

**DATED**

29 DECEMBER 2023

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- (1) THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF SOUTHWARK
  - (2) ELEPHANT AND CASTLE PROPERTIES CO.  
LIMITED
  - (3) GET LIVING PLC
- 

**DEED OF VARIATION**

of agreement dated 1 February 2023  
relating to the site of  
the former Elephant and Castle Shopping Centre  
and surrounding land and buildings  
at Elephant and Castle, London SE1

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THIS DEED is made the 29 day of DECEMBER 2023

**BETWEEN:**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** whose address for the purposes of this agreement is 160 Tooley Street, London SE1 2QH (hereinafter called "**the Council**");
- (2) **ELEPHANT AND CASTLE PROPERTIES CO. LIMITED** (incorporated in British Virgin Islands with company number 1925749) whose registered office is at Craigmuir Chambers P.O. Box 71, Road Town, Tortola, VG1110, British Virgin Islands (hereinafter called "**the Developer**"); and
- (3) **GET LIVING PLC** (incorporated with company number 11532492) whose registered office is at 1 East Park Walk London E20 1JL (hereinafter called "**the Guarantor**").

**WHEREAS**

- (A) The parties entered into the Original Agreement.
- (B) Subsequently the Council made the Original CPO.
- (C) Following changes to the proposals for the relocation of occupiers on Elephant Road, on 17 October 2023 the Council resolved to make the New CPO pursuant to section 226(1)(a) of the 1990 Act to facilitate the Development, subject to the completion of this Deed, and to withdraw the Original CPO.
- (D) It is necessary to make some amendments to the Original Agreement as secured by this Deed.
- (E) The Guarantor has agreed to enter into this Deed to evidence its consent to the variation of the Original Agreement.

**NOW IT IS HEREBY AGREED:-**

**1. DEFINITIONS**

- 1.1** In this Deed the following expressions shall have the meanings hereinafter respectively assigned to them:-

"**New CPO**" means the CPO envisaged by the Council's Cabinet resolution of 17 October 2023;

"**Original Agreement**" means the agreement dated 1 February 2023 made between the parties hereto relating to the site of the former Elephant and Castle Shopping Centre and surrounding land and buildings at Elephant and Castle, London SE1;

"**Original CPO**" means the CPO dated 2 February 2023 made by the Council titled The London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023.

- 1.2** Save where the context requires otherwise or where expressly stated otherwise, terms, words and phrases whose meanings are not varied by this Deed shall have the same meanings as in the Original Agreement.

- 1.3** References to clauses, parts, schedules and annexures shall be deemed to be references to clauses and parts of and schedules and annexures to this Deed unless otherwise stated.

- 1.4 Headings to clauses and schedules shall be disregarded.
- 1.5 Any reference in this Deed to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as re amended, re enacted or applied by or under any other enactment and shall include all instruments, orders, plans, regulations and permissions and directions made or issued thereunder or deriving validity therefrom unless specifically stated otherwise.
- 1.6 Where in this Deed examples are given (including where the word "**including**" is followed by a list of items) such examples shall not limit any general description preceding such examples.
- 1.7 References to the "**parties**" shall be references to the Council, the Developer and the Guarantor, and references to a "**party**" shall be to any of them.
- 1.8 All references to the Council are to The Mayor and Burgesses of the London Borough of Southwark in its capacity as promoter of the regeneration of the Site and surrounding area and shall not in any way fetter or compromise The Mayor and Burgesses of the London Borough of Southwark as local planning authority or in any other capacity, or in the exercise of any statutory duty.
- 1.9 Where in this Deed the acceptance, consent, approval, agreement or expression of satisfaction of a party is required, or an opinion is to be expressed by any party, unless the relevant clause expressly states that the same is at the discretion of that party, it shall not be unreasonably withheld or delayed and any opinion shall be reasonably given, and any refusal of such a matter must include the notification of a properly reasoned basis for such refusal.

## **2. LEGAL EFFECT**

- 2.1 This Deed including the variations to the Original Agreement contained in the Schedule will come into effect on the date hereof.
- 2.2 Save as may be expressly varied by and at the times set out in this Deed, the Original Agreement will otherwise remain in full force and effect.

## **3. WITHDRAWAL OF THE ORIGINAL CPO**

- 3.1 The parties acknowledge their agreement to the withdrawal of the Original CPO.
- 3.2 For the avoidance of doubt clause 3.4 of the Original Agreement shall continue to apply to any CPO Costs incurred (or to be incurred) by the Council in respect of the Original CPO.

## **4. THE NEW CPO**

The parties agree that the New CPO shall be a CPO for the purposes of the Original Agreement as varied by this Deed and that the Council's Cabinet resolution of 17 October 2023 is a Resolution for the purposes of the Original Agreement as varied by this Deed.

## **5. VARIATION OF THE ORIGINAL AGREEMENT**

The provisions of the Schedule shall apply.

**6. GUARANTOR'S CONSENT**

The Guarantor consents to the Developer entering into this Deed and agrees that the Guarantor's obligations under the Original Agreement shall remain fully effective and shall not be released or diminished by any provisions of this Deed.

**7. DISPUTE RESOLUTION**

**7.1** The parties shall endeavour to resolve any disputes promptly and amicably. If they are unable to resolve any matter within 15 Working Days either party may serve notice on the other that it wishes to refer the dispute to the Expert and shall specify the nature of the dispute and the provision(s) of this agreement or a matter of law or as to compulsory purchase procedure which give rise to it.

**7.2** Where either party requires expert determination in accordance with Clause 7.1 or the parties both agree on such determination, the matter shall be referred to the Expert.

**7.3** The Expert shall have at least 10 years' experience in respect of the subject matter of the dispute and shall be a specialist in that field. If the dispute is as to the interpretation or construction of this agreement the Expert shall be a barrister. Otherwise the Expert shall be a chartered surveyor.

**7.4** The Expert shall be agreed by the parties or in default of agreement appointed by the President for the time being (or failing him the next most senior officer available and willing to act) of the Bar Council or the Royal Institution of Chartered Surveyors (as appropriate) on the application of either party.

**7.5** The Expert so appointed shall act as an expert and not as an arbitrator and his or her decision shall be final and binding (save in the case of fraud or manifest error).

**7.6** The Expert shall be instructed to:

**7.6.1** seek evidence (whether written or oral) from the parties and shall be entitled to seek and rely upon such other professional advice and assistance as he shall in his absolute discretion deem desirable;

**7.6.2** provide an opportunity for each party to make prompt written representations and to respond in writing to the written submission of the other party within such timetable as the Expert considers appropriate, although the Expert shall not be in any way fettered thereby;

**7.6.3** serve a document setting out his or her determination on each party; and

**7.6.4** give his or her decision promptly and in any event within 30 Working Days of his or her appointment which shall (save in the absence of manifest error) be final and binding on the parties.

**7.7** The parties shall use all reasonable endeavours to procure that the Expert is given all such assistance and access to documents and other information as he or she may reasonably require in order to make a decision.

**7.8** The costs or such valuation, and of the appointment of the Expert, shall be paid by the parties equally or as otherwise directed by the Expert.

**8. NOTICES**

**8.1** All notices relating to this Deed shall be in writing and delivered by hand or sent by post (but not electronic mail) to the party concerned at the relevant address shown at the start of this Deed (or such other address as may be notified from time to time in accordance with this Clause by the relevant party to the other party).

**8.2** Each of those notices shall take effect:

**8.2.1** if delivered, upon delivery; and

**8.2.2** if posted, at the earlier of delivery and, if sent by first class registered post, 10.00 a.m. on the first Working Day after posting.

**9. GOVERNING LAW**

This Deed is governed by and shall be construed in accordance with the laws of England and (subject to the provisions of Clause 7) the parties submit to the exclusive jurisdiction of the English courts in respect of any claim difference or dispute between them.

**10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**11. PARTNERSHIP EXCLUSION**

Nothing contained in this Deed shall be construed as effecting any partnership between the parties.

**12. COSTS OF THIS DEED**

The Developer shall pay to the Council on the date hereof the Council's reasonable legal surveyor's and officers fees in connection with the negotiation and completion of this Deed.

**13. SEVERABILITY**

If any provision of this Deed is held invalid, unlawful or unenforceable by a court of competent jurisdiction, that provision shall be severed and the remaining provisions of this Deed shall continue in full force and effect as if it had been executed without the invalid, unlawful or unenforceable provision.

**14. NON-MERGER**

The provisions of this Deed shall not merge on the completion of any act or step contemplated by this Deed to the extent they remain to be performed and capable of being performed the provisions of this Deed shall continue in full force and effect.

**15. FURTHER ASSURANCE**

Each party agrees to do all acts and things reasonably necessary to give meaning and effect to this Deed and the things contemplated by it.

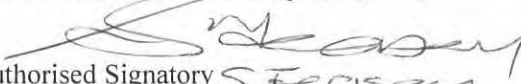
**16. COUNTERPARTS**

This Deed may be executed in any number of separate counterparts each of which when executed and dated shall be an original but all the counterparts shall together form the same instrument.

**EXECUTION**

IN WITNESS whereof the parties hereto have executed this Deed as a deed the day and year first before written

The COMMON SEAL of  
**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF SOUTHWARK**  
was hereunto affixed in the presence of:

  
Authorised Signatory *S Feasey*



SIGNED AS A DEED on behalf of  
**ELEPHANT AND CASTLE PROPERTIES  
CO. LIMITED** a company incorporated in  
British Virgin Islands, by

.....  
being (a) person(s) who, in accordance with the  
law of that territory is/are acting under the  
authority of the company

Signature in the name of the company:

*Elephant and Castle Properties Co. Limited*

Signature of authorised signatory/signatories:

.....

.....

## 16. COUNTERPARTS

This Deed may be executed in any number of separate counterparts each of which when executed and dated shall be an original but all the counterparts shall together form the same instrument.

## EXECUTION

IN WITNESS whereof the parties hereto have executed this Deed as a deed the day and year first before written

The COMMON SEAL of  
**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF SOUTHWARK**  
was hereunto affixed in the presence of:

}

Authorised Signatory

SIGNED AS A DEED on behalf of  
**ELEPHANT AND CASTLE PROPERTIES  
CO. LIMITED** a company incorporated in  
British Virgin Islands, by

Dan Greenslade

Rick de Blaby

being (a) person(s) who, in accordance with the  
law of that territory is/are acting under the  
authority of the company

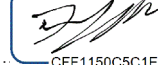
}

Signature in the name of the company:

*Elephant and Castle Properties Co. Limited*

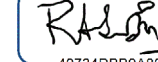
Signature of authorised signatory/signatories:

DocuSigned by:



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DocuSigned by:



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SIGNED as a DEED by )  
**GET LIVING PLC** )  
acting by a director and its secretary or )  
by two directors: )

Signature of Director: .....  
DocuSigned by:  
*James Beadle*  
BD3CA9DD998649C.....

Signature of Secretary/Director: .....  
DocuSigned by:  
*R. S. [Signature]*  
49734DBB9A8040D.....

## **SCHEDULE**

### **VARIATIONS TO THE ORIGINAL AGREEMENT**

1. The terms and provisions of the Original Agreement are varied as set out in the mark up at Appendix 1.
2. The Original Agreement as varied by this Agreement is appended at Appendix 2 (“**the Variation Agreement**”).
3. In the event that there is any discrepancy between the form of the Variation Agreement at Appendix 1 and the form of the Variation Agreement at Appendix 2, the form of the Variation Agreement at Appendix 2 will take precedence.
4. Plan 1 to the Original Agreement shall be replaced with the new Plan 1 appended at Appendix 3.



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**APPENDIX 1**

**Variation Agreement Mark Up**

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..... 2023

**(1) THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF SOUTHWARK**

and

**(2) ELEPHANT AND CASTLE PROPERTIES CO. LIMITED**

and

**(3) GET LIVING PLC**

---

**AGREEMENT**

relating to the site of the former Elephant and  
Castle Shopping Centre and surrounding land and  
buildings at Elephant and Castle, London SE1

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THIS AGREEMENT is made the

day of

2023

**BETWEEN:**

- (A) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** whose address for the purposes of this agreement is 160 Tooley Street, London SE1 2QH (hereinafter called "**the Council**");
- (B) **ELEPHANT AND CASTLE PROPERTIES CO. LIMITED** (incorporated in British Virgin Islands with company number 1925749) whose registered office is at Craigmuir Chambers P.O. Box 71, Road Town, Tortola, VG1110, British Virgin Islands (hereinafter called "**the Developer**"); and
- (C) **GET LIVING PLC** (incorporated with company number 11532492) whose registered office is at 6th Floor, Lansdowne House, Berkeley Square, London W1J 6ER (hereinafter called "**the Guarantor**").

**WHEREAS:-**

- (1) The Developer is the registered freehold title proprietor of the Shopping Centre Site.
- (2) The parties desire to secure the comprehensive redevelopment of the Site and adjacent land which is intended to be integrated into the surrounding area.
- (3) The Council has resolved to make a CPO pursuant to section 226(1)(a) of the 1990 Act to facilitate the Development, subject to the Developer bearing the CPO Costs.
- (4) To facilitate the carrying out of the Development, the Developer and the Council have agreed to enter into certain undertakings with one another in accordance with the terms of this Agreement
- (5) The Guarantor has agreed to enter into this Agreement to guarantee the obligations of the Developer under this Agreement.
- (6) The Council acknowledges that the UAL Condition has been satisfied.

**NOW IT IS HEREBY AGREED:-**

**1. DEFINITIONS**

- 1.1 In this Agreement the following expressions shall have the meanings hereinafter respectively assigned to them:-

"**1990 Act**" means the Town and Country Planning Act 1990;

"**Beset**" means Beset International Limited (the current tenant of railway arch 7 Farrell Court);

"**Blight Notice**" means a valid blight notice served on the Council in respect of land or premises required for the Development specifying any or all of the categories of blight listed in paragraphs 21-22 of schedule 13 of the 1990 Act;

"**Code**" means the body of statutory and case law and the established practice pertaining to the assessment, payment and determination of compensation for compulsory acquisition, including the Land Compensation Acts of 1961 and 1973, the Compulsory Purchase Act 1965, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017, in each case as amended or replaced from time to time;



"**CPO**" means a compulsory purchase order or orders (if any) to be made by the Council pursuant to any statutory powers available to the Council from time to time in respect of the Outstanding Interests and at the Developer's request any other land interests in the Site;

"**CPO Pre-Condition**" means (i) a CPO which is either in the same form as made by the Council or if modified by the Secretary of State is in such a form as is satisfactory to the Developer (and as to which the Developer shall within 15 Working Days of the confirmation of a CPO give written notice to the Council as to whether it is satisfactory or not) becoming operative under section 26 of the Acquisition of Land Act 1981 and (ii) the statutory challenge period under section 23 of the said 1981 Act expiring without any court challenge being made by any third party as to that satisfactory CPO or the decision of the Secretary of State or of the Council (as appropriate) to confirm it or if such a court challenge is made during that period, the date 14 days after the final determination of any court proceedings (including any appeal to higher courts) leaving in place that CPO but provided that the Council and the Developer may agree in writing to waive limb (ii).

