

Dated 2020

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK**

- and -

**BL CW HOLDINGS LIMITED**

- and -

**UNION PROPERTY HOLDINGS (LONDON) LIMITED**

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**FIRST MODIFICATION AGREEMENT**
pursuant to Section 106A of the Town and Country Planning Act 1990
in relation to
land bounded by Lower Road (West), Redriff Road (South), Quebec Way (East), Surrey
Quays Road and Canada Water Dock (North) and site at Roberts Close, London
(known as Canada Water)
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Herbert Smith Freehills LLP

**THIS DEED** is made the             day of                          Two Thousand and Twenty

**B E T W E E N**

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of 160 Tooley Street, London, SE1 2TZ (the **"Council"**);
2. **BL CW HOLDINGS LIMITED** (company registration number 10398435) whose registered office is situated at York House, 45 Seymour Street, London, W1H 7LX (the **"Developer"**); and
3. **UNION PROPERTY HOLDINGS (LONDON) LIMITED** (company registration number 00423829) whose registered office is situated at York House, 45 Seymour Street, London, W1H 7LX (the **"Guarantor"**).

**W H E R E A S:**

1. The Council is the local planning authority for the area within which the Site (as defined in the Principal Agreement) is located and by whom the obligations in the Principal Agreement are enforceable.
2. On 28 May 2020 the Council, the Developer, TfL and the Guarantor entered into a Section 106 agreement (the **"Principal Agreement"**) comprising planning obligations relating to the comprehensive, phased, mixed use development of the Site pursuant to the Planning Permission (as defined in the Principal Agreement) granted by the Council on 29 May 2020.
3. The Council is the freehold owner of those parts of the Site shown hatched green on the Site Plan registered at the Land Registry under Title Numbers TGL340140, TGL339299, SGL391152, TGL298689, TGL130780, TGL136102 and SGL39254.
4. The Developer is the freehold owner of those parts of the Site shown shaded grey on the Freehold and Leasehold Interests Plan registered at the Land Registry under Title Numbers TGL147500, TGL93274, TGL185589, TGL359834, TGL106589 and TGL128775 and is the leasehold owner of those parts of the Site shown shaded green on the Freehold and Leasehold Interests Plan registered at the Land Registry under Title Numbers TGL22620, TGL59022, TGL135706, SGL460523, SGL480198 and SGL491092.
5. TfL entered into the Principal Agreement in its capacity as a statutory public transport service provider and as the highway authority responsible for certain roads within the vicinity of the Site and by whom the TfL Obligations (as defined in the Principal Agreement) may be enforced.
6. The Guarantor agreed to guarantee the performance of the Developer’s obligations contained in the Principal Agreement on the terms and subject to the provisions set out in Schedule 28 to the Principal Agreement.
7. The Council, the Developer and the Guarantor have agreed to modify the Principal Agreement in accordance with the terms set out in this Deed.

**NOW THIS DEED WITNESSES:**

# Interpretation

Unless the context otherwise requires, the definitions used in this Deed shall have the same meanings prescribed by the Principal Agreement.

Where in this Deed reference is made to a clause, paragraph, Schedule, recital or annex it is to a clause, paragraph, Schedule, recital or annex to this Deed except where otherwise provided in this Deed or where the context otherwise requires.

A reference in this Deed to any statute, bye-laws, regulations, orders and delegated legislation includes any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or modifying it from time to time and for the time being in force.

Headings in this Deed are for reference purposes only and shall not be taken into account in its construction or interpretation.

# Legal Effect

This Deed is supplemental to the Principal Agreement and is made pursuant to section 106A(1)(a) and section 106A(2) of the 1990 Act.

The obligations, covenants and conditions contained in the Principal Agreement as modified by this Deed shall be enforceable by the Council in accordance with the terms of the Principal Agreement as modified by this Deed.

Should any provisions in this Deed in whole or in part be found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed or of the Principal Agreement as modified by this Deed.

This Deed shall come into effect on the date of this Deed.

# Modification of the Principal Agreement

The Council, the Developer and the Guarantor agree that on the date of this Deed the Principal Agreement shall be modified as set out in the Schedule to this Deed.

Save as modified by this Deed, the obligations, covenants, conditions and undertakings contained within the Principal Agreement shall subject to clause 8 remain in full force and effect.

