

Dated

2021

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

- and -

ELEPHANT AND CASTLE PROPERTIES LIMITED

- and -

ELEPHANT AND CASTLE PROPERTIES CO. LIMITED

- and -

UNIVERSITY OF THE ARTS LONDON

- and -

TRANSPORT FOR LONDON

Third Deed of Variation to an Agreement made pursuant to Section 106 of
the Town and Country Planning Act 1990
and other powers in relation to land known as

**SHOPPING CENTRE SITE, ELEPHANT AND CASTLE, 26, 28, 30 AND 32 NEW KENT ROAD,
ARCHES 6 AND 7 ELEPHANT ROAD, AND LONDON COLLEGE OF COMMUNICATIONS SITE,
LONDON SE1**

Doreen Forrester-Brown
Director of Law and Democracy
London Borough of Southwark
160 Tooley Street
London SE1 2TZ
Ref: LEG/RP/PL/S106/64010
16/AP/4458

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THIS DEED is made the day of two thousand and twenty one

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) **ELEPHANT AND CASTLE PROPERTIES CO. LIMITED** (incorporated in the British Virgin Islands with company number 1810065) whose registered office is situated at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, VG1110, British Virgin Islands (the "**First Developer**");
- (3) **ELEPHANT AND CASTLE PROPERTIES LIMITED** (company registration number 04434716) whose registered office is situated at 6th Floor Berkeley Square, London, England, W1J 6ER (the "**Second Developer**");
- (4) **GL ELEPHANT TWO (HOLDO) LIMITED** (registered in Jersey with registration number 131912) (the "**Chargee**");
- (5) **ELEPHANT & CASTLE 990 UNI CO LIMITED** (company registration number 12646521) whose registered office is situated at 6th Floor Berkeley Square, London, England, W1J 6ER (the "**Leaseholder**");
- (6) **UNIVERSITY OF THE ARTS LONDON** of 272 High Holborn London WC1V 7EY ("**UAL**");
and
- (7) **TRANSPORT FOR LONDON** of 5 Endeavour Square, London E20 1JN ("**TfL**").

W H E R E A S:

- (A) The Council is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The First Developer owns part of the freehold interests in part of the Site and is registered as proprietor of them with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number SGL473011 at the date of this Deed.
- (C) The First Developer owns part of the leasehold interests in the Site and is registered as proprietor of them with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers 214298, SGL473013, SGL473014, SGL473015 and SGL473016 at the date of this Deed.

- (D) The First Developer owns part of the freehold interests in part of the Site and is registered as proprietor with Possessory Title at the Land Registry of the land with title number TGL554072.
- (E) The Second Developer owns part of the leasehold interests in the Site and is registered as proprietor of them with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers TGL340343 and TGL340344 at the date of this Deed.
- (F) UAL owns part of the freehold interest in the Site and is registered as proprietor of it with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number TGL394476 at the date of this Deed.
- (G) TfL owns part of the unregistered title of the Transport for London Road Network situated within the Site.
- (H) TfL owns part of the freehold interest in the Site and is registered proprietor of it with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers 170829, 177237, 271661, 294366, LN113754, LN198688, LN202123, LN220261 and TGL190331 at the date of this Deed.
- (I) The Leaseholder owns part of the leasehold interests in the Site [and is registered as proprietor of them with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers A and B at the date of this Deed.]¹
- (J) The Chargee is the beneficiary of a charge dated 4 August 2020 over those freehold and leasehold interests held by the First Developer set out in recitals “(B)” and “(C)”.²
- (K) On 10 January 2019 the Parties entered into the Original Deed and the Council granted the Planning Permission. On 9 July 2019, the Parties entered into the First Deed of Variation. On 29 October 2020, the Parties entered into the Second Deed of Variation.
- (L) The Parties wish to further vary the Original Deed (as varied by the First Deed of Variation and Second Deed of Variation) as shown in this Deed.