"**CPO Costs**" means all reasonable and proper costs, fees, expenses and all liabilities incurred by the Council in relation to or in connection with the CPO including but not limited to:

- (a) confirmation of third party land ownerships, beneficiaries of rights, preparation of notices ~~(if not prepared by the Developer)~~, the making and (if relevant) confirmation of the CPO, the withdrawal of the CPO (if relevant), service of notices on all relevant owners and third parties in respect of the Outstanding Interests, ~~(if not prepared and served by the Developer)~~ preparation and publication of appropriate notices in the press as required by law, both before and after the confirmation (if any) of the CPO and submissions to the relevant Secretary of State;
- (b) all ~~external~~ legal, valuation, surveyor and other professional advice properly required by the Council (and the reasonable and proper time costs of the Council's own officers incurred) in connection with any part of the CPO process carried out in accordance with this Agreement including the process set out in clauses 3.11 and 3.12 which for the avoidance of doubt shall include any time spent by the Council in negotiating any matters envisaged by this Agreement with statutory bodies such as Transport for London, the Greater London Authority, Network Rail and London Underground Limited, but provided that it is agreed that the Council shall not be able to claim as CPO Costs any expenditure or time incurred in discussing or corresponding with statutory bodies in their capacity as statutory consultees on any planning application;
- (c) all monies reasonably and properly paid to settle acquisitions under all proper heads of claim including the value of land taken, disturbance, claimant's reasonable and proper legal and surveyor's fees, occupier's reasonable and proper loss payments, and proper reinvestment costs, statutory interest and other costs that are reasonably payable or determined by the Upper Tribunal (Lands Chamber) arising out of or in connection with the acquisition by the Council of the Outstanding Interests pursuant to or incidental to the CPO including without limitation pursuant or incidental to the service and acceptance of:
  - (i) any Blight Notice; and/or
  - (ii) any notice under section 12 and schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (d) any written representations procedure, hearing and public inquiry ~~hearing~~ in respect of the CPO including the reasonable and proper cost of hiring an appropriate venue for any public hearing/inquiry and/or any costs connected to any claims and/or appeals before the Upper Tribunal (Lands Chamber) or any other body or Court including the



fees of a Planning Inspector ~~chairing the inquiry~~, external legal fees and those of Counsel, other external consultants and expert witnesses;

- (e) compensation and any other sums payable or contracted to be paid (in accordance with this Agreement) in respect of the overriding or extinguishment of rights of light, rights of way and any other rights and/or restrictive covenants pursuant or incidental to the exercise by the Council of powers under section 226 and/or 227 of the 1990 Act and the consequent engagement of sections 203 – 205 of the Housing and Planning Act 2016 or any other relevant statutory power in respect of the Outstanding Interests;
- (f) stamp duty land tax (or any other equivalent tax replacing or superseding it), Land Registry fees, and reasonable and proper costs, fees, expenses charges and irrecoverable Value Added Tax paid incurred in connection with the performance of the Council's obligations in relation to the acquisition of the Outstanding Interests pursuant to the CPO;
- (g) any claims or awards of compensation arising pursuant to the Compulsory Purchase Act 1965 or Part 1 of the Land Compensation Act 1973 in respect of the Outstanding Interests or in respect of land adversely affected by the Development;
- (h) any claim made by a party which is not a party to this Agreement in relation to or in connection with the CPO and this Agreement;
- (i) the cost of hosting CPO documents on the internet and the cost of translation of any letters, notices and documents connected to the CPO

provided that (where applicable) all compensation referred to above is calculated and is properly due and relates to claims made in accordance with the Code.

**"Development"** means the mixed use town centre redevelopment on and adjacent to the Site including residential, retail, offices, education, assembly and leisure, a new station entrance and station box for use as a London Underground operational railway station, nightclub incorporating sound mitigation lobby, commercial, business and services, access and highway works, public realm, car and cycle parking, plant and servicing and associated and ancillary works and structures, with the land comprised within the Development shown edged red on Plan 3, in a manner consistent with a Planning Permission, and references to the "Development" shall be taken to include any part(s) thereof;

**"East Site"** has the meaning given to it in the Section 106 Agreement and includes railway arches 113A/120 and 113B/121 Elephant Road;

**"Elephant Three"** means Elephant Three Properties Limited (incorporated in British Virgin Islands with company number 1925749) whose registered office is at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, VG1110, British Virgin Islands;

**"Event of Default"** has the meaning set out in Clause 5.5;

**"Event of Insolvency"** has the meaning set out in Clause 5.8;

**"Expert"** means an independent expert who is professionally qualified to act as an independent expert in relation to the dispute in question and who shall be appointed all in accordance with Clause 6;

**"FOI Act"** means the Freedom of Information Act 2000 and/or if applicable the Environmental Information Regulations 2004;

**"Group Company"** means any company which is from time to time a member of the same group of companies as the Developer, including any subsidiary and subsidiary undertakings,



holding company or parent undertaking (and all subsidiary and subsidiary undertakings of any holding company or parent undertaking) or any other entity that directly or indirectly controls, is controlled by or is under common control with the Developer. For the purposes of this definition "control" shall mean (a) the direct or indirect ownership of in excess of 50% of the equity interests (or interests convertible into or otherwise exchangeable for equity interests) in an entity or (b) the possession of the direct or indirect right to vote in excess of 50% of the voting securities or elect in excess of 50% of the board of directors or other governing body of an entity and it is agreed further that Elephant Three, the Guarantor and University Co are each a Group Company for these purposes;

**"GVD"** means a general vesting declaration and/or declarations under the Compulsory Purchase (Vesting Declarations) Act 1981;

**"Independent Counsel"** means a member of the Planning and Environmental Bar Association who is either a King's Counsel or junior counsel having not less than 10 years' experience (not being Leading Counsel) who is appointed in accordance with and for the purposes of clause 5.3;

**"LCC"** means the London College of Communication;

**"LCC Site"** means the land edged red on Plan 2;

**"Leading Counsel"** means a member of the Planning and Environmental Bar Association who is either a King's Counsel or junior counsel having not less than 10 years' experience in planning matters appointed in default of agreement between the parties by the chairman for the time being of the Bar Council;

**"Mortgagee"** means any third party providing funding to the Developer or any Group Company for the Development (or any part thereof);

**"Outstanding Interests"** means such interests or rights affecting the Site which may impede or prevent or are otherwise required for the carrying out and beneficial use of the Development, such as, but not limited to, title, occupational interests, leases, tenancies, easements, rights of light and restrictive covenants and which shall include for the avoidance of doubt any new easements or other rights over land held by third parties or any land or interest where the owner is unknown or cannot be found which are so required, and **"Outstanding Interest"** shall be construed accordingly;

**"Plan 1, Plan 2 and Plan 3"** means the plans so marked annexed to this Agreement in the Appendix;

**"Planning Inspector"** means any person appointed by the Secretary of State for the purpose of either reporting to the Secretary of State on or determining the issue of whether any CPO shall be confirmed;

**"Planning Permission"** means

(i) the planning permission for the vast majority of the Development with reference 21/AP/1104 dated 29 July 2021 and the related listed building consent relating to minor amendments to the northern elevation of the Metropolitan Tabernacle with reference 16/AP/4525 dated 10 January 2019,

(ii) the planning permission 21/AP/4628 dated 10 June 2022 in relation to that part of the Development comprising a heating network pipe under Elephant Road and the Elephant and Castle railway station; and

(iii) such planning permission(s) as may be granted for that part of the Development comprising (a) refurbishment and ~~change in conversion of~~ use of railway arches 113A and 120 and 113B and 121 Elephant Road to ~~form a nightclub and (b) refurbishment and change in use of commercial, business and services and (b) the construction of a sound mitigation lobby and associated works to adjoin~~ railway arches 4 and 5 Farrell Court ~~to commercial, business and services~~ and the refurbishment of 4 and 5 Farrell Court,

and in each case includes any subsequent amendment, alteration or replacement of the same save for any planning permission granted on appeal following refusal by the Council's Planning Committee;

**"Prescribed Rate"** means a rate of interest compounded annually of three per centum (3%) per annum above the base rate from time to time of National Westminster Bank plc or such other clearing bank reasonably nominated by the Council from time to time;

**"Secretary of State"** means the Secretary of State for Levelling Up, Housing and Communities;

**"Section 106 Agreement"** means the agreement under section 106 of the 1990 Act in respect of the Development dated 10 January 2019 between (inter alia) (1) the Council and (2) the Developer, as varied by deeds of variation dated 9 July 2019, 29 October 2020, 29 June 2021 and 29 July 2021, and as may be further varied from time to time;

**"Shopping Centre Site"** means the site of the former Elephant & Castle Shopping Centre and 26-32 New Kent Road (inclusive), Elephant and Castle, London (the registered freehold title to which is owned by the Developer);

**"Site"** means the land and buildings shown edged red on Plan 1 (subject to such amendment, and/or deletion and/or any minor addition as the Developer and the Council (acting reasonably) may agree in writing);

**"UAL"** means University of the Arts, London;

**"UAL Condition"** means the Council having received evidence that the LCC Site is the subject of a contract for sale from UAL to Elephant Three and that there is a contract in place between the Developer and UAL for the relocation of LCC to the Shopping Centre Site;

**"University Co"** means Elephant & Castle 990 Uni Co Limited (incorporated in England with company number 12646521) whose registered office is at 6th Floor, Lansdowne House, Berkeley Square, London W1J 6ER;

**"VAT"** means Value Added Tax or any similar tax from time to time in addition to it replacing it or performing a similar fiscal function;

**"VAT Act"** means the Value Added Tax Act 1994;

**"Working Day"** means any day other than Saturday or Sunday or Public or Bank Holidays when clearing banks in the United Kingdom are open to the public for the transaction of business; and

- 1.2 References to clauses, parts, schedules and annexures shall be deemed to be references to clauses and parts of and schedules and annexures to this Agreement unless otherwise stated.
- 1.3 Headings to clauses and schedules shall be disregarded.
- 1.4 Any reference in this Agreement to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as re-amended, re-enacted or applied by or under any other enactment and shall include all instruments, orders, plans, regulations and permissions



and directions made or issued thereunder or deriving validity therefrom unless specifically stated otherwise.

- 1.5 Where in this Agreement examples are given (including where the word "including" is followed by a list of items) such examples shall not limit any general description preceding such examples.
- 1.6 References to the "parties" shall be references to the Council, the Developer and the Guarantor, and references to a "party" shall be to any of them.
- 1.7 All references to the Council are to The Mayor and Burgesses of the London Borough of Southwark in its capacity as promoter of the regeneration of the Site and surrounding area and shall not in any way fetter or compromise The Mayor and Burgesses of the London Borough of Southwark as local planning authority or in any other capacity, or in the exercise of any statutory duty.
- 1.8 Where in this Agreement the acceptance, consent, approval, agreement or expression of satisfaction of a party is required, or an opinion is to be expressed by any party, unless the relevant clause expressly states that the same is at the discretion of that party, it shall not be unreasonably withheld or delayed and any opinion shall be reasonably given, and any refusal of such a matter must include the notification of a properly reasoned basis for such refusal.

## **2. PLANNING APPLICATION**

- 2.1 To the extent it has not already done so, the Developer will as soon as practicable after the date hereof at its own cost submit the requisite planning application(s) for that part of the Development referred to in sub-paragraph (iii) of the definition of Planning Permission and shall thereafter seek the grant of planning permission for the same with all due diligence. For the avoidance of any doubt the planning application for that part of the Development referred to in sub-paragraph (iii)(a) of the definition of Planning Permission may include the installation of additional kiosks to the viaduct where it encloses railway arches 113A and 120 and 113B and 121.

## **3. COMPULSORY PURCHASE PROVISIONS**

- 3.1 The Council's Cabinet has resolved to (inter alia) make the CPO and to seek its confirmation on the basis that there is a compelling case in the public interest to do so ("**the Resolution**"). To the extent it has not already done so, the Developer shall reimburse the Council's reasonable and proper costs incurred in obtaining the Resolution and any replacement and/or amended Resolution, such costs to be paid by the Developer within 20 Working Days of receipt by the Developer of reasonable evidence of the Council's costs and for the avoidance of doubt to the extent (if any) that the Council is entitled to recover such costs from the Developer pursuant to any other agreement with the Developer the Council shall not be entitled to recover the same items or costs more than once.
- 3.2 To the extent (if any) that they have not already done so, prior to the making of the CPO the parties (acting reasonably) shall agree and finalise:
  - 3.2.1 all reasonable and necessary steps to compile the schedule of all interests which may be included in the CPO;
  - 3.2.2 the following:
    - (A) the requisite notices to be served on the relevant third parties in respect of the Outstanding Interests;
    - (B) the CPO;

- (C) the map(s) accompanying the notice of the CPO and referencing of the CPO area;
- (D) the notice of the CPO; and
- (E) the relevant statement of reasons;

and any dispute between the parties pursuant to this clause 3.2 shall be determined in accordance with clause 6.

3.3 The Developer shall:

- 3.3.1 keep the Council fully informed at all times of the progress made in connection with its efforts to acquire the Outstanding Interests, it being agreed that the Developer shall where practicable use its reasonable endeavours to acquire or procure the release of (as appropriate) the Outstanding Interests by private treaty (save for the avoidance of doubt that it is agreed that the Developer shall not be required to procure the release of any rights or covenants that are overridden pursuant to the provisions of section 203 Housing and Planning Act 2016);
- 3.3.2 provide to the Council copies of relevant documentation and correspondence received by the Developer in relation to the steps taken pursuant to clause 3.3.1 within 10 Working Days of reasonable demand; and
- 3.3.3 consult with the Council and take into account and have due regard to the Council's reasonable comments in relation to all action taken by the Developer pursuant to clause 3.3.1;
- 3.3.4 at its own cost provide the Council with such support and assistance to the Council in its exercise of compulsory purchase powers (including as to the making and confirmation of a CPO) as may be reasonable including producing supporting evidence for the CPO at any public inquiry and providing to the Council details of the proposed funding of the Development and such other information as may reasonably be required to support the CPO as per the terms of Department for Communities and Local Government's July 2019 Guidance on Compulsory Purchase Process and the Crichel Down Rules (including any guidance replacing or superseding the same) but provided that nothing in this clause shall oblige the Developer to provide commercially sensitive or confidential material.

3.4 The Developer shall indemnify and keep the Council indemnified at all times from and against the CPO Costs incurred by the Council.

