their respective rights duties and obligations to be performed under this Agreement up to and including Practical Completion any party at any time by giving notice to the others ("Fast Track Dispute Notice") may refer the dispute for determination to a third party who shall be a partner or director in a firm of chartered surveyors or civil engineers of not less than ten (10) years qualification or such other suitably qualified person as the parties

may agree ("the Expert"). For the avoidance of doubt, the provisions of this clause 8 shall not apply to any dispute or difference arising between any of the parties under any other agreement between them including any such agreement referred to herein nor to the settlement of the terms of the Supplemental Lease Variation

- 8.2. The Expert shall be appointed by agreement between the parties or if within three working days after service of the Fast Track Dispute Notice they are unable to agree then on the application of any of the parties by the President for the time being of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers or the duly appointed deputy of such President or any other person authorised by him to make appointments on his behalf
- 8.3. The Expert shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the parties hereto
- 8.4. The parties shall be obliged to submit to each other and to the Expert their respective views in connection with the matter in dispute in writing within five working days after the Expert is appointed and the Expert shall be obliged to produce his determination within ten working days thereafter
- 8.5. Following the Experts determination the plans and other documents the subject of the dispute shall be revised (if at all) in accordance with the determination of the Expert whereupon the same shall comprise part of this Agreement to the extent of their subject matter (but not further or otherwise) or if appropriate the decision of the Expert as to whether any party is in breach of its obligations in respect of this Agreement shall be binding on the parties
- 8.6. The cost of appointing the Expert and his costs and disbursements in connection with his duties under this clause shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination equally between the parties
- 8.7. Where the Expert dies refuses to act or is unable to act or fails to proceed with reasonable speed to discharge his duties the procedure contained in this

Clause 8 for the appointment of the Expert may be repeated as often as necessary until a decision is obtained

9. VALUE ADDED TAX

So far as concerns Value Added Tax:-

9.1 where under this Agreement any party covenants to pay an amount of money such amount shall be regarded as being exclusive of Value Added Tax (without prejudice to clause 9.2 below)

9.2 MML's and/or the Council's and/or Railtrack's covenants under this Agreement shall be construed as requiring payment of Value Added Tax chargeable in respect of any payment made by or taxable supply received by MML and/or Railtrack and/or the Council under the terms of or in connection with this Agreement

PROVIDED that the Council shall not be obliged to pay any Value Added Tax unless it has received a valid VAT invoice therefor addressed to the Council which enables the Council to recover the VAT as input tax

10 GOOD FAITH

The parties to this Agreement shall each act towards the other with good faith and shall each perform its duties and obligations pursuant to this Agreement in a diligent and efficient manner with due regard to the interests of the other and in considering any applications for approvals in accordance with the terms of this Agreement the parties shall consider such applications as expeditiously as reasonably practicable without prejudice at all times to the safe operation of the Railway and the safety of Railtrack's and MML's respective employees customers and tenants and licensees which shall be of paramount consideration

11 LICENCES

The Council and MML shall each grant to Railtrack the Council Licence and the MML Licence (respectively) (save where granted prior to the date hereof)

SECOND SCHEDULE

DATED 2nd January 2001

R.S.F.

(1) MIDLAND MAIN LINE LIMITED

(2) RAILTRACK PLC

LICENCE

EDWARDS GELDARD
St Michael's Court
St Michael's Lane
Derby DE1 3HQ

Tel: 01332 331631
Fax: 01332 294295

THIS LICENCE is made on the

Second day of January 2001

BETWEEN

(1) MIDLAND MAIN LINE LIMITED (Company Number 3007934) whose registered office is at 75 Davies Street, London, W1Y 1FA ("Midland")

(2) RAILTRACK PLC (Company Number 2904587) whose registered office is at Railtrack House, Euston Square, London, NW1 2EE ("Railtrack")

DEFINITIONS

In this Licence the following expressions shall have the following meanings:-

"the Agreement"	the Agreement dated 2000 and made between Railtrack (1) Derby City Council (2) and Midland (3)
"the Licensed Area"	land at Derby Station leased to Midland by Railtrack <i>upon which Railtrack are to carry out works in connection with the permitted Use</i>
"the Licence Fee"	£1.00 plus VAT
"the Permitted Use"	the construction of an extension to the Footbridge and the removal of the Redundant Footbridge both as defined in the Agreement
"the Licence Period"	the period commencing on and including the date hereof and expiring on Practical Completion (as defined in the Agreement) or the 31 st December 2000 whichever is the earlier subject to the provisions for earlier termination contained in clause 5.1

OPERATIVE PART

1. Permission Granted

Midland grants to Railtrack its employees agents and contractors at all times with or without vehicles equipment and plant the right to enter upon the Licensed Area for the purpose of the Permitted Use for the Licence Period in common with Midland and all others authorised by Midland.