¹ Land Registry processing registration

² Land Registry processing registration

NOW THIS AGREEMENT WITNESSETH:

1. Definitions and Interpretation

1.1 In this Deed all words and phrases defined in the Original Deed as varied by the First Deed of Variation and the Second Deed of Variation shall have the same meanings in this Deed (and where repeated they are done so only for ease of reference) save where the context otherwise dictates and for the avoidance of any doubt the Original Deed, as varied by the First Deed of Variation, the Second Deed of Variation and by this Deed, shall remain in full force and effect.

1.2 The following terms shall have the following meaning unless the context otherwise requires:

| TERM | MEANING |
|-----------------------------------|--|
| "First Deed of Variation" | means the agreement pursuant to Section 106 of the 1990 Act dated 9 July 2019 to vary the Original Deed and made between the Council, the First and Second Developer, UAL, TfL and Deutsche PfandBriefbank AG |
| "Original Deed" | means the agreement pursuant to Section 106 of the 1990 Act relating to the Site dated 10 January 2019 and made between the Council, the First and Second Developer, UAL, TfL and Deutsche PfandBriefbank AG |
| "Second Deed of Variation" | means the agreement pursuant to Section 106 of the 1990 Act dated 29 October 2020 to vary the Original Deed (as varied by the First Deed of Variation) and made between the Council, the First and Second Developer, UAL and TfL |

1.3 In this Deed (except where the context otherwise requires):

- 1.3.1 Reference to the masculine feminine and neuter genders shall include other genders.
- 1.3.2 Reference to the singular include the plural and vice versa unless the contrary intention is expressed.
- 1.3.3 Reference to natural persons are to include corporations and vice versa.
- 1.3.4 Headings in this Deed are for reference purposes only and shall not be taken into account in its construction or interpretation.

- 1.3.5 A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule of this Deed.
- 1.3.6 Any reference in this Deed to any statute or to any section of a statute includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.
- 1.3.7 The expressions the "Developer", "UAL", "Council" and "TfL" shall include their respective successors in title and assigns and the expression "the Council" and "TfL" shall include their successors in statutory function.
- 1.3.8 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of such restrictions.
- 1.3.9 Where in this Deed a party includes more than one person any obligation of that party shall be joint and several.
- 1.3.10 Where any approval, consent, agreement or similar is to be given by the Council or TfL pursuant to the terms of this Deed, such approval, consent, agreement or similar shall not be unreasonably withheld or delayed.

2. Statutory Provisions

- 2.1 This Deed is made pursuant to the provisions of Sections 106 and 106A of the 1990 Act and all restrictions covenants and undertakings in this Deed are enforceable as planning obligations for the purposes of Section 106 of the 1990 Act.
- 2.2 To the extent only that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in the Acts.

3. Legal Effect

The provisions of this Deed shall take effect on completion of this Deed.

4. Obligations of the Parties

The Parties covenant to observe and perform or cause to be observed and performed their obligations contained in the Original Deed as amended by the First Deed of Variation and the Second Deed of Variation and by this Deed.

5. **Registration**

- 5.1 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 Number(s) referred to in recital B above so as to bind the Site as provided for in the before-mentioned statutory provisions.
- 5.2 If the Developer fails to make an application as referred to in clause 5.1 above 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 or advantageous to enable the said entries to be made.
- 5.3 The covenants on behalf of the Parties hereto to be observed and performed under this Deed shall be treated as Local Land Charges and registered in the Register of Local Land Charges for the purposes of the Local Land Charges Act 1975.

6. **Miscellaneous**

- 6.1 The construction, validity and performance of this Deed shall be governed by English law.
- 6.2 Each clause, sub-clause or schedule shall be separate distinct and severable from each other to the extent only that if any clause, sub-clause or schedule becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause or schedule shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause or schedule contained herein.
- 6.3 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council 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.
- 6.4 The Council shall endorse its executed copy of the Original Deed with the insertion of the following words: "This Deed has been modified and supplemented by the Third Deed of Variation".