3.5 The Council shall:

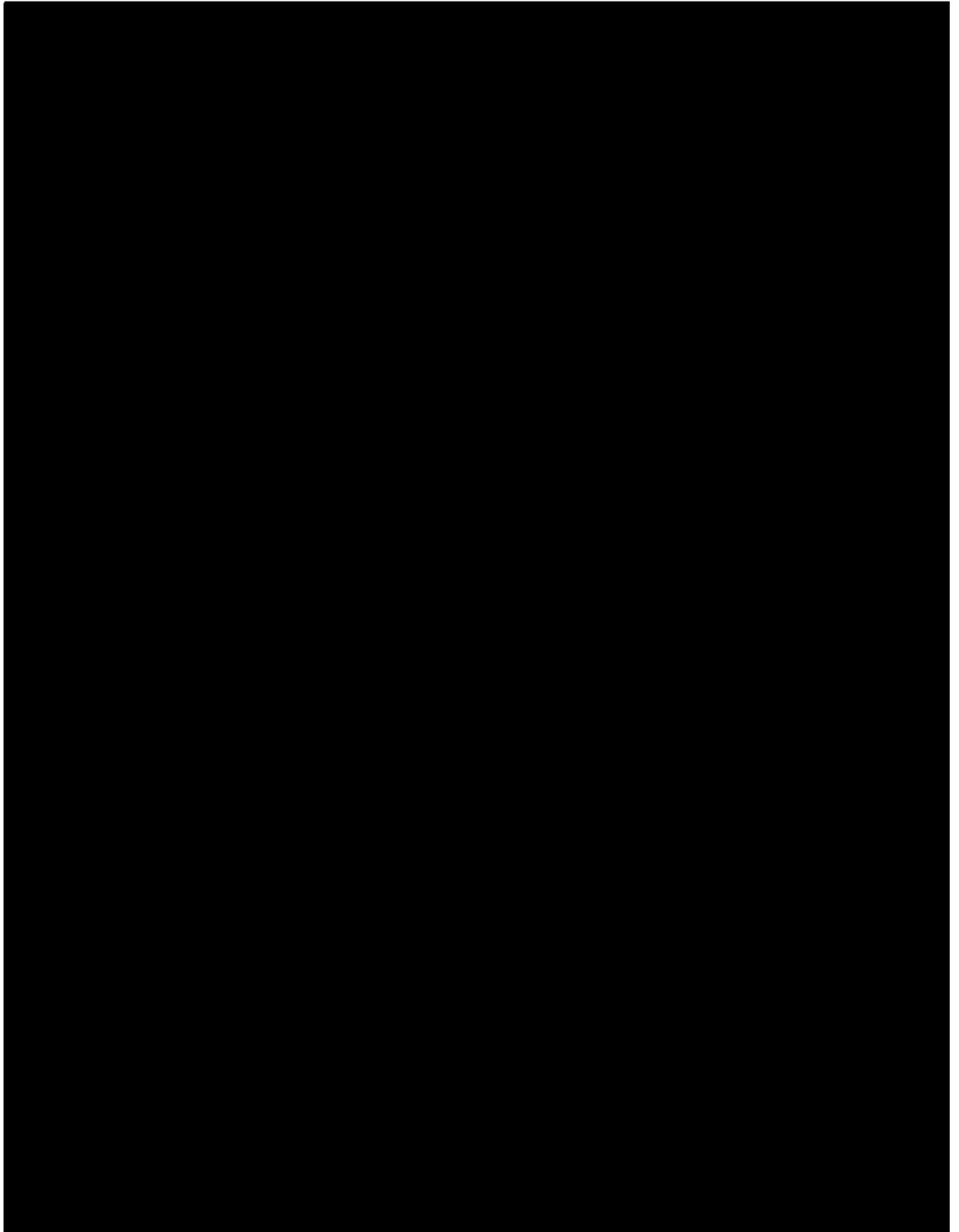
- 3.5.1 take all reasonable and necessary steps to enable the CPO to be made promptly in accordance with statutory requirements, and shall give public notice of the making of the CPO;
- 3.5.2 consult with the Developer regularly and promptly and in any event whenever so reasonably required to do so by the Developer and take into account and have regard to the reasonable representations by the Developer as to the conduct, promotion and obtaining of the CPO and/or related matters contemplated by this Agreement, including the preparation of all and any evidence for any public inquiry including the identity of witnesses and the scope of evidence required to be presented;
- 3.5.3 submit the CPO to the Secretary of State for confirmation and thereafter the Council will take all reasonable and necessary steps to enable the confirmation of the CPO;



- 3.5.4 notify the Developer of any objections passed on by the Secretary of State thereto and of any communications with the Secretary of State and/or the Planning Inspector; and
- 3.5.5 notify and permit the Developer and its representatives to attend and participate in all relevant conferences or consultations with Leading Counsel relating to the CPO and/or related matters contemplated by this Agreement, including the preparation of all and any evidence for any public inquiry including the identity of witnesses and the scope of evidence required to be presented, but excluding any circumstances where a dispute has arisen between the Council and the Developer concerning this ~~agreement~~Agreement.
- 3.6 The Council shall keep the Developer fully and promptly informed of the progress of the CPO throughout the statutory process.
- 3.7 The Council shall, having first obtained the prior written consent of the Developer, be entitled to agree with the Secretary of State or the Planning Inspector:
  - 3.7.1 such amendments additions variations and/or substitutions to a CPO; and
  - 3.7.2 such other application or applications in relation to a CPO;
 as shall be necessary or desirable to assist in procuring the confirmation of a CPO.
- 3.8 In the event that objections are made to a CPO within the period prescribed by statute the Council shall forthwith obtain and send to the Developer copies of all such objections (subject to any necessary redactions so as to comply with any applicable data protection laws which apply to the Council) and the Developer shall notify the Council whether or not it still wishes for the Council to proceed with a CPO. If no objections are made within the prescribed period the Council shall to the extent it has power to do so confirm the CPO itself.
- 3.9 In the event that a CPO is opposed and the Developer notifies the Council pursuant to Clause 3.8 that it wishes to proceed with the CPO, the Council and the Developer shall work together with the aim of securing the withdrawal of every objection made to the CPO and in particular the Council shall:
  - 3.9.1 following the calling of a public inquiry by the Secretary of State in consultation with the Developer take all reasonable and necessary steps to comply with the requirements of the Secretary of State and/or a Planning Inspector in order to enable a public inquiry into the confirmation of the CPO to be held;
  - 3.9.2 keep the Developer informed of the arrangements for the holding of the inquiry; and
  - 3.9.3 have due regard to the views of the Developer in connection with the preparation for the public inquiry and in particular shall consult with the Developer as to the content of the statement of case prior to its submission and the content and nature of any evidence to be submitted to the public inquiry and generally permit the Developer to take an active part in the preparation and conduct of, and strategy for, the inquiry.
- 3.10 In the event that:
  - 3.10.1 the Secretary of State declines to confirm the CPO or only confirms it in a manner which is not satisfactory to the Developer; or
  - 3.10.2 a third party applies to the court to challenge the decision of the Secretary of State as to confirmation of the CPO;

the Council shall (in either event) consult with and have due regard to the Developer as to the appropriate manner in which to respond to such decision or action to facilitate the

implementation and completion of the Development, and without prejudice to the Council's ability to instigate or defend or participate in any court proceedings of its own volition the Council shall if so requested by the Developer investigate the merits of taking the action as set out in Clause 3.11.





- 3.13 If the CPO is confirmed, the Council shall publish all necessary notices about the confirmation of the CPO and the possible making of a GVD promptly so as to ensure the CPO may be implemented, and as to the implementation of the CPO the Council shall except where the Council has agreed with the Developer not to exercise such powers so as to procure the withdrawal of an objection to the CPO or to prevent such an objection being made, act in accordance with a written notice or notices served by the Developer on the Council requiring the Council to implement the CPO in respect of such of the Outstanding Interests the subject of the confirmed CPO and/or other land interests within the Site the subject of the confirmed CPO as in each case are requested by the Developer, to be acquired by using such procedure and strategy as agreed with the Developer (both parties acting reasonably) but provided that (i) no such notice(s) may be served by the Developer in respect of the acquisition of third party title or new rights to be created until the CPO Pre-Condition is met in respect of that title or new rights (as appropriate) and (ii) this clause 3.13 shall not apply in respect of any Blight Notice which shall be dealt with in accordance with clause 3.17.
- 3.14 The Council shall so far as practicable consult with the Developer in relation to the making of any such GVD and the service of any notice to treat/notice of entry. For the avoidance of doubt the Council will not acquire any title, interest or right owned by the Developer, or any Group Company pursuant to the CPO unless such title, interest or right is included in a notice served by the Developer pursuant to Clause 3.13 and the Council has the power to acquire such title, interest or right pursuant to the CPO.
- 3.15 If the Council receives a written request from a landowner and/or third party in respect of the Outstanding Interests for an advance payment of compensation under the Land Compensation Act 1973 ("**Early Payment**") the Council will immediately notify the Developer of the Early Payment request. The Developer shall, taking into account the Council's statutory obligations in relation to the Early Payment, propose a course of action to the Council for the Council's approval (such approval not to be unreasonably withheld or delayed where the same does not contravene the Council's statutory obligations in this regard) within 10 Working Days of receipt of the Early Payment request together with its views as to the correct amount of the Early Payment. Insofar as the same do not contravene the Council's statutory obligations relating to the Early Payment, the Council and the Developer will use reasonable endeavours to agree the amount of the Early Payment and whether or not it will be paid to the landowner and/or third party. Any dispute will be referred to the Expert in accordance with Clause 6.
- 3.16 If prior to the confirmation of the CPO the Council is approached by any third party who will be affected by the CPO to negotiate with the Council in relation to an Outstanding Interest the Council undertakes it will not negotiate with any such third party in respect of any such Outstanding Interest without first giving the Developer written notice of the approach from the third party to enable the Developer to conduct any such negotiations on the Council's behalf should the Developer wish to do so. If the Developer shall so request in writing to the Council, the Council shall use all reasonable endeavours to undertake such negotiations and acquire the relevant Outstanding Interest as soon as reasonably practicable by using such procedure and at such a price and other terms as are agreed with the Developer (both parties acting reasonably) (but provided that it is accepted that the Council shall not be obliged to make any payment which exceeds the amount which that third party would be entitled to pursuant to the Code). The Council shall keep the Developer fully informed as to the progress of such negotiations (including providing the Developer with copies of draft heads of terms and draft contracts and all material correspondence). In the event that the Council agrees such purchase, the Council will observe and perform all obligations on the part of the purchaser as are contained in such contract and at law in respect of such purchase and shall expressly state in the acquisition itself that it is by the Council for planning purposes pursuant to section 227 of the 1990 Act. In the event that the Developer elects to undertake such negotiations and any such Outstanding Interest is successfully acquired, the Developer shall notify the Council of the same. Regardless of whether an Outstanding Interest is acquired by the Council or the Developer, the Council

shall if appropriate update any schedule of interests which are subject to the CPO and (if appropriate) shall avoid any unnecessary action being taken under a CPO including (if appropriate) to enable a public inquiry to be cancelled and the Council shall promptly take such steps.

- 3.17 The Council shall send a copy to the Developer as soon as reasonably practicable of any Blight Notice which it receives together with a statement certifying the rateable value of the relevant property within the rating list as at the date of the Blight Notice and the Developer shall propose a course of action to the Council for the Council's approval within 10 Working Days of receiving such notice including its views as to the validity of the notice and the amount of compensation it considers is payable which course of action the Council (so far as the law permits) shall follow. Any dispute will be referred to the Expert in accordance with Clause 6.
- 3.18 Without prejudice to the foregoing, the Council and the Developer will use reasonable endeavours to agree with any relevant claimant of title or new rights to be acquired the amount of compensation which shall be properly assessed in accordance with the Code. The Developer shall provide all reasonable assistance to the Council in seeking to settle such claims with the claimant, and failing any agreement as to the amount of compensation due to a particular claimant between the Council and the Developer, the matter will be referred to the Expert in accordance with Clause 6. The parties acknowledge that ultimately the amount of CPO compensation may be determined by the Upper Tribunal (Lands Chamber). Following receipt of any compensation claim, and having allowed for a reasonable period to negotiate the claim, the Council agrees that if requested to do so by the Developer it will take all reasonable and necessary steps to refer such compensation claim to the Upper Tribunal (Lands Chamber).
- 3.19 Subject to Clause 3.13 in respect of any particular land interest or work undertaken by the Council pursuant to this Agreement the Developer will pay the CPO Costs pertaining thereto within 20 Working Days of the latter of the parties agreeing the amount of the CPO Costs and receipt of a certificate from the Council evidencing the CPO Costs (the "**Qualifying Certificate**"). If the parties are unable to agree the CPO Costs within 40 Working Days of receipt of the Qualifying Certificate the matter may be referred to the Expert in accordance with Clause 6.
- 3.20 A Qualifying Certificate shall not be valid unless it contains the following information and is signed by a duly authorised officer of the Council:
- 3.20.1 the amount (and breakdown) of the CPO Costs for which payment is sought;
  - 3.20.2 either a description of the work for which the payment is sought or the value of the Outstanding Interest that is being acquired (as appropriate);
  - 3.20.3 certification that the amount being sought is fair and reasonable in relation to the action being taken or the Outstanding Interest being acquired in accordance with this Agreement; and
  - 3.20.4 where appropriate copies of supporting invoices (including VAT invoices).
- 3.21 Qualifying Certificates in relation to CPO Costs shall be a minimum of one month apart.
- 3.22 Where CPO Costs are paid by the Council to a third party in advance of receipt of funds from the Developer to the Council, the Developer shall pay to the Council in addition to the amount of any CPO Costs, interest at three per cent per annum below the Prescribed Rate from the date of payment of the relevant CPO Costs to the third party until the date on which the Developer pays such sum to the Council, provided that the amount of such costs are included in the first Qualifying Certificate issued by the Council following payment to such third party.



- 3.23 If the Developer shall fail to pay any of the sums specified in Clause 3.20 above in accordance with clause 3.19 then without prejudice to any other right or remedy of the Council the Developer shall pay to the Council interest thereon at the Prescribed Rate from the due date until actual payment.
- 3.24 If any amount paid by the Council to any third party owner in respect of any Outstanding Interest pursuant to this Agreement is lower than the amount paid by the Developer to the Council in respect of that particular Outstanding Interest the Council will arrange for such excess to be repaid to the Developer within 14 days of such settlement being concluded (or in the event of determination by the Upper Tribunal (Lands Chamber) an award being made).
- 3.25 If the Council is legally obliged to make or is liable in respect of any CPO Costs as at the date of termination of this Agreement, then notwithstanding the termination of the remainder of this Agreement the provisions of Clauses 3.4, 3.19 – 3.27 of this Agreement as to the payment of those CPO Costs shall continue in force until such time as those payments are made and thereupon any relevant land acquired by the Council pursuant to this Agreement shall be transferred to the Developer (or as it may direct pursuant to the terms of this Agreement) as though this Agreement (and in particular Clauses 3.28 - 3.30) was still in full force and effect.
- 3.26 If the Developer requests that the Council executes a GVD or serves a notice to treat under the CPO in respect of any Outstanding Interest or otherwise requests that the Council acquire any Outstanding Interest, the Council shall not be obliged to do so until such time as the Developer has shown to the Council's reasonable satisfaction that the Developer has deposited a sum equivalent to the reasonably estimated value (if not agreed with the relevant third party) of items (c), (f) and (g) of the CPO Costs in respect of that Outstanding Interest into an account held by the Council referred to in 3.27 below.
- 3.27 All monies deposited by the Developer with the Council to acquire any Outstanding Interests shall be held by the Council for that purpose in an interest bearing bank account and:
- 3.27.1 the Council shall be entitled to make withdrawals to pay compensation under the Code where the same has become due;
- 3.27.2 all interest earned on such sums deposited by the Developer shall be credited to the Developer and all unused amounts and accrued interest shall be paid promptly to the Developer once all compensation under the Code has been paid.
- 3.28 If requested to do so by the Developer as part of the notice served by the Developer pursuant to clause 3.13, upon completion of the acquisition by the Council of any Outstanding Interests pursuant to any provision of this Clause 3 or of any other land interest in the Site included in the CPO at the Developer's request, the Council shall promptly register the same at the Land Registry if appropriate and use reasonable endeavours to ensure that any requisitions raised by the Land Registry are dealt with promptly and satisfactorily and shall provide the Developer with official copies and title plans in respect of such title(s) within five Working Days of receipt of the same from the Land Registry.
- 3.29 If requested to do so by the Developer as part of the notice served by the Developer pursuant to clause 3.13, the Council shall immediately transfer to the Developer or a Group Company (at the Developer's reasonable direction) (or otherwise deal with at the Developer's reasonable direction) any title acquired by the Council pursuant to this Clause 3 for a peppercorn subject to the Developer having already paid at the time of legal completion to the Council the sums referred to in clause 3.26 in relation to that specific title.
- 3.30 In relation to any Outstanding Interest acquired by the Council but which acquisition has been paid for by the Developer, until such time as the relevant Outstanding Interest is transferred (or otherwise dealt with at the Developer's reasonable direction) to the Developer or a Group Company whether pursuant to Clause 3.29 or otherwise following written notice from the



Developer, the Council shall hold the relevant Outstanding Interest on trust for the Developer and shall act in accordance with the Developer's instructions and the income (if any) deriving from such Outstanding Interest shall belong to the Developer.

3.31 It is agreed that the consideration paid by the Developer (or any nominee of the Developer under this Agreement) for the land and titles transferred by the Council to the Developer (or at the Developer's direction under this Agreement) shall comply with section 233 of the 1990 Act and the Council acknowledges that it has concluded that the consideration secured to it by the terms of Clause 3.29 complies with section 233 of the 1990 Act.