2. Licence Fee

In consideration of the grant of this Licence Railtrack shall pay to Midland the Licence Fee in advance on the date hereof.

3. Obligations of Railtrack

In further consideration of the grant of this Licence Railtrack agrees with Midland that Railtrack will observe and perform the following provisions:-

- 3.1 Not to do or permit to be done in the Licensed Area anything which causes a legal nuisance save that this shall not prevent the use of the Licensed Area for the Permitted Use.
- 3.2 Not to use the Licensed Area other than for the Permitted Use.
- 3.3 Not to charge assign hold in trust for any person or otherwise share or part with possession of the whole or any part of the Licensed Area or with the benefit of this Licence save that this shall not prevent Railtrack's agents or contractors from entering the Licensed Area.
- 3.4 To pay for (and to indemnify Midland against the cost of) all gas, electricity, water, drainage and telephone services used by Railtrack at the Licensed Area during the continuance of this Licence and where such services are assessed on the Licensed Area and other premises of Railtrack to pay to Midland within 14 days of written demand a fair and proper proportion according to use of the cost of those services following reasonable written or documentary evidence being provided to Railtrack of their being incurred.
- 3.5 To pay (and to indemnify Midland in respect of) all business rates payable in respect of the Licensed Area during the continuance of this Licence.
- 3.6 To indemnify and keep Midland fully indemnified against all actions damages liabilities costs claims and expenses howsoever arising out of the exercise of the

rights granted hereunder and/or the carrying out of works upon the Licensed Area including any breach of any statute bye-law or regulation or any condition imposed by any permission licence or consent and/or any neglect or omission to comply with such matters and/or any claims made by any neighbouring or adjoining owner or occupier or member of the public or any other person save where such action damage liability cost claim or expense arises as a result of any act or omission of Midland its employees or agents.

4. **Midland's Liability**

Midland shall not be responsible for any loss or damage which may be done to or suffered by Railtrack or its employees agents visitors or invitees or the property of Railtrack or of any such person in or about the Licensed Area otherwise than as a result of any negligent act or omission of Midland its agents and employees.

5. **Termination**

The rights granted in clause 2 of this Licence are to determine – without prejudice to Midland's rights in respect of any breach of the obligations contained in clause 3 of this Licence –

- 5.1 On reasonable written notice given by Midland at any time following any breach by Railtrack of its obligations contained in clause 3 of this Licence following a reasonable period being given to Railtrack to remedy such liability having expired.
- 5.2 On not less than 10 working days' notice given by Railtrack to Midland.
- 5.3 On the expiration of the Licence Period.

SIGNED for and on behalf of
MIDLAND MAIN LINE LIMITED



Director

SIGNED for and on behalf of
RAILTRACK PLC



Director

12 **THIRD PARTY RIGHTS**

The parties to this Agreement do not intend that any term of this Agreement is enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement

IN WITNESS of which the parties hereto have executed this agreement as a deed by affixing their respective Common Seals the day and year first above written.

FIRST SCHEDULE

Works

1. Works as detailed in the specification which has been agreed between the parties and which are more briefly described in the Approvals in principle
2. Removal in part of the Redundant Footbridge

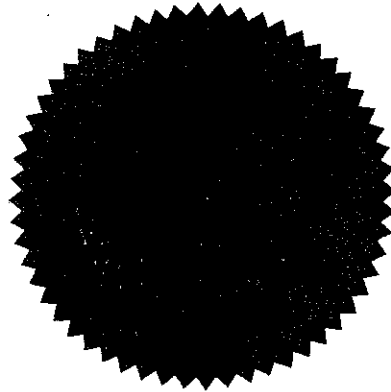
SECOND SCHEDULE

MML Licence

The **COMMON SEAL**
of **DERBY CITY COUNCIL** was hereunto
affixed in the presence of:



Director of Corporate Services



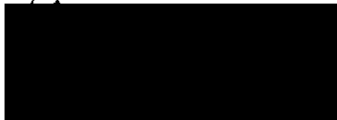
14791

The **COMMON SEAL**
of **RAILTRACK PLC** was hereunto
affixed in the presence of:



Authorized signatory, as approved
of RAILTRACK PLC

The **COMMON SEAL**
of **MIDLAND MAIN LINE LIMITED** was
hereunto affixed in the presence of:



Director



Director/Secretary