7. **Mortgagee**

Any Mortgagee or chargee who from time to time shall have the benefit of a charge or mortgage over or registered against any part or parts of the Site, including the Chargee, shall have no liability under this Deed unless and until it becomes mortgagee in possession or

successor in title of the Site or part of the Site (the "**Relevant Part**") in which case it too will be bound by the obligations of the Developer under this Deed that relate to that Relevant Part from the date it becomes mortgagee in possession or successor in title of that Relevant Part to the date which is the earlier of (i) the date the mortgagee or chargee disposes of its interest in that Relevant Part and (ii) the date it is no longer mortgagee in possession or successor in title of that Relevant Part.

8. **Counterpart**

This Deed may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute one and the same agreement.

SCHEDULE 1

VARIATION TO ORIGINAL DEED

1. NEW DEFINITIONS

- 1.1 The Parties agree that the Original Deed as varied by the First Deed of Variation and Second Deed of Variation shall be further varied by insertion of the following definition into clause 1.1 of the Original Deed:-

"Third Deed of Variation" means the deed of variation to this Deed made between the Parties dated _____ 2021

2. VARIED DEFINITIONS

The Parties agree that the definitions in clause 1.1 of the Original Deed as varied by the First Deed of Variation and Second Deed of Variation shall be varied as follows:

- 2.1 the definition of "Elephant & Castle Northern Line Underground Station" shall be deleted;
- 2.2 the definition of "Station Box" shall be deleted and replaced with the following:

"means the new London Underground station ticket hall to be provided on part of the East Site;" and

- 2.3 the definition of "Station Box Works" shall be deleted and replaced with the following:

"means construction of the associated access and egress from the Station Box to and from London underground platforms and for the fitting out of the Station Box all in accordance with LUL standards;"

3. VARIED PROVISIONS

The Parties agree that in the Original Deed as varied by the First Deed of Variation and Second Deed of Variation:

- 3.1 the words "Northern Line Underground" shall be deleted from the heading of paragraph 1 of part 7 of Schedule 2;
- 3.2 the following provisions shall be deleted:
- 3.2.1 Paragraph 1.2.7 of Part 7 of Schedule 2; and
- 3.2.2 Paragraph 1.2.8 of Part 7 of Schedule 2;

3.3 Paragraph 1.2.9 of Part 7 of Schedule 2 shall be renumbered as Paragraph 1.2.7 of Part 7 of Schedule 2; and

3.4 Paragraph 1.4 of Part 7 of Schedule 2 shall be deleted and replaced with the following:

"1.4 TfL shall procure that, subject to confirmation from LUL that it has available funds for the Station Box Works, an agreement pursuant to section 106 of the 1990 Act is completed with the Council in order to secure the fitting out and opening of the Station Box in accordance with a programme and timetable set out in such agreement subject to obtaining all relevant consents and licences and the handover of the Station Box as defined in the Development Agreement."

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

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

Authorised Signatory

Executed as a Deed by **ELEPHANT & CASTLE PROPERTIES LIMITED** by a director in the presence of a witness:

Director

Name of Director (Block Capitals)

Witness

Name of Witness (Block Capitals) and Address of Witness

Executed as a Deed by **ELEPHANT AND CASTLE PROPERTIES CO. LIMITED** (a company incorporated in the British Virgin Islands) by _____ being a person who in accordance with the laws of that territory is acting under the authority of the company:

Authorised Signatory

Executed a Deed by affixing the Common Seal

of **The University of the Arts, London**

In the presence of

.....

Member of the Court of Governors

.....

Member of the Court of Governors

SIGNED as a **DEED** by

as attorney for

TRANSPORT FOR LONDON

Signature of attorney.....

in the presence of:

(Name of witness).....

(Address of witness).....

(Signature of witness).....