3.32 In seeking to acquire any Outstanding Interests the Developer and the Council shall act in accordance with such land acquisition strategy as the Developer may reasonably require unless otherwise agreed in writing. It is acknowledged that the Council has a duty to act in compliance with section 233(5) of the 1990 Act and the Developer agrees in furtherance of that duty that it will (upon obtaining sufficient title pursuant to the CPO from the Council to enable it to do so) so far as may be practicable offer to any relevant occupier (as defined in section 233(6) of the 1990 Act) on a first refusal basis a suitable opportunity for accommodation (as defined in section 233(7) of the 1990 Act) within such part of the Site as the Developer may reasonably direct by way of a lease at current market rent and on reasonable commercial terms. The Developer may require the relevant occupier to provide satisfactory evidence of its financial stability prior to the grant of a lease to that relevant occupier. ~~For the purposes of this clause 3.32 it is agreed that it would not be practicable to offer accommodation within the railway arch units 4 and 5 Farrell Court to the occupiers of both 6 Farrell Court and 7 Farrell Court (due to floorspace constraints) and unless~~

Unless otherwise agreed in writing by the Council the Developer shall (to the extent it has not already done so) offer on a first refusal basis as aforesaid suitable opportunity for accommodation (i) within the East Site of the Development to the current ~~tenant~~tenants of 6 Farrell Court (DistriAndina U.K. Limited)— and 7 Farrell Court (Beset) and (ii) within 4-5 Farrell Court to the current tenant of 4-5 Farrell Court (Corsica Studios). Unless otherwise agreed in writing between the Council and the Developer, the Developer shall use all reasonable endeavours (but without being obliged to accept unreasonable commercial terms) to procure that as part of any agreement with Beset for its relocation within the Scheme, Beset shall offer floorspace within such relocation premises as are offered to Beset to the other occupiers of 7 Farrell Court (such floorspace to be offered to the other occupiers of 7 Farrell Court being comparable in size to their current floorspace and offered on reasonable commercial terms).

For the avoidance of doubt (i) the Developer shall not be in breach of this clause 3.32 if it chooses to offer any rental discount or incentive to any relevant occupier and (ii) nothing in this clause 3.32 shall obviate any obligation on the Developer to apply any rental discount pursuant to the Section 106 Agreement.

3.33 Notwithstanding any other provision of this Agreement, the indemnity in clause 3.4 shall not apply:

3.33.1 in respect of any deliberate act of misconduct on the part of the Council or its officers or employees; or

3.33.2 to the extent that the Developer's liability under this clause 3 is increased as a result of any negligent act, default or omission on the part of the Council or its officer or employees; or

3.33.3 to the extent that the Development is carried out other than by or on behalf of or with the written consent of the Developer or a Group Company; or

3.33.4 to the extent that the Council has recovered the relevant CPO Costs from the Developer pursuant to any other agreement between the Council and the Developer (it being



agreed that the Council shall not be entitled to recover the same item of CPO Costs more than once).

3.34 The Developer covenants with the Council that:

3.34.1 the Developer shall only acquire Outstanding Interests pursuant to this Agreement with the intention of enabling the Development to continue and complete;

3.34.2 any Outstanding Interests acquired by or passed to any Group Company after the date of this Agreement are intended to be held to enable the Development to continue and complete and it shall procure that every Group Company complies with the provisions of this clause and shall not otherwise acquire Outstanding Interests other than in furtherance of the objectives of this Agreement.

3.35 The Developer covenants with the Council that the Developer shall procure that in the carrying out of demolition works comprised within the Development on and immediately adjacent to the LCC Site (a) the disabled entrance in the front side arch of the Metropolitan Tabernacle (close to the Elephant & Castle highway) shall be available at all times when the Metropolitan Tabernacle is in operation, ~~and~~ (b) reasonable endeavours are taken to keep open the side accessway route within the grounds of the Metropolitan Tabernacle from the rear of the Metropolitan Tabernacle to that disabled entrance in the front side arch, under scaffolding, for persons with (and without) mobility impairments if it is safe and practicable to do so and (c) that safe access and egress to and from the Metropolitan Tabernacle is ensured at all times.

3.36 Unless otherwise agreed in writing with the Council, and subject to the Developer having acquired sufficient title to 4 and 5 Farrell Court (including the accessway between those two units) and the land to the immediate rear thereof (and new rights in respect of the sides and undersides of the railway viaduct enclosing 4 and 5 Farrell Court) to enable the Developer to be able to let that land and control works thereon, the Developer covenants with the Council that, in the event Corsica Studios does not take up the offer from the Developer of a new lease and vacates 4 and 5 Farrell Court, the Developer shall promptly notify the Council to that effect and within 30 Working Days of such notice shall submit to the Council for its approval a marketing strategy for seeking the re-letting of 4 and 5 Farrell Court to other nightclub operators, including the proposed duration of the marketing (which shall, unless otherwise agreed in writing by the Council, be for a period of not less than 2 years from the completion of the transfer of arches 4 and 5 Farrell Court and the land to the immediate rear thereof to the Developer) and a range of measures to maximise the prospect of identifying a suitable tenant. In the event the Council rejects the marketing strategy, the Developer shall promptly re-submit to the Council a revised marketing strategy seeking the re-letting of 4 and 5 Farrell Court to other nightclub operators and which takes into account comments made by the Council in respect of the marketing strategy. Following approval of a marketing strategy, the Developer shall proactively market the availability of 4 and 5 Farrell Court as a nightclub in accordance with the approved strategy (and shall regularly update the Council as to progress and provide the Council with such evidence as it may reasonably require) and if successful in finding a nightclub operator which is acceptable to the Developer (acting reasonably) ("the chosen operator") within the approved marketing period the Developer shall promptly notify the Council of the same and use reasonable endeavours to enter into a binding agreement for lease on reasonable commercial terms with the chosen operator for the premises to be used as a nightclub. Any dispute in relation to this clause 3.36 may be referred to the Expert in accordance with Clause 6.

#### 4. GUARANTEE

4.1 Subject to clauses 4.2 – 4.3, the Guarantor covenants with the Council, by way of guarantee, in the terms set out in the Schedule.

4.2 The Guarantor or the Developer may at any time propose to the Council a replacement guarantor and subject to such replacement being of sufficient financial standing to perform the guarantee provisions of this Agreement as approved by the Council (such approval not to be unreasonably withheld or delayed) and such replacement entering into a deed of covenant with the Council by way of guarantee in the terms set out in the Schedule then the Guarantor shall be automatically released from all liability pursuant to this Agreement but without prejudice to any liability in respect of antecedent breach. The Developer shall pay the Council's reasonable and proper fees and costs in connection with such substitution.

4.3 Without prejudice to clause 4.2, the liability of the Guarantor under this Agreement shall cease and determine upon the determination of this Agreement subject to and in accordance with clause 5.

## **5. TERMINATION**

5.1 In the event that the CPO Pre-Condition has not been satisfied on or before [REDACTED] [REDACTED] either the Developer or the Council may on or at any time thereafter by way of written notice served on the other prior to the CPO Pre-Condition being satisfied terminate this Agreement and following service of such notice this Agreement will terminate with immediate effect (subject to clause 5.14).

5.2 If there has been no acquisition of any Outstanding Interests pursuant to this Agreement within [REDACTED] then either the Developer or the Council may at any time thereafter by way of written notice served on the other terminate this Agreement and following service of such notice this Agreement will terminate with immediate effect (subject to clause 5.14).

5.3 It is acknowledged that the Council is required to act reasonably and in the public interest as regards any CPO. If the Council receives advice from Leading Counsel that there is no reasonable prospect of a CPO being confirmed [REDACTED] the Council shall provide the Developer with a copy of that advice and the instructions to Leading Counsel which led to that advice and at the cost of the Developer shall allow the Developer to discuss such advice with Leading Counsel in consultation and to review that advice in light of the Developer's representations. If Leading Counsel is still of the same view following such representations, the Council and the Developer shall seek to agree on the best way to proceed and if no such agreement has been reached [REDACTED] the prospects of a CPO being confirmed [REDACTED] shall be referred to Independent Counsel who specialises in compulsory purchase (who is to be agreed upon between the parties) by way of joint instructions to advise in conference and thereafter in writing, with both parties entitled to participate in and make representations to Independent Counsel at the conference and if Independent Counsel's written opinion is that there is no reasonable prospect of confirmation of a CPO [REDACTED] then either the Council or the Developer may terminate this Agreement by giving written notice to the other and upon service of such notice this Agreement shall immediately terminate (subject to clause 5.14).

5.4 The Developer may terminate this Agreement (subject to clause 5.14) by giving written notice to the Council if the Council has committed material breaches of its obligations in clause 3 (and not remedied such material breaches within a reasonable period following written notification by the Developer to the Council of a material breach) and such default is materially detrimental to the Developer's interest in the Development or its ability to carry out the Development.

5.5 For the purposes of the remainder of this Clause 5, an event of default occurs if:-

5.5.1 the Developer has committed material breaches (and not remedied such material breaches within a reasonable period following written notification by the Council to

the Developer of a material breach) of its obligations under this Agreement which are individually or cumulatively such as would entitle the Council to repudiate this Agreement; or

5.5.2 an Event of Insolvency occurs in relation to the Developer and there is at that time no guarantor standing as surety for the Developer's obligations under this Agreement,

each an "**Event of Default**".

5.6 On the occurrence of an Event of Default the Council may, in addition to any other rights and remedies it may have, terminate this Agreement for breach by giving written notice to the Developer to that effect, but subject to first complying with the provisions of Clause 5.9 and to the right of termination being overridden by the operation of Clause 5.10.

5.7 If the Council terminates this Agreement in accordance with Clause 5.6 the Council will retain all rights and remedies against the Developer for any breach of obligation under this Agreement before the termination.

5.8 The expression an "Event of Insolvency" means any of the following:

5.8.1 an inability of the Developer to pay its debts within the meaning of sections 122 and 123 of the Insolvency Act 1986;

5.8.2 entry into liquidation either compulsory or voluntary (except for the purpose of amalgamation or reconstruction);

5.8.3 the passing of a resolution for a creditor's winding up;

5.8.4 the making of a proposal to the Developer and its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs;

5.8.5 the appointment of a receiver or administrative receiver; or

5.8.6 the making of a petition to the court for an administration order.

5.9 The Council may not terminate this Agreement under Clause 5.6 unless it has first given to any Mortgagee at least 60 Working Days' notice of that intention, and specifying the grounds for doing so, but by complying with this Clause 5.9 the Council shall not be treated as waiving its right to terminate this Agreement unless that right is overridden by the operation of Clause 5.10.

5.10 The right of the Council to terminate this Agreement will be overridden if within the period of 60 Working Days referred to in Clause 5.9 the Mortgagee (or its nominee, whose identity is approved by the Council):

5.10.1 gives notice to the Council requiring it not to terminate this Agreement;

5.10.2 acknowledges to the Council by the Mortgagee or its nominee entering into a deed of covenant with the Council in a form to be approved by the Council assuming all the obligations of the Developer under this Agreement;

5.10.3 takes steps approved by the Council acting reasonably to remedy the relevant breach with all reasonable despatch; and

5.10.4 pays to the Council any monies which have become due under this Agreement but which are unpaid at the date of the Council's notice to terminate.

5.11 The Council will allow the Mortgagee such additional time as may be reasonable to remedy a default of the Developer.

- 5.12 If the Mortgagee exercises its rights under Clause 5.10 within the time limit allowed for doing so, of which time is of the essence, this Agreement shall continue in force as if the right of termination of this Agreement had not arisen, and this Agreement had originally been made between the Council and the Mortgagee or such nominee to the exclusion of the Developer.
- 5.13 The Council is not entitled or required to enquire whether, as between the Developer and the Mortgagee, the Mortgagee may exercise the rights in Clause 5.10, and the Council shall not incur liability to the Developer by reason only of acting in accordance with Clause 5.10.
- 5.14 On the termination of this Agreement the parties shall be released from all their obligations save that:
- 5.14.1 clauses 3.4, 3.19 - 3.27 (inclusive) shall continue to apply to the extent referred to in clause 3.25;
- 5.14.2 clauses 3.28 - 3.30 (inclusive) shall continue to apply to the extent they have already been triggered in respect of the acquisition of a specific land interest; and
- 5.14.3 clause 12 shall continue to apply.
- 5.15 Without prejudice to any other provision of this Agreement, this Agreement shall determine and all liability under it shall cease when all of the following have occurred:
- 5.15.1 [REDACTED] following the completion of the external envelopes of the buildings comprised in the Development in so far as it is carried out on the Site; and
- 5.15.2 the settlement of all third party claims referred to the Upper Tribunal (Lands Chamber) in respect of the CPO (if any) and the paying of any CPO Costs which are outstanding as a result of any such claims.

## **6. DISPUTE RESOLUTION**

- 6.1 The parties shall endeavour to resolve any disputes promptly and amicably. If they are unable to resolve any matter within 15 Working Days either party may serve notice on the other that it wishes to refer the dispute to the Expert and shall specify the nature of the dispute and the provision(s) of this agreement or a matter of law or as to compulsory purchase procedure which give rise to it.
- 6.2 Where either party requires expert determination in accordance with Clause 6.1 or the parties both agree on such determination, the matter shall be referred to the Expert.
- 6.3 The Expert shall have at least 10 years' experience in respect of the subject matter of the dispute and shall be a specialist in that field. If the dispute is as to the interpretation or construction of this agreement the Expert shall be a barrister. Otherwise the Expert shall be a chartered surveyor.
- 6.4 The Expert shall be agreed by the parties or in default of agreement appointed by the President for the time being (or failing him the next most senior officer available and willing to act) of the Bar Council or the Royal Institution of Chartered Surveyors (as appropriate) on the application of either party.
- 6.5 The Expert so appointed shall act as an expert and not as an arbitrator and his or her decision shall be final and binding (save in the case of fraud or manifest error).
- 6.6 The Expert shall be instructed to:



- 6.6.1 seek evidence (whether written or oral) from the parties and shall be entitled to seek and rely upon such other professional advice and assistance as he shall in his absolute discretion deem desirable;
  - 6.6.2 provide an opportunity for each party to make prompt written representations and to respond in writing to the written submission of the other party within such timetable as the Expert considers appropriate, although the Expert shall not be in any way fettered thereby;
  - 6.6.3 serve a document setting out his or her determination on each party; and
  - 6.6.4 give his or her decision promptly and in any event within 30 Working Days of his or her appointment which shall (save in the absence of manifest error) be final and binding on the parties.
- 6.7 The parties shall use all reasonable endeavours to procure that the Expert is given all such assistance and access to documents and other information as he or she may reasonably require in order to make a decision.
- 6.8 The costs or such valuation, and of the appointment of the Expert, shall be paid by the parties equally or as otherwise directed by the Expert.

## **7. COUNCIL AS LOCAL AUTHORITY**

- 7.1 Nothing herein contained shall prejudice or affect any of the statutory rights powers discretion obligations and duties for the time being vested in the Council as local or other statutory authority for the area in which the Site is located and all such rights powers obligations and duties exercised in the capacity of local or other statutory authority shall in regard to the Site and any buildings or works thereon or the occupiers thereof be enforceable and exercisable by the Council as fully and freely as if this Agreement had not been executed.
- 7.2 Without prejudice to the provisions of Clause 7.1, nothing in this Agreement shall in any way fetter or compromise The Mayor and Burgesses of the London Borough of Southwark as local planning authority in any decisions relating to the Development.
- 7.3 Subject to Clause 7.1 and the Developer fulfilling its obligations hereunder the Council and the Developer will co-operate together and will use reasonable endeavours (but at no cost to the Council and commensurate with the Council's obligations under this Agreement) to promote the development permitted by the Planning Permission and to assist the Developer in doing so including (where requested to do so by the Developer and in accordance with a strategy set out by the Developer) assisting in discussions and negotiations with any other relevant stakeholders or parties, such as Transport for London, London Underground Limited, the Greater London Authority and Network Rail.
- 7.4 Any approval agreement consent direction or authority given by the Council as local or other statutory authority shall not be or be deemed to be an approval agreement consent direction or authority given under this Agreement and vice versa.