The Council, the Developer and the Guarantor agree that no TfL Obligation is modified by this Deed and that pursuant to clause 7.2 of the Principal Agreement, the approval or consent of TfL for the modifications of the Principal Agreement effected by this Deed is therefore not required.

# Registration

## As soon as reasonably practicable after the completion of this Deed, the Developer shall make an application to the Land Registry for entries relating to this Deed to be made in the charges register(s) of the Title Numbers referred to in recital (D) above.

## If the Developer fails to make the application as referred to in clause 4.1, the Council shall (without prejudice to any other right) be entitled to register this Deed and recover the expenses incurred in doing so from the Developer and the Developer covenants with the Council to do or concur in doing all things necessary to enable the said entries to be made.

The covenants on behalf of the Parties to be observed and performed under the Principal Agreement as modified by this Deed shall be treated as Local Land Charges and this Deed shall be registered in the Register of Local Land Charges for the purposes of the Local Land Charges Act 1975.

# Legal Costs

The Developer shall pay on the date of this Deed to the Council its reasonable legal costs properly incurred in the negotiation and completion of this Deed up to the sum of £[ ] (to the extent not already paid).

# Contracts (Rights of Third Parties) Act 1999

A person who is not named in this Deed (save for successors in title or assigns to the parties to this Deed and any statutory successor to the Council in respect of the statutory functions to which the Principal Agreement as modified by this Deed relates) does not have any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999.

# Miscellaneous

The construction, validity and performance of this Deed shall be governed by and construed in accordance with English law and shall be subject to the jurisdiction of the English Courts.

Nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council as local planning authority and/or local highway authority (as the case may be) under private or public statutes, bye-laws, orders and regulations and the same may be as fully effectively exercised as if it were not a party to this Deed.

The Council, the Developer and the Guarantor shall each endorse their respective copies of the Principal Agreement with the following: *"This Agreement has been varied by a First Modification Agreement dated the day of                        2020 between (1) The Mayor and Burgesses of the London Borough of Southwark (2) BL CW Holdings Limited and (3) Union Property Holdings (London) Limited"* with the date of this Deed inserted in the appropriate blank spaces.

# Satisfaction of Obligations

Where any obligation contained in the Principal Agreement has been satisfied and/or complied with as a matter of fact at the date of this Deed, any such obligation shall be deemed to be satisfied and/or complied with for the purposes of the Principal Agreement as modified by this Deed.

# Community Infrastructure Levy

The Parties are satisfied that the planning obligations given by the Developer in Schedules 2 to 24 (inclusive) to the Principal Agreement as modified by this Deed accord with the three statutory tests set out in Regulation 122 (2)(a)-(c) of the Community Infrastructure Regulations 2010.

THE SCHEDULE
Modifications to the principal agreement

1. Definition of Development Plot

The definition of "Development Plot" within clause 1.1 of the Principal Agreement shall be deleted and replaced with the following new definition:

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| **"Development Plot"** | means:1. Development Plot A1, Development Plot A2, Development Plot K1 and the IPFS in relation to the Phase 1 Development; and
2. an area of land in respect of which a particular building or group of buildings is to be constructed, as defined by the relevant RMA for that area of land in relation to the remainder of the Development;
 |

1. Interim Use, Construction Period Community Scheme and Existing Business Management Strategy

The definitions of "Development Exploratory Centre", "Project Information Centre" and "Transport Innovation Hub" within Schedule 2 to the Principal Agreement shall be deleted and replaced with the following new definitions:

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| --- | --- |
| **"Development Exploratory Centre"** | means a temporary facility to be provided by the Developer on the Site and which shall include but not be limited to education material and resources specifically designed to engage young people and local school children in the built environment; |
| **"Project Information Centre"** | means a temporary facility to be provided by the Developer on the Site and which includes but shall not be limited to displays, project information boards and education material specific to the Development and the wider construction industry; and |
| **"Transport Innovation Hub"** | means a temporary facility to be provided by the Developer on the Site and made available as a meeting hub and lecture area with the aim of: 1. introducing, demonstrating and trialling technologies, behaviours and vehicles that may help in shifting mobility away from the personal car;
2. helping people who find travel difficult to become more mobile; and
3. encouraging partnerships with technology companies, vehicle manufacturers and sustainable transport groups and organisations to achieve the above.
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1. Trees

The definition of "Targeted Tree Canopy Cover" within Schedule 7 to the Principal Agreement shall be deleted and replaced with the following new definition:

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| --- | --- |
| **"Targeted Tree Canopy Cover"** | means a forecasted total tree canopy cover of 40,873 sq m by 2038 (subject to any adjustment made in accordance with paragraph 6.3); |

The word "and" at the end of the definition of "Tree Planting On-Site Plan" within Schedule 7 to the Principal Agreement shall be deleted.