## **8. APPROVALS**

Where in accordance with the interpretation set down in Clause 1.8 the acceptance, consent, approval, agreement, expression of satisfaction or opinion of the Council (each of which shall be referred to in this clause 8 as a "**consent**") is not to be unreasonably withheld or delayed, the following provisions shall apply:

- 8.1 the Developer shall seek the relevant consent by an application in writing addressed to the Council;

- 8.2 the Council shall use its reasonable endeavours to give a written response to an application for such consent within 10 Working Days of receipt of the application and that response will either be:

8.2.1 the consent requested is given, with or without conditions;

8.2.2 (where reasonable and proper) a request for further information will be made; or

8.2.3 a refusal of such consent, accompanied by reasonable and proper written reasons,

provided that it is accepted that if a consent requires the approval of the Council's Cabinet it may not be practicable for that consent to be given within 10 Working Days but in that event the Council shall act promptly and take the matter to its Cabinet at the earliest opportunity.

## **9. VALUE ADDED TAX**

- 9.1 The parties agree that all supplies made under this Agreement are made on a VAT exclusive basis and that the paying party will (subject to the delivery of a valid VAT invoice addressed to that party) pay any VAT which is properly payable on such supplies (and, for this purpose, each party agrees that it will provide a back to back invoice, addressed to the other party, for any supplies made to it where the supplier does not provide a VAT invoice addressed to the party required to pay VAT under this Agreement).

## **10. ASSIGNMENT**

- 10.1 Prior to the first occupation of any part of the Development, the Developer may not assign, part with or charge in whole or in part this Agreement or the benefit thereof except by way of:-

10.1.1 an assignment by way of charge or other security of the benefit in the whole of this Agreement in favour of a Mortgagee or its security agent or other similar nominee acting on its behalf which in each case is a reputable and creditworthy entity; and/or

10.1.2 an assignment of the benefit of the whole of this Agreement to a Group Company of the Developer provided that such Group Company will on or prior to such assignment enter into a deed of covenant with the Council to comply with and perform the obligations of the Developer under this Agreement (including the provision of such financial security as may be required under this Agreement) in such form as the Developer may propose and the Council shall approve as if such Group Company had been party to this Agreement; and/or

10.1.3 an assignment of the benefit of the whole of this Agreement to any entity which has the requisite financial resources (when taking into account any security arrangements which may be required under this Agreement and any internal and external funds available to it) and skills (whether in-house or through its proposed project team) in respect of the Development and for which evidence of those matters satisfactory to the Council has been provided to the Council provided that such entity will on or prior to such assignment enter into a deed of covenant with the Council to comply with and perform the obligations of the Developer under this Agreement (including the provision of such financial security as may be required under this Agreement) in such form as the Developer may propose and the Council shall approve as if such entity had been party to this Agreement; and/or

10.1.4 an assignment of the benefit of the whole of this Agreement to an assignee approved by the Council provided that such entity will on or prior to such assignment enter into a deed of covenant with the Council to comply with and perform the obligations of the Developer under this Agreement (including the provision of such financial security as



may be required under this Agreement) in such form as the Developer may propose and the Council shall approve as if such entity had been party to this Agreement .

10.1.5 a novation of this Agreement to any entity referred to in Clause 10.1.2, 10.1.3 or 10.1.4 in which case the Developer shall prior to such novation provide the Council with information as to the identity of the intended novatee, and shall provide to the Council for its approval a draft deed of novation with the said entity and any such novation shall be completed in accordance with the approved deed of novation so that the Developer's obligations under this Agreement shall pass to the said entity and the Council for its part agrees to promptly enter into such a deed of novation.

10.2 In the case of any assignment pursuant to Clause 10.1.2, 10.1.3 or 10.1.4, the Council shall at the request of the Developer release the Developer from its obligations under this Agreement if the Council has received the completed deed of covenant referred to in those clauses.

## **11. RELEASE**

11.1 Subject to clause 11.2, the Developer shall be released from any obligations under this Agreement if:

11.1.1 it procures a replacement indemnity from an alternative entity provided that the Developer has received the Council's prior written approval of the alternative entity, such approval not to be unreasonably withheld or delayed; and

11.1.2 the indemnity agreement from the alternative entity has been lawfully and validly entered into by way of a deed with the Council on the same terms as this Agreement or on such alternative terms as are approved by the Council, such approval not to be unreasonably withheld or delayed. The Developer shall pay the Council's reasonable and proper fees and costs in connection with such substitution.

11.2 The release contained in clause 11.1 does not apply to any antecedent breach of covenant by the Developer.

## **12. CONFIDENTIALITY**

12.1 Subject to clause 12.2 the parties acknowledge that this Agreement is a public document.

12.2 The parties agree and undertake not to make public or to reveal to any third party:

12.2.1 the amount of compensation payable under the Code;

12.2.2 the discussions and/or negotiations leading up to and/or in connection with this Agreement

(each "**Confidential Information**").

12.3 Clause 12.2 shall not prevent disclosure:

12.3.1 to the extent necessary to comply with any legal obligation or legal requirement (including in the case of the Council pursuant to the FOI Act);

12.3.2 to the extent necessary to comply with any requirements of any relevant stock exchange or other regulatory, governmental or official body;

12.3.3 to HM Revenue & Customs or any other governmental, public or official body for taxation, rating or registration purposes; or

12.3.4 by way of a joint press announcement previously agreed by the parties acting reasonably.

12.4 In the event that the Council receives a request to disclose any Confidential Information to a third party under the FOI Act, the Council shall:

12.4.1 inform the Developer about the request and the nature of the information being sought as soon as reasonably possible;

12.4.2 consult with the Developer prior to the disclosure of any such information; and

12.4.3 consider and apply all lawful exemptions provided under the FOI Act and then to withhold information sought in terms of the request for information consistent with the exercise of its discretion and duties under the FOI Act.

12.5 The provisions of this Clause 12 shall continue to apply notwithstanding any termination of the other provisions of this Agreement.

### **13. GOOD FAITH**

The Council and the Developer shall each act in good faith in their dealings with each other in relation to all matters which are the subject of this Agreement.

### **14. WORKING GROUP**

14.1 The Council and the Developer shall use all reasonable endeavours to set up as soon as practicable after the date hereof a working group in respect of the various matters under this Agreement. The working group's role will be to seek and achieve co-operation between the Developer and the Council on all matters pursuant to this Agreement and to review and monitor progress of the various obligations under this Agreement.

14.2 The working group will seek to meet at least once every month or otherwise as agreed.

14.3 The working group will comprise representatives of the Developer and the Council (and may include their professional advisors) and each party will notify the other of the names of their respective representatives.

14.4 It will be the responsibility of each party to ensure that their respective representatives attend the working group meetings. If those representatives are not available, the relevant party shall ensure that a suitable substitute, who has sufficient knowledge of the Development and this Agreement, shall attend the meeting.

### **15. NOTICES**

15.1 All notices relating to this Agreement shall be in writing and delivered by hand or sent by post (but not electronic mail) to the party concerned at the relevant address shown at the start of this Agreement (or such other address as may be notified from time to time in accordance with this Clause by the relevant party to the other party).

15.2 Each of those notices shall take effect:

15.2.1 if delivered, upon delivery; and

15.2.2 if posted, at the earlier of delivery and, if sent by first class registered post, 10.00 a.m. on the first Working Day after posting.

**16. GOVERNING LAW**

This Agreement is governed by and shall be construed in accordance with the laws of England and (subject to the provisions of Clause 6) the parties submit to the exclusive jurisdiction of the English courts in respect of any claim difference or dispute between them.

**17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this ~~agreement~~ Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**18. PARTNERSHIP EXCLUSION**

Nothing contained in this Agreement shall be construed as effecting any partnership between the parties.

**19. COSTS OF THIS AGREEMENT**

The Developer shall pay to the Council on the date hereof the Council's reasonable legal surveyor's and officers fees in connection with the negotiation and completion of this Agreement.

**20. SEVERABILITY**

If any provision of this Agreement is held invalid, unlawful or unenforceable by a court of competent jurisdiction, that provision shall be severed and the remaining provisions of this Agreement shall continue in full force and effect as if it had been executed without the invalid, unlawful or unenforceable provision.

**21. NON-MERGER**

The provisions of this Agreement shall not merge on the completion of any act or step contemplated by this Agreement to the extent they remain to be performed and capable of being performed the provisions of this Agreement shall continue in full force and effect.

**22. FURTHER ASSURANCE**

Each party agrees to do all acts and things reasonably necessary to give meaning and effect to this Agreement and the things contemplated by it.

**23. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement.

**24. COUNTERPARTS**

This Agreement may be executed in any number of separate counterparts each of which when executed and dated shall be an original but all the counterparts shall together form the same instrument.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a deed the day and year first before written

The COMMON SEAL of  
**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF SOUTHWARK**

was hereunto affixed in the presence of:

Authorised Signatory

SIGNED AS A DEED on behalf of  
**ELEPHANT AND CASTLE PROPERTIES  
CO. LIMITED** a company incorporated in  
British Virgin Islands, by

being (a) person(s) who, in accordance with the  
law of that territory is/are acting under the  
authority of the company

Signature in the name of the company:

*Elephant and Castle Properties Co. Limited*

Signature of authorised signatory/signatories:

SIGNED as a DEED by  
**GET LIVING PLC**  
acting by a director and its secretary or  
by two directors:

Signature of Director:.....

Signature of Secretary/Director:.....



**SCHEDULE**  
**GUARANTEE**

**1. Guarantee**

1.1 The Guarantor hereby irrevocably and unconditionally undertakes and guarantees the full, prompt and complete performance and observance by the Developer of its financial obligations in this Agreement and agrees that if the Developer shall in any respect fail to perform any of its financial obligations under this Agreement that the Guarantor will in accordance with paragraph 6 perform and fulfil or procure to be performed or fulfilled in place of the Developer each and every one of the obligations in respect of which the Developer has defaulted.

1.2 The Guarantor agrees that any sum payable to the Council by it pursuant to this Agreement will be paid without deduction or set-off.

**2. Continuing Guarantee**

The guarantee in paragraph 1 shall be a continuing guarantee and shall remain in force until such time as it determines in accordance with clauses 4.2 or 4.3 and shall not be affected by any legal limitations, disability or other circumstances relating to the Guarantor or the Developer.

**3. No release**

3.1 None of the following or any combination of them shall release, discharge or lessen or affect the liability of the Guarantor under this Agreement:

3.1.1 any neglect, delay or forbearance of the Council in endeavouring to obtain payment of any sum due under this Agreement or in enforcing compliance with the Developer's obligations in this Agreement;

3.1.2 any extension of time indulgence or any other concessions given by the Council to the Developer or to the Guarantor or any third party;

3.1.3 any variation or arrangement or alteration of terms being made or agreed with the Developer with the consent of the Guarantor;

3.1.4 any lack of or limitation on the powers of the Developer;

3.1.5 the absence of authority of any person purporting to represent or act on behalf of the Developer;

3.1.6 the liquidation administration or other insolvency of or any change in the constitution of the Developer or the Guarantor;

3.1.7 any other act, omission, dealing, matter or thing as a result of which but for this provision the Guarantor would or might be exonerated or discharged wholly or in part (other than an express release given by the Council, whether pursuant to clause 4.2 or otherwise).

4. **Disclaimer of Agreement**

If the Developer (being an individual) becomes bankrupt or (being a corporate body) enters into liquidation and the trustee in bankruptcy or liquidator disclaims this Agreement then the Guarantor shall on demand pay to the Council sums equal to the sums that would have been due under this Agreement but for the disclaimer.

5. **Deferral of Guarantor's rights**

The Guarantor shall not in priority to or in competition with the Council exercise any rights which it may have by reason of the performance by it or its obligations under this schedule:

- (a) to receive or claim payment from or be indemnified by the Developer;
- (b) to take the benefit (in whole or part and whether by way of subrogation or otherwise) of any rights of, or any guarantee or security taken by, the Council in respect of the Developer's obligations in this Agreement;
- (c) to exercise any rights of set-off against the Developer; or
- (d) to claim or prove as a creditor of the Developer in competition with the Council.

6. **Failure to perform**

In the event of the Developer failing to observe and perform any of the financial obligations and stipulations in this Agreement in respect of which the Guarantor has given this guarantee and following service of written notice by the ~~Authority~~Council upon the Developer and the Guarantor to remedy such failure and within 20 Working Days from the date of service of that notice neither the Guarantor nor the Developer has remedied such obligation then the Council shall be entitled to enforce such provisions against the Guarantor without the need to pursue the Developer further.

**APPENDIX**  
**Plan 1, Plan 2 and Plan 3**

**APPENDIX 2**  
**Variation Agreement**



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..... 2023

**(1) THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF SOUTHWARK**

and

**(2) ELEPHANT AND CASTLE PROPERTIES CO. LIMITED**

and

**(3) GET LIVING PLC**

---

**AGREEMENT**

relating to the site of the former Elephant and  
Castle Shopping Centre and surrounding land and  
buildings at Elephant and Castle, London SE1

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**Appendix – Plan 1 (of the Site), Plan 2 (of the LCC Site) and Plan 3 (of the land comprised in the Development)**

THIS AGREEMENT is made the

day of

2023

**BETWEEN:**

- (A) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** whose address for the purposes of this agreement is 160 Tooley Street, London SE1 2QH (hereinafter called "**the Council**");
- (B) **ELEPHANT AND CASTLE PROPERTIES CO. LIMITED** (incorporated in British Virgin Islands with company number 1925749) whose registered office is at Craigmuir Chambers P.O. Box 71, Road Town, Tortola, VG1110, British Virgin Islands (hereinafter called "**the Developer**"); and
- (C) **GET LIVING PLC** (incorporated with company number 11532492) whose registered office is at 6th Floor, Lansdowne House, Berkeley Square, London W1J 6ER (hereinafter called "**the Guarantor**").

**WHEREAS:-**

- (1) The Developer is the registered freehold title proprietor of the Shopping Centre Site.
- (2) The parties desire to secure the comprehensive redevelopment of the Site and adjacent land which is intended to be integrated into the surrounding area.
- (3) The Council has resolved to make a CPO pursuant to section 226(1)(a) of the 1990 Act to facilitate the Development, subject to the Developer bearing the CPO Costs.
- (4) To facilitate the carrying out of the Development, the Developer and the Council have agreed to enter into certain undertakings with one another in accordance with the terms of this Agreement
- (5) The Guarantor has agreed to enter into this Agreement to guarantee the obligations of the Developer under this Agreement.
- (6) The Council acknowledges that the UAL Condition has been satisfied.

**NOW IT IS HEREBY AGREED:-**

**1. DEFINITIONS**

- 1.1 In this Agreement the following expressions shall have the meanings hereinafter respectively assigned to them:-

"**1990 Act**" means the Town and Country Planning Act 1990;

"**Beset**" means Beset International Limited (the current tenant of railway arch 7 Farrell Court);

"**Blight Notice**" means a valid blight notice served on the Council in respect of land or premises required for the Development specifying any or all of the categories of blight listed in paragraphs 21-22 of schedule 13 of the 1990 Act;

"**Code**" means the body of statutory and case law and the established practice pertaining to the assessment, payment and determination of compensation for compulsory acquisition, including the Land Compensation Acts of 1961 and 1973, the Compulsory Purchase Act 1965, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, the Planning Act 2008, the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017, in each case as amended or replaced from time to time;



**"CPO"** means a compulsory purchase order or orders (if any) to be made by the Council pursuant to any statutory powers available to the Council from time to time in respect of the Outstanding Interests and at the Developer's request any other land interests in the Site;

**"CPO Pre-Condition"** means (i) a CPO which is either in the same form as made by the Council or if modified by the Secretary of State is in such a form as is satisfactory to the Developer (and as to which the Developer shall within 15 Working Days of the confirmation of a CPO give written notice to the Council as to whether it is satisfactory or not) becoming operative under section 26 of the Acquisition of Land Act 1981 and (ii) the statutory challenge period under section 23 of the said 1981 Act expiring without any court challenge being made by any third party as to that satisfactory CPO or the decision of the Secretary of State or of the Council (as appropriate) to confirm it or if such a court challenge is made during that period, the date 14 days after the final determination of any court proceedings (including any appeal to higher courts) leaving in place that CPO but provided that the Council and the Developer may agree in writing to waive limb (ii).

**"CPO Costs"** means all reasonable and proper costs, fees, expenses and all liabilities incurred by the Council in relation to or in connection with the CPO including but not limited to:

- (a) confirmation of third party land ownerships, beneficiaries of rights, preparation of notices, the making and (if relevant) confirmation of the CPO, the withdrawal of the CPO (if relevant), service of notices on all relevant owners and third parties in respect of the Outstanding Interests, preparation and publication of appropriate notices in the press as required by law, both before and after the confirmation (if any) of the CPO and submissions to the relevant Secretary of State;
- (b) all legal, valuation, surveyor and other professional advice properly required by the Council (and the reasonable and proper time costs of the Council's own officers incurred) in connection with any part of the CPO process carried out in accordance with this Agreement including the process set out in clauses 3.11 and 3.12 which for the avoidance of doubt shall include any time spent by the Council in negotiating any matters envisaged by this Agreement with statutory bodies such as Transport for London, the Greater London Authority, Network Rail and London Underground Limited, but provided that it is agreed that the Council shall not be able to claim as CPO Costs any expenditure or time incurred in discussing or corresponding with statutory bodies in their capacity as statutory consultees on any planning application;
- (c) all monies reasonably and properly paid to settle acquisitions under all proper heads of claim including the value of land taken, disturbance, claimant's reasonable and proper legal and surveyor's fees, occupier's reasonable and proper loss payments, and proper reinvestment costs, statutory interest and other costs that are reasonably payable or determined by the Upper Tribunal (Lands Chamber) arising out of or in connection with the acquisition by the Council of the Outstanding Interests pursuant to or incidental to the CPO including without limitation pursuant or incidental to the service and acceptance of:
  - (i) any Blight Notice; and/or
  - (ii) any notice under section 12 and schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (d) any written representations procedure, hearing and public inquiry in respect of the CPO including the reasonable and proper cost of hiring an appropriate venue for any public hearing/inquiry and/or any costs connected to any claims and/or appeals before the Upper Tribunal (Lands Chamber) or any other body or Court including the fees of a

Planning Inspector, external legal fees and those of Counsel, other external consultants and expert witnesses;

- (e) compensation and any other sums payable or contracted to be paid (in accordance with this Agreement) in respect of the overriding or extinguishment of rights of light, rights of way and any other rights and/or restrictive covenants pursuant or incidental to the exercise by the Council of powers under section 226 and/or 227 of the 1990 Act and the consequent engagement of sections 203 – 205 of the Housing and Planning Act 2016 or any other relevant statutory power in respect of the Outstanding Interests;
- (f) stamp duty land tax (or any other equivalent tax replacing or superseding it), Land Registry fees, and reasonable and proper costs, fees, expenses charges and irrecoverable Value Added Tax paid incurred in connection with the performance of the Council's obligations in relation to the acquisition of the Outstanding Interests pursuant to the CPO;
- (g) any claims or awards of compensation arising pursuant to the Compulsory Purchase Act 1965 or Part 1 of the Land Compensation Act 1973 in respect of the Outstanding Interests or in respect of land adversely affected by the Development;
- (h) any claim made by a party which is not a party to this Agreement in relation to or in connection with the CPO and this Agreement;
- (i) the cost of hosting CPO documents on the internet and the cost of translation of any letters, notices and documents connected to the CPO

provided that (where applicable) all compensation referred to above is calculated and is properly due and relates to claims made in accordance with the Code.

**"Development"** means the mixed use town centre redevelopment on and adjacent to the Site including residential, retail, offices, education, assembly and leisure, a new station entrance and station box for use as a London Underground operational railway station, nightclub incorporating sound mitigation lobby, commercial, business and services, access and highway works, public realm, car and cycle parking, plant and servicing and associated and ancillary works and structures, with the land comprised within the Development shown edged red on Plan 3, in a manner consistent with a Planning Permission, and references to the "Development" shall be taken to include any part(s) thereof;

**"East Site"** has the meaning given to it in the Section 106 Agreement and includes railway arches 113A/120 and 113B/121 Elephant Road;

**"Elephant Three"** means Elephant Three Properties Limited (incorporated in British Virgin Islands with company number 1925749) whose registered office is at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, VG1110, British Virgin Islands;

**"Event of Default"** has the meaning set out in Clause 5.5;

**"Event of Insolvency"** has the meaning set out in Clause 5.8;

**"Expert"** means an independent expert who is professionally qualified to act as an independent expert in relation to the dispute in question and who shall be appointed all in accordance with Clause 6;

**"FOI Act"** means the Freedom of Information Act 2000 and/or if applicable the Environmental Information Regulations 2004;

**"Group Company"** means any company which is from time to time a member of the same group of companies as the Developer, including any subsidiary and subsidiary undertakings,

holding company or parent undertaking (and all subsidiary and subsidiary undertakings of any holding company or parent undertaking) or any other entity that directly or indirectly controls, is controlled by or is under common control with the Developer. For the purposes of this definition "control" shall mean (a) the direct or indirect ownership of in excess of 50% of the equity interests (or interests convertible into or otherwise exchangeable for equity interests) in an entity or (b) the possession of the direct or indirect right to vote in excess of 50% of the voting securities or elect in excess of 50% of the board of directors or other governing body of an entity and it is agreed further that Elephant Three, the Guarantor and University Co are each a Group Company for these purposes;

**"GVD"** means a general vesting declaration and/or declarations under the Compulsory Purchase (Vesting Declarations) Act 1981;

**"Independent Counsel"** means a member of the Planning and Environmental Bar Association who is either a King's Counsel or junior counsel having not less than 10 years' experience (not being Leading Counsel) who is appointed in accordance with and for the purposes of clause 5.3;

**"LCC"** means the London College of Communication;

**"LCC Site"** means the land edged red on Plan 2;

**"Leading Counsel"** means a member of the Planning and Environmental Bar Association who is either a King's Counsel or junior counsel having not less than 10 years' experience in planning matters appointed in default of agreement between the parties by the chairman for the time being of the Bar Council;

**"Mortgagee"** means any third party providing funding to the Developer or any Group Company for the Development (or any part thereof);

**"Outstanding Interests"** means such interests or rights affecting the Site which may impede or prevent or are otherwise required for the carrying out and beneficial use of the Development, such as, but not limited to, title, occupational interests, leases, tenancies, easements, rights of light and restrictive covenants and which shall include for the avoidance of doubt any new easements or other rights over land held by third parties or any land or interest where the owner is unknown or cannot be found which are so required, and **"Outstanding Interest"** shall be construed accordingly;

**"Plan 1, Plan 2 and Plan 3"** means the plans so marked annexed to this Agreement in the Appendix;

**"Planning Inspector"** means any person appointed by the Secretary of State for the purpose of either reporting to the Secretary of State on or determining the issue of whether any CPO shall be confirmed;

**"Planning Permission"** means

(i) the planning permission for the vast majority of the Development with reference 21/AP/1104 dated 29 July 2021 and the related listed building consent relating to minor amendments to the northern elevation of the Metropolitan Tabernacle with reference 16/AP/4525 dated 10 January 2019,

(ii) the planning permission 21/AP/4628 dated 10 June 2022 in relation to that part of the Development comprising a heating network pipe under Elephant Road and the Elephant and Castle railway station; and

(iii) such planning permission(s) as may be granted for that part of the Development comprising (a) refurbishment and conversion of use of railway arches 113A and 120 and 113B and 121 Elephant Road to commercial, business and services and (b) the construction of a sound mitigation lobby and associated works to adjoin railway arches 4 and 5 Farrell Court and the refurbishment of 4 and 5 Farrell Court,

and in each case includes any subsequent amendment, alteration or replacement of the same save for any planning permission granted on appeal following refusal by the Council's Planning Committee;

**"Prescribed Rate"** means a rate of interest compounded annually of three per centum (3%) per annum above the base rate from time to time of National Westminster Bank plc or such other clearing bank reasonably nominated by the Council from time to time;

**"Secretary of State"** means the Secretary of State for Levelling Up, Housing and Communities;

**"Section 106 Agreement"** means the agreement under section 106 of the 1990 Act in respect of the Development dated 10 January 2019 between (inter alia) (1) the Council and (2) the Developer, as varied by deeds of variation dated 9 July 2019, 29 October 2020, 29 June 2021 and 29 July 2021, and as may be further varied from time to time;

**"Shopping Centre Site"** means the site of the former Elephant & Castle Shopping Centre and 26-32 New Kent Road (inclusive), Elephant and Castle, London (the registered freehold title to which is owned by the Developer);

**"Site"** means the land and buildings shown edged red on Plan 1 (subject to such amendment, and/or deletion and/or any minor addition as the Developer and the Council (acting reasonably) may agree in writing);

**"UAL"** means University of the Arts, London;

**"UAL Condition"** means the Council having received evidence that the LCC Site is the subject of a contract for sale from UAL to Elephant Three and that there is a contract in place between the Developer and UAL for the relocation of LCC to the Shopping Centre Site;

**"University Co"** means Elephant & Castle 990 Uni Co Limited (incorporated in England with company number 12646521) whose registered office is at 6th Floor, Lansdowne House, Berkeley Square, London W1J 6ER;

**"VAT"** means Value Added Tax or any similar tax from time to time in addition to it replacing it or performing a similar fiscal function;

**"VAT Act"** means the Value Added Tax Act 1994;

**"Working Day"** means any day other than Saturday or Sunday or Public or Bank Holidays when clearing banks in the United Kingdom are open to the public for the transaction of business; and

- 1.2 References to clauses, parts, schedules and annexures shall be deemed to be references to clauses and parts of and schedules and annexures to this Agreement unless otherwise stated.
- 1.3 Headings to clauses and schedules shall be disregarded.
- 1.4 Any reference in this Agreement to any enactment (whether generally or specifically) shall be construed as a reference to that enactment as re-amended, re-enacted or applied by or under any other enactment and shall include all instruments, orders, plans, regulations and permissions



and directions made or issued thereunder or deriving validity therefrom unless specifically stated otherwise.

- 1.5 Where in this Agreement examples are given (including where the word "including" is followed by a list of items) such examples shall not limit any general description preceding such examples.
- 1.6 References to the "parties" shall be references to the Council, the Developer and the Guarantor, and references to a "party" shall be to any of them.
- 1.7 All references to the Council are to The Mayor and Burgesses of the London Borough of Southwark in its capacity as promoter of the regeneration of the Site and surrounding area and shall not in any way fetter or compromise The Mayor and Burgesses of the London Borough of Southwark as local planning authority or in any other capacity, or in the exercise of any statutory duty.
- 1.8 Where in this Agreement the acceptance, consent, approval, agreement or expression of satisfaction of a party is required, or an opinion is to be expressed by any party, unless the relevant clause expressly states that the same is at the discretion of that party, it shall not be unreasonably withheld or delayed and any opinion shall be reasonably given, and any refusal of such a matter must include the notification of a properly reasoned basis for such refusal.

## **2. PLANNING APPLICATION**

- 2.1 To the extent it has not already done so, the Developer will as soon as practicable after the date hereof at its own cost submit the requisite planning application(s) for that part of the Development referred to in sub-paragraph (iii) of the definition of Planning Permission and shall thereafter seek the grant of planning permission for the same with all due diligence. For the avoidance of any doubt the planning application for that part of the Development referred to in sub-paragraph (iii)(a) of the definition of Planning Permission may include the installation of additional kiosks to the viaduct where it encloses railway arches 113A and 120 and 113B and 121.

## **3. COMPULSORY PURCHASE PROVISIONS**

- 3.1 The Council's Cabinet has resolved to (inter alia) make the CPO and to seek its confirmation on the basis that there is a compelling case in the public interest to do so ("**the Resolution**"). To the extent it has not already done so, the Developer shall reimburse the Council's reasonable and proper costs incurred in obtaining the Resolution and any replacement and/or amended Resolution, such costs to be paid by the Developer within 20 Working Days of receipt by the Developer of reasonable evidence of the Council's costs and for the avoidance of doubt to the extent (if any) that the Council is entitled to recover such costs from the Developer pursuant to any other agreement with the Developer the Council shall not be entitled to recover the same items or costs more than once.
- 3.2 To the extent (if any) that they have not already done so, prior to the making of the CPO the parties (acting reasonably) shall agree and finalise:
  - 3.2.1 all reasonable and necessary steps to compile the schedule of all interests which may be included in the CPO;
  - 3.2.2 the following:
    - (A) the requisite notices to be served on the relevant third parties in respect of the Outstanding Interests;
    - (B) the CPO;

- (C) the map(s) accompanying the notice of the CPO and referencing of the CPO area;
- (D) the notice of the CPO; and
- (E) the relevant statement of reasons;

and any dispute between the parties pursuant to this clause 3.2 shall be determined in accordance with clause 6.

3.3 The Developer shall:

- 3.3.1 keep the Council fully informed at all times of the progress made in connection with its efforts to acquire the Outstanding Interests, it being agreed that the Developer shall where practicable use its reasonable endeavours to acquire or procure the release of (as appropriate) the Outstanding Interests by private treaty (save for the avoidance of doubt that it is agreed that the Developer shall not be required to procure the release of any rights or covenants that are overridden pursuant to the provisions of section 203 Housing and Planning Act 2016);
- 3.3.2 provide to the Council copies of relevant documentation and correspondence received by the Developer in relation to the steps taken pursuant to clause 3.3.1 within 10 Working Days of reasonable demand; and
- 3.3.3 consult with the Council and take into account and have due regard to the Council's reasonable comments in relation to all action taken by the Developer pursuant to clause 3.3.1;
- 3.3.4 at its own cost provide the Council with such support and assistance to the Council in its exercise of compulsory purchase powers (including as to the making and confirmation of a CPO) as may be reasonable including producing supporting evidence for the CPO at any public inquiry and providing to the Council details of the proposed funding of the Development and such other information as may reasonably be required to support the CPO as per the terms of Department for Communities and Local Government's July 2019 Guidance on Compulsory Purchase Process and the Crichel Down Rules (including any guidance replacing or superseding the same) but provided that nothing in this clause shall oblige the Developer to provide commercially sensitive or confidential material.