The following new definition shall be inserted into Schedule 7 to the Principal Agreement in the correct alphabetical position:

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| --- | --- |
| **"Tree Retention Plan"** | means the plan located at Annex 25 or such replacement plan as may be agreed from time to time between the Developer and the Council; and |

Paragraph 2.1 of Schedule 7 to the Principal Agreement shall be deleted and replaced with the following new paragraph:

2.1 Unless otherwise agreed by the Council, not to remove any of the 49 trees and groups of trees shown on the Tree Retention Plan.

Paragraph 5.5 of Schedule 7 to the Principal Agreement shall be deleted and replaced with the following new paragraph:

5.5 Unless otherwise agreed by the Council, to plant 588 Medium to Large Species Trees off-Site or, in the event that more than 658 trees are planted on-Site by the Developer or any trees are planted off-Site by the Council and paid for by the Developer pursuant to paragraph 8, a lesser number of Medium to Large Species Trees off-Site commensurate to the increased number of trees planted on-Site by the Developer or planted off-Site by the Council and paid for by the Developer pursuant to paragraph 8 in order to achieve the Targeted Tree Canopy Cover.

The Tree Retention Plan located at Annex 25 of the Principal Agreement shall be removed and replaced with the Tree Retention Plan annexed to this Deed at Annex 1.

1. Highways

The following new definitions shall be inserted into Schedule 16 to the Principal Agreement in the correct alphabetical positions:

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| **"Deal Porters Way (Zone A) Footway"** | means the footway on the western edge of Deal Porters Way 2.4m in width from the edge of Deal Porters Way adjacent to Development Plot A1 and Development Plot A2 shown shaded [XXX] on the Deal Porters Way (Zone A) Footway Plan located at Annex 43 which forms part of the Development Plot A1 Public Realm and the Development Plot A2 Public Realm (and any land in between the footway and Deal Porters Way); |
| **"Deal Porters Way (Zone A) Footway Plan"** | means the plan located at Annex 43;  |

Paragraph 1.7 of Schedule 16 to the Principal Agreement shall be deleted and replaced with the following new paragraph:

1.7 The Developer covenants with the Council that Deal Porters Way (including the Deal Porters Way (Zone A) Footway) and Printworks Street shall be dedicated as public highway maintained by the Developer on the grant of the certificate of completion in respect of the whole of Deal Porters Way and Printworks Street (respectively) and subsequently public highway maintainable at public expense on the grant of the certificate of maintenance (or final certificate of maintenance where delivered in phases) both of which shall be promptly issued by the Council pursuant to the terms of the relevant agreement(s) pursuant to section 38 and/or 278 of the 1980 Act.

The plan annexed to this Deed at Annex 2 shall be inserted as a new Annex 43 to the Principal Agreement titled “Deal Porters Way (Zone A) Footway Plan”.

1. Affordable Retail and Affordable Workspace

The word "within" in the first line of paragraph 2.4.1 of Schedule 21 to the Principal Agreement shall be deleted and replaced with the words “in connection with”.

The word "within" in the first line of paragraph 2.4.2 of Schedule 21 to the Principal Agreement shall be deleted and replaced with the words “in connection with”.

**annex 1**

**REPLACEMENT TREE RETENTION PLAN**

**annex 2**

**Deal Porters Way (Zone A) Footway Plan**

**IN WITNESS WHEREOF** the parties hereto have executed this Deed the day and year first before written

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| The Common Seal of **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** was hereto affixed in the presence of: |  |
| Authorised Signatory |  |

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| --- | --- |
| Executed as a Deed by **BL CW HOLDINGS LIMITED** by a director in the presence of a witness: |  |
| Director |  |
| Witness Signature |  |
| Witness Name |  |
| Witness Address |  |

|  |  |
| --- | --- |
| Executed as a Deed by **UNION PROPERTY HOLDINGS (LONDON)** **LIMITED** by a director in the presence of a witness: |  |
| Director |  |
| Witness Signature |  |
| Witness Name |  |
| Witness Address |  |