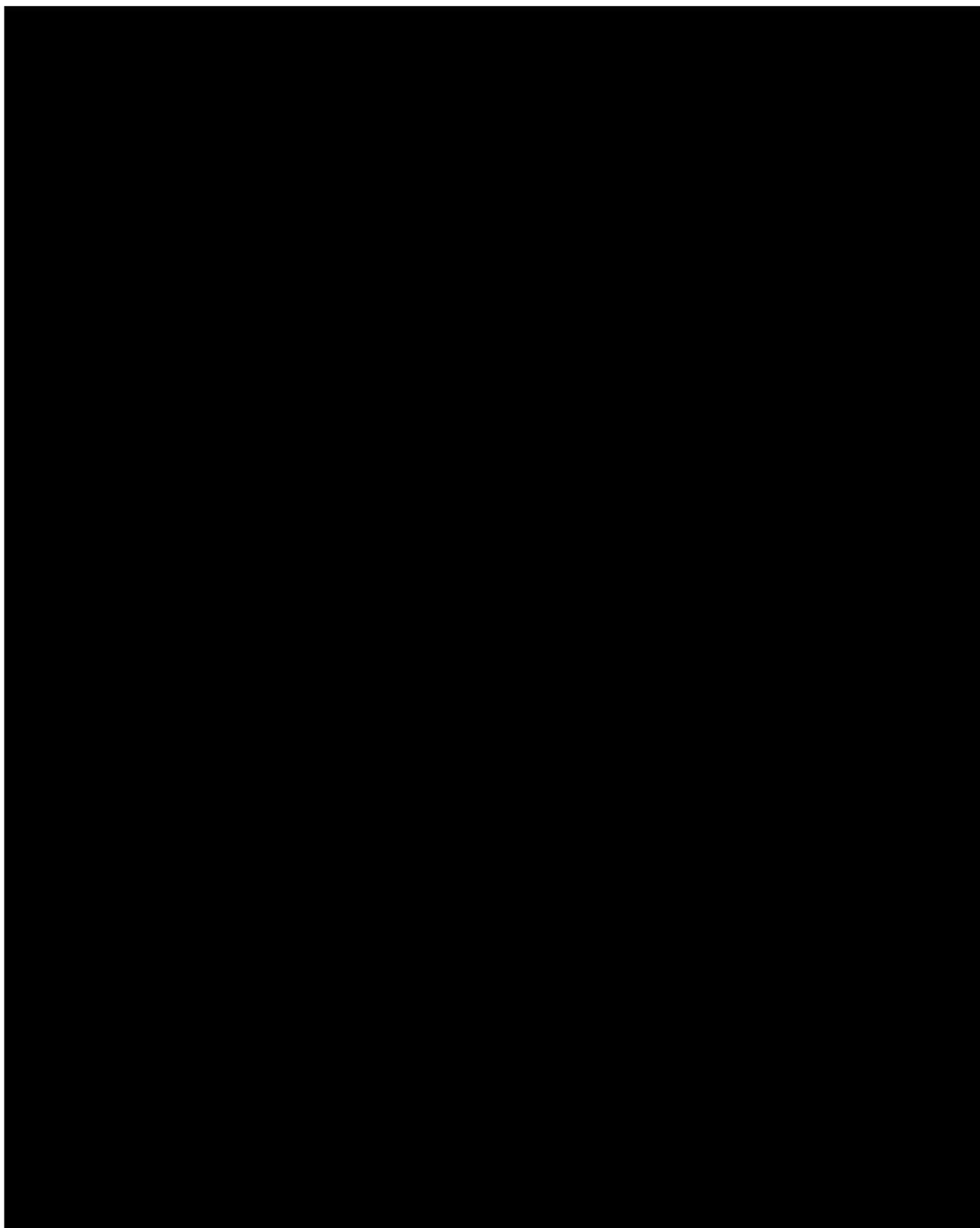
3.4 The Developer shall indemnify and keep the Council indemnified at all times from and against the CPO Costs incurred by the Council.

3.5 The Council shall:

- 3.5.1 take all reasonable and necessary steps to enable the CPO to be made promptly in accordance with statutory requirements, and shall give public notice of the making of the CPO;
- 3.5.2 consult with the Developer regularly and promptly and in any event whenever so reasonably required to do so by the Developer and take into account and have regard to the reasonable representations by the Developer as to the conduct, promotion and obtaining of the CPO and/or related matters contemplated by this Agreement, including the preparation of all and any evidence for any public inquiry including the identity of witnesses and the scope of evidence required to be presented;
- 3.5.3 submit the CPO to the Secretary of State for confirmation and thereafter the Council will take all reasonable and necessary steps to enable the confirmation of the CPO;

- 3.5.4 notify the Developer of any objections passed on by the Secretary of State thereto and of any communications with the Secretary of State and/or the Planning Inspector; and
- 3.5.5 notify and permit the Developer and its representatives to attend and participate in all relevant conferences or consultations with Leading Counsel relating to the CPO and/or related matters contemplated by this Agreement, including the preparation of all and any evidence for any public inquiry including the identity of witnesses and the scope of evidence required to be presented, but excluding any circumstances where a dispute has arisen between the Council and the Developer concerning this Agreement.
- 3.6 The Council shall keep the Developer fully and promptly informed of the progress of the CPO throughout the statutory process.
- 3.7 The Council shall, having first obtained the prior written consent of the Developer, be entitled to agree with the Secretary of State or the Planning Inspector:
  - 3.7.1 such amendments additions variations and/or substitutions to a CPO; and
  - 3.7.2 such other application or applications in relation to a CPO;
 as shall be necessary or desirable to assist in procuring the confirmation of a CPO.
- 3.8 In the event that objections are made to a CPO within the period prescribed by statute the Council shall forthwith obtain and send to the Developer copies of all such objections (subject to any necessary redactions so as to comply with any applicable data protection laws which apply to the Council) and the Developer shall notify the Council whether or not it still wishes for the Council to proceed with a CPO. If no objections are made within the prescribed period the Council shall to the extent it has power to do so confirm the CPO itself.
- 3.9 In the event that a CPO is opposed and the Developer notifies the Council pursuant to Clause 3.8 that it wishes to proceed with the CPO, the Council and the Developer shall work together with the aim of securing the withdrawal of every objection made to the CPO and in particular the Council shall:
  - 3.9.1 following the calling of a public inquiry by the Secretary of State in consultation with the Developer take all reasonable and necessary steps to comply with the requirements of the Secretary of State and/or a Planning Inspector in order to enable a public inquiry into the confirmation of the CPO to be held;
  - 3.9.2 keep the Developer informed of the arrangements for the holding of the inquiry; and
  - 3.9.3 have due regard to the views of the Developer in connection with the preparation for the public inquiry and in particular shall consult with the Developer as to the content of the statement of case prior to its submission and the content and nature of any evidence to be submitted to the public inquiry and generally permit the Developer to take an active part in the preparation and conduct of, and strategy for, the inquiry.
- 3.10 In the event that:
  - 3.10.1 the Secretary of State declines to confirm the CPO or only confirms it in a manner which is not satisfactory to the Developer; or
  - 3.10.2 a third party applies to the court to challenge the decision of the Secretary of State as to confirmation of the CPO;
 the Council shall (in either event) consult with and have due regard to the Developer as to the appropriate manner in which to respond to such decision or action to facilitate the implementation and completion of the Development, and without prejudice to the Council's

ability to instigate or defend or participate in any court proceedings of its own volition the Council shall if so requested by the Developer investigate the merits of taking the action as set out in Clause 3.11.



- 3.13 If the CPO is confirmed, the Council shall publish all necessary notices about the confirmation of the CPO and the possible making of a GVD promptly so as to ensure the CPO may be implemented, and as to the implementation of the CPO the Council shall, except where the Council has agreed with the Developer not to exercise such powers so as to procure the withdrawal of an objection to the CPO or to prevent such an objection being made, act in accordance with a written notice or notices served by the Developer on the Council requiring the Council to implement the CPO in respect of such of the Outstanding Interests the subject of the confirmed CPO and/or other land interests within the Site the subject of the confirmed CPO as in each case are requested by the Developer, to be acquired by using such procedure and strategy as agreed with the Developer (both parties acting reasonably) but provided that (i) no such notice(s) may be served by the Developer in respect of the acquisition of third party title or new rights to be created until the CPO Pre-Condition is met in respect of that title or new rights (as appropriate) and (ii) this clause 3.13 shall not apply in respect of any Blight Notice which shall be dealt with in accordance with clause 3.17.
- 3.14 The Council shall so far as practicable consult with the Developer in relation to the making of any such GVD and the service of any notice to treat/notice of entry. For the avoidance of doubt the Council will not acquire any title, interest or right owned by the Developer, or any Group Company pursuant to the CPO unless such title, interest or right is included in a notice served by the Developer pursuant to Clause 3.13 and the Council has the power to acquire such title, interest or right pursuant to the CPO.
- 3.15 If the Council receives a written request from a landowner and/or third party in respect of the Outstanding Interests for an advance payment of compensation under the Land Compensation Act 1973 ("**Early Payment**") the Council will immediately notify the Developer of the Early Payment request. The Developer shall, taking into account the Council's statutory obligations in relation to the Early Payment, propose a course of action to the Council for the Council's approval (such approval not to be unreasonably withheld or delayed where the same does not contravene the Council's statutory obligations in this regard) within 10 Working Days of receipt of the Early Payment request together with its views as to the correct amount of the Early Payment. Insofar as the same do not contravene the Council's statutory obligations relating to the Early Payment, the Council and the Developer will use reasonable endeavours to agree the amount of the Early Payment and whether or not it will be paid to the landowner and/or third party. Any dispute will be referred to the Expert in accordance with Clause 6.
- 3.16 If prior to the confirmation of the CPO the Council is approached by any third party who will be affected by the CPO to negotiate with the Council in relation to an Outstanding Interest the Council undertakes it will not negotiate with any such third party in respect of any such Outstanding Interest without first giving the Developer written notice of the approach from the third party to enable the Developer to conduct any such negotiations on the Council's behalf should the Developer wish to do so. If the Developer shall so request in writing to the Council, the Council shall use all reasonable endeavours to undertake such negotiations and acquire the relevant Outstanding Interest as soon as reasonably practicable by using such procedure and at such a price and other terms as are agreed with the Developer (both parties acting reasonably) (but provided that it is accepted that the Council shall not be obliged to make any payment which exceeds the amount which that third party would be entitled to pursuant to the Code). The Council shall keep the Developer fully informed as to the progress of such negotiations (including providing the Developer with copies of draft heads of terms and draft contracts and all material correspondence). In the event that the Council agrees such purchase, the Council will observe and perform all obligations on the part of the purchaser as are contained in such contract and at law in respect of such purchase and shall expressly state in the acquisition itself that it is by the Council for planning purposes pursuant to section 227 of the 1990 Act. In the event that the Developer elects to undertake such negotiations and any such Outstanding Interest is successfully acquired, the Developer shall notify the Council of the same. Regardless of whether an Outstanding Interest is acquired by the Council or the Developer, the Council



shall if appropriate update any schedule of interests which are subject to the CPO and (if appropriate) shall avoid any unnecessary action being taken under a CPO including (if appropriate) to enable a public inquiry to be cancelled and the Council shall promptly take such steps.

- 3.17 The Council shall send a copy to the Developer as soon as reasonably practicable of any Blight Notice which it receives together with a statement certifying the rateable value of the relevant property within the rating list as at the date of the Blight Notice and the Developer shall propose a course of action to the Council for the Council's approval within 10 Working Days of receiving such notice including its views as to the validity of the notice and the amount of compensation it considers is payable which course of action the Council (so far as the law permits) shall follow. Any dispute will be referred to the Expert in accordance with Clause 6.
- 3.18 Without prejudice to the foregoing, the Council and the Developer will use reasonable endeavours to agree with any relevant claimant of title or new rights to be acquired the amount of compensation which shall be properly assessed in accordance with the Code. The Developer shall provide all reasonable assistance to the Council in seeking to settle such claims with the claimant, and failing any agreement as to the amount of compensation due to a particular claimant between the Council and the Developer, the matter will be referred to the Expert in accordance with Clause 6. The parties acknowledge that ultimately the amount of CPO compensation may be determined by the Upper Tribunal (Lands Chamber). Following receipt of any compensation claim, and having allowed for a reasonable period to negotiate the claim, the Council agrees that if requested to do so by the Developer it will take all reasonable and necessary steps to refer such compensation claim to the Upper Tribunal (Lands Chamber).
- 3.19 Subject to Clause 3.13 in respect of any particular land interest or work undertaken by the Council pursuant to this Agreement the Developer will pay the CPO Costs pertaining thereto within 20 Working Days of the latter of the parties agreeing the amount of the CPO Costs and receipt of a certificate from the Council evidencing the CPO Costs (the "**Qualifying Certificate**"). If the parties are unable to agree the CPO Costs within 40 Working Days of receipt of the Qualifying Certificate the matter may be referred to the Expert in accordance with Clause 6.
- 3.20 A Qualifying Certificate shall not be valid unless it contains the following information and is signed by a duly authorised officer of the Council:
- 3.20.1 the amount (and breakdown) of the CPO Costs for which payment is sought;
  - 3.20.2 either a description of the work for which the payment is sought or the value of the Outstanding Interest that is being acquired (as appropriate);
  - 3.20.3 certification that the amount being sought is fair and reasonable in relation to the action being taken or the Outstanding Interest being acquired in accordance with this Agreement; and
  - 3.20.4 where appropriate copies of supporting invoices (including VAT invoices).
- 3.21 Qualifying Certificates in relation to CPO Costs shall be a minimum of one month apart.
- 3.22 Where CPO Costs are paid by the Council to a third party in advance of receipt of funds from the Developer to the Council, the Developer shall pay to the Council in addition to the amount of any CPO Costs, interest at three per cent per annum below the Prescribed Rate from the date of payment of the relevant CPO Costs to the third party until the date on which the Developer pays such sum to the Council, provided that the amount of such costs are included in the first Qualifying Certificate issued by the Council following payment to such third party.

- 3.23 If the Developer shall fail to pay any of the sums specified in Clause 3.20 above in accordance with clause 3.19 then without prejudice to any other right or remedy of the Council the Developer shall pay to the Council interest thereon at the Prescribed Rate from the due date until actual payment.
- 3.24 If any amount paid by the Council to any third party owner in respect of any Outstanding Interest pursuant to this Agreement is lower than the amount paid by the Developer to the Council in respect of that particular Outstanding Interest the Council will arrange for such excess to be repaid to the Developer within 14 days of such settlement being concluded (or in the event of determination by the Upper Tribunal (Lands Chamber) an award being made).
- 3.25 If the Council is legally obliged to make or is liable in respect of any CPO Costs as at the date of termination of this Agreement, then notwithstanding the termination of the remainder of this Agreement the provisions of Clauses 3.4, 3.19 – 3.27 of this Agreement as to the payment of those CPO Costs shall continue in force until such time as those payments are made and thereupon any relevant land acquired by the Council pursuant to this Agreement shall be transferred to the Developer (or as it may direct pursuant to the terms of this Agreement) as though this Agreement (and in particular Clauses 3.28 - 3.30) was still in full force and effect.
- 3.26 If the Developer requests that the Council executes a GVD or serves a notice to treat under the CPO in respect of any Outstanding Interest or otherwise requests that the Council acquire any Outstanding Interest, the Council shall not be obliged to do so until such time as the Developer has shown to the Council's reasonable satisfaction that the Developer has deposited a sum equivalent to the reasonably estimated value (if not agreed with the relevant third party) of items (c), (f) and (g) of the CPO Costs in respect of that Outstanding Interest into an account held by the Council referred to in 3.27 below.
- 3.27 All monies deposited by the Developer with the Council to acquire any Outstanding Interests shall be held by the Council for that purpose in an interest bearing bank account and:
- 3.27.1 the Council shall be entitled to make withdrawals to pay compensation under the Code where the same has become due;
- 3.27.2 all interest earned on such sums deposited by the Developer shall be credited to the Developer and all unused amounts and accrued interest shall be paid promptly to the Developer once all compensation under the Code has been paid.
- 3.28 If requested to do so by the Developer as part of the notice served by the Developer pursuant to clause 3.13, upon completion of the acquisition by the Council of any Outstanding Interests pursuant to any provision of this Clause 3 or of any other land interest in the Site included in the CPO at the Developer's request, the Council shall promptly register the same at the Land Registry if appropriate and use reasonable endeavours to ensure that any requisitions raised by the Land Registry are dealt with promptly and satisfactorily and shall provide the Developer with official copies and title plans in respect of such title(s) within five Working Days of receipt of the same from the Land Registry.
- 3.29 If requested to do so by the Developer as part of the notice served by the Developer pursuant to clause 3.13, the Council shall immediately transfer to the Developer or a Group Company (at the Developer's reasonable direction) (or otherwise deal with at the Developer's reasonable direction) any title acquired by the Council pursuant to this Clause 3 for a peppercorn subject to the Developer having already paid at the time of legal completion to the Council the sums referred to in clause 3.26 in relation to that specific title.
- 3.30 In relation to any Outstanding Interest acquired by the Council but which acquisition has been paid for by the Developer, until such time as the relevant Outstanding Interest is transferred (or otherwise dealt with at the Developer's reasonable direction) to the Developer or a Group Company whether pursuant to Clause 3.29 or otherwise following written notice from the

Developer, the Council shall hold the relevant Outstanding Interest on trust for the Developer and shall act in accordance with the Developer's instructions and the income (if any) deriving from such Outstanding Interest shall belong to the Developer.

3.31 It is agreed that the consideration paid by the Developer (or any nominee of the Developer under this Agreement) for the land and titles transferred by the Council to the Developer (or at the Developer's direction under this Agreement) shall comply with section 233 of the 1990 Act and the Council acknowledges that it has concluded that the consideration secured to it by the terms of Clause 3.29 complies with section 233 of the 1990 Act.

3.32 In seeking to acquire any Outstanding Interests the Developer and the Council shall act in accordance with such land acquisition strategy as the Developer may reasonably require unless otherwise agreed in writing. It is acknowledged that the Council has a duty to act in compliance with section 233(5) of the 1990 Act and the Developer agrees in furtherance of that duty that it will (upon obtaining sufficient title pursuant to the CPO from the Council to enable it to do so) so far as may be practicable offer to any relevant occupier (as defined in section 233(6) of the 1990 Act) on a first refusal basis a suitable opportunity for accommodation (as defined in section 233(7) of the 1990 Act) within such part of the Site as the Developer may reasonably direct by way of a lease at current market rent and on reasonable commercial terms. The Developer may require the relevant occupier to provide satisfactory evidence of its financial stability prior to the grant of a lease to that relevant occupier.

Unless otherwise agreed in writing by the Council the Developer shall (to the extent it has not already done so) offer on a first refusal basis as aforesaid suitable opportunity for accommodation (i) within the East Site of the Development to the current tenants of 6 Farrell Court (DistriAndina U.K. Limited) and 7 Farrell Court (Beset) and (ii) within 4-5 Farrell Court to the current tenant of 4-5 Farrell Court (Corsica Studios). Unless otherwise agreed in writing between the Council and the Developer, the Developer shall use all reasonable endeavours (but without being obliged to accept unreasonable commercial terms) to procure that as part of any agreement with Beset for its relocation within the Scheme, Beset shall offer floorspace within such relocation premises as are offered to Beset to the other occupiers of 7 Farrell Court (such floorspace to be offered to the other occupiers of 7 Farrell Court being comparable in size to their current floorspace and offered on reasonable commercial terms).

For the avoidance of doubt (i) the Developer shall not be in breach of this clause 3.32 if it chooses to offer any rental discount or incentive to any relevant occupier and (ii) nothing in this clause 3.32 shall obviate any obligation on the Developer to apply any rental discount pursuant to the Section 106 Agreement.

3.33 Notwithstanding any other provision of this Agreement, the indemnity in clause 3.4 shall not apply:

3.33.1 in respect of any deliberate act of misconduct on the part of the Council or its officers or employees; or

3.33.2 to the extent that the Developer's liability under this clause 3 is increased as a result of any negligent act, default or omission on the part of the Council or its officer or employees; or

3.33.3 to the extent that the Development is carried out other than by or on behalf of or with the written consent of the Developer or a Group Company; or

3.33.4 to the extent that the Council has recovered the relevant CPO Costs from the Developer pursuant to any other agreement between the Council and the Developer (it being agreed that the Council shall not be entitled to recover the same item of CPO Costs more than once).

- 3.34 The Developer covenants with the Council that:
- 3.34.1 the Developer shall only acquire Outstanding Interests pursuant to this Agreement with the intention of enabling the Development to continue and complete;
  - 3.34.2 any Outstanding Interests acquired by or passed to any Group Company after the date of this Agreement are intended to be held to enable the Development to continue and complete and it shall procure that every Group Company complies with the provisions of this clause and shall not otherwise acquire Outstanding Interests other than in furtherance of the objectives of this Agreement.
- 3.35 The Developer covenants with the Council that the Developer shall procure that in the carrying out of demolition works comprised within the Development on and immediately adjacent to the LCC Site (a) the disabled entrance in the front side arch of the Metropolitan Tabernacle (close to the Elephant & Castle highway) shall be available at all times when the Metropolitan Tabernacle is in operation, (b) reasonable endeavours are taken to keep open the side accessway route within the grounds of the Metropolitan Tabernacle from the rear of the Metropolitan Tabernacle to that disabled entrance in the front side arch, under scaffolding, for persons with (and without) mobility impairments if it is safe and practicable to do so and (c) that safe access and egress to and from the Metropolitan Tabernacle is ensured at all times.
- 3.36 Unless otherwise agreed in writing with the Council, and subject to the Developer having acquired sufficient title to 4 and 5 Farrell Court (including the accessway between those two units) and the land to the immediate rear thereof (and new rights in respect of the sides and undersides of the railway viaduct enclosing 4 and 5 Farrell Court) to enable the Developer to be able to let that land and control works thereon, the Developer covenants with the Council that, in the event Corsica Studios does not take up the offer from the Developer of a new lease and vacates 4 and 5 Farrell Court, the Developer shall promptly notify the Council to that effect and within 30 Working Days of such notice shall submit to the Council for its approval a marketing strategy for seeking the re-letting of 4 and 5 Farrell Court to other nightclub operators, including the proposed duration of the marketing (which shall, unless otherwise agreed in writing by the Council, be for a period of not less than 2 years from the completion of the transfer of arches 4 and 5 Farrell Court and the land to the immediate rear thereof to the Developer) and a range of measures to maximise the prospect of identifying a suitable tenant. In the event the Council rejects the marketing strategy, the Developer shall promptly re-submit to the Council a revised marketing strategy seeking the re-letting of 4 and 5 Farrell Court to other nightclub operators and which takes into account comments made by the Council in respect of the marketing strategy. Following approval of a marketing strategy, the Developer shall proactively market the availability of 4 and 5 Farrell Court as a nightclub in accordance with the approved strategy (and shall regularly update the Council as to progress and provide the Council with such evidence as it may reasonably require) and if successful in finding a nightclub operator which is acceptable to the Developer (acting reasonably) ("the chosen operator") within the approved marketing period the Developer shall promptly notify the Council of the same and use reasonable endeavours to enter into a binding agreement for lease on reasonable commercial terms with the chosen operator for the premises to be used as a nightclub. Any dispute in relation to this clause 3.36 may be referred to the Expert in accordance with Clause 6.

#### **4. GUARANTEE**

- 4.1 Subject to clauses 4.2 – 4.3, the Guarantor covenants with the Council, by way of guarantee, in the terms set out in the Schedule.
- 4.2 The Guarantor or the Developer may at any time propose to the Council a replacement guarantor and subject to such replacement being of sufficient financial standing to perform the guarantee provisions of this Agreement as approved by the Council (such approval not to be

unreasonably withheld or delayed) and such replacement entering into a deed of covenant with the Council by way of guarantee in the terms set out in the Schedule then the Guarantor shall be automatically released from all liability pursuant to this Agreement but without prejudice to any liability in respect of antecedent breach. The Developer shall pay the Council's reasonable and proper fees and costs in connection with such substitution.

- 4.3 Without prejudice to clause 4.2, the liability of the Guarantor under this Agreement shall cease and determine upon the determination of this Agreement subject to and in accordance with clause 5.

## **5. TERMINATION**

- 5.1 In the event that the CPO Pre-Condition has not been satisfied on or before [REDACTED] [REDACTED] either the Developer or the Council may on or at any time thereafter by way of written notice served on the other prior to the CPO Pre-Condition being satisfied terminate this Agreement and following service of such notice this Agreement will terminate with immediate effect (subject to clause 5.14).

- 5.2 If there has been no acquisition of any Outstanding Interests pursuant to this Agreement within [REDACTED] then either the Developer or the Council may at any time thereafter by way of written notice served on the other terminate this Agreement and following service of such notice this Agreement will terminate with immediate effect (subject to clause 5.14).

- 5.3 It is acknowledged that the Council is required to act reasonably and in the public interest as regards any CPO. If the Council receives advice from Leading Counsel that there is no reasonable prospect of a CPO being confirmed [REDACTED] the Council shall provide the Developer with a copy of that advice and the instructions to Leading Counsel which led to that advice and at the cost of the Developer shall allow the Developer to discuss such advice with Leading Counsel in consultation and to review that advice in light of the Developer's representations. If Leading Counsel is still of the same view following such representations, the Council and the Developer shall seek to agree on the best way to proceed and if no such agreement has been reached [REDACTED] the prospects of a CPO being confirmed [REDACTED] shall be referred to Independent Counsel who specialises in compulsory purchase (who is to be agreed upon between the parties) by way of joint instructions to advise in conference and thereafter in writing, with both parties entitled to participate in and make representations to Independent Counsel at the conference and if Independent Counsel's written opinion is that there is no reasonable prospect of confirmation of a CPO [REDACTED] then either the Council or the Developer may terminate this Agreement by giving written notice to the other and upon service of such notice this Agreement shall immediately terminate (subject to clause 5.14).

- 5.4 The Developer may terminate this Agreement (subject to clause 5.14) by giving written notice to the Council if the Council has committed material breaches of its obligations in clause 3 (and not remedied such material breaches within a reasonable period following written notification by the Developer to the Council of a material breach) and such default is materially detrimental to the Developer's interest in the Development or its ability to carry out the Development.

- 5.5 For the purposes of the remainder of this Clause 5, an event of default occurs if:-

- 5.5.1 the Developer has committed material breaches (and not remedied such material breaches within a reasonable period following written notification by the Council to the Developer of a material breach) of its obligations under this Agreement which are individually or cumulatively such as would entitle the Council to repudiate this Agreement; or

- 5.5.2 an Event of Insolvency occurs in relation to the Developer and there is at that time no guarantor standing as surety for the Developer's obligations under this Agreement,
- each an "**Event of Default**".
- 5.6 On the occurrence of an Event of Default the Council may, in addition to any other rights and remedies it may have, terminate this Agreement for breach by giving written notice to the Developer to that effect, but subject to first complying with the provisions of Clause 5.9 and to the right of termination being overridden by the operation of Clause 5.10.
- 5.7 If the Council terminates this Agreement in accordance with Clause 5.6 the Council will retain all rights and remedies against the Developer for any breach of obligation under this Agreement before the termination.
- 5.8 The expression an "Event of Insolvency" means any of the following:
- 5.8.1 an inability of the Developer to pay its debts within the meaning of sections 122 and 123 of the Insolvency Act 1986;
  - 5.8.2 entry into liquidation either compulsory or voluntary (except for the purpose of amalgamation or reconstruction);
  - 5.8.3 the passing of a resolution for a creditor's winding up;
  - 5.8.4 the making of a proposal to the Developer and its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs;
  - 5.8.5 the appointment of a receiver or administrative receiver; or
  - 5.8.6 the making of a petition to the court for an administration order.
- 5.9 The Council may not terminate this Agreement under Clause 5.6 unless it has first given to any Mortgagee at least 60 Working Days' notice of that intention, and specifying the grounds for doing so, but by complying with this Clause 5.9 the Council shall not be treated as waiving its right to terminate this Agreement unless that right is overridden by the operation of Clause 5.10.
- 5.10 The right of the Council to terminate this Agreement will be overridden if within the period of 60 Working Days referred to in Clause 5.9 the Mortgagee (or its nominee, whose identity is approved by the Council):
- 5.10.1 gives notice to the Council requiring it not to terminate this Agreement;
  - 5.10.2 acknowledges to the Council by the Mortgagee or its nominee entering into a deed of covenant with the Council in a form to be approved by the Council assuming all the obligations of the Developer under this Agreement;
  - 5.10.3 takes steps approved by the Council acting reasonably to remedy the relevant breach with all reasonable despatch; and
  - 5.10.4 pays to the Council any monies which have become due under this Agreement but which are unpaid at the date of the Council's notice to terminate.
- 5.11 The Council will allow the Mortgagee such additional time as may be reasonable to remedy a default of the Developer.
- 5.12 If the Mortgagee exercises its rights under Clause 5.10 within the time limit allowed for doing so, of which time is of the essence, this Agreement shall continue in force as if the right of



termination of this Agreement had not arisen, and this Agreement had originally been made between the Council and the Mortgagee or such nominee to the exclusion of the Developer.

- 5.13 The Council is not entitled or required to enquire whether, as between the Developer and the Mortgagee, the Mortgagee may exercise the rights in Clause 5.10, and the Council shall not incur liability to the Developer by reason only of acting in accordance with Clause 5.10.
- 5.14 On the termination of this Agreement the parties shall be released from all their obligations save that:
- 5.14.1 clauses 3.4, 3.19 - 3.27 (inclusive) shall continue to apply to the extent referred to in clause 3.25;
- 5.14.2 clauses 3.28 - 3.30 (inclusive) shall continue to apply to the extent they have already been triggered in respect of the acquisition of a specific land interest; and
- 5.14.3 clause 12 shall continue to apply.
- 5.15 Without prejudice to any other provision of this Agreement, this Agreement shall determine and all liability under it shall cease when all of the following have occurred:
- 5.15.1 [REDACTED] following the completion of the external envelopes of the buildings comprised in the Development in so far as it is carried out on the Site; and
- 5.15.2 the settlement of all third party claims referred to the Upper Tribunal (Lands Chamber) in respect of the CPO (if any) and the paying of any CPO Costs which are outstanding as a result of any such claims.

## **6. DISPUTE RESOLUTION**

- 6.1 The parties shall endeavour to resolve any disputes promptly and amicably. If they are unable to resolve any matter within 15 Working Days either party may serve notice on the other that it wishes to refer the dispute to the Expert and shall specify the nature of the dispute and the provision(s) of this agreement or a matter of law or as to compulsory purchase procedure which give rise to it.
- 6.2 Where either party requires expert determination in accordance with Clause 6.1 or the parties both agree on such determination, the matter shall be referred to the Expert.
- 6.3 The Expert shall have at least 10 years' experience in respect of the subject matter of the dispute and shall be a specialist in that field. If the dispute is as to the interpretation or construction of this agreement the Expert shall be a barrister. Otherwise the Expert shall be a chartered surveyor.
- 6.4 The Expert shall be agreed by the parties or in default of agreement appointed by the President for the time being (or failing him the next most senior officer available and willing to act) of the Bar Council or the Royal Institution of Chartered Surveyors (as appropriate) on the application of either party.
- 6.5 The Expert so appointed shall act as an expert and not as an arbitrator and his or her decision shall be final and binding (save in the case of fraud or manifest error).
- 6.6 The Expert shall be instructed to:
- 6.6.1 seek evidence (whether written or oral) from the parties and shall be entitled to seek and rely upon such other professional advice and assistance as he shall in his absolute discretion deem desirable;

- 6.6.2 provide an opportunity for each party to make prompt written representations and to respond in writing to the written submission of the other party within such timetable as the Expert considers appropriate, although the Expert shall not be in any way fettered thereby;
  - 6.6.3 serve a document setting out his or her determination on each party; and
  - 6.6.4 give his or her decision promptly and in any event within 30 Working Days of his or her appointment which shall (save in the absence of manifest error) be final and binding on the parties.
- 6.7 The parties shall use all reasonable endeavours to procure that the Expert is given all such assistance and access to documents and other information as he or she may reasonably require in order to make a decision.
- 6.8 The costs or such valuation, and of the appointment of the Expert, shall be paid by the parties equally or as otherwise directed by the Expert.

## **7. COUNCIL AS LOCAL AUTHORITY**

- 7.1 Nothing herein contained shall prejudice or affect any of the statutory rights powers discretion obligations and duties for the time being vested in the Council as local or other statutory authority for the area in which the Site is located and all such rights powers obligations and duties exercised in the capacity of local or other statutory authority shall in regard to the Site and any buildings or works thereon or the occupiers thereof be enforceable and exercisable by the Council as fully and freely as if this Agreement had not been executed.
- 7.2 Without prejudice to the provisions of Clause 7.1, nothing in this Agreement shall in any way fetter or compromise The Mayor and Burgesses of the London Borough of Southwark as local planning authority in any decisions relating to the Development.
- 7.3 Subject to Clause 7.1 and the Developer fulfilling its obligations hereunder the Council and the Developer will co-operate together and will use reasonable endeavours (but at no cost to the Council and commensurate with the Council's obligations under this Agreement) to promote the development permitted by the Planning Permission and to assist the Developer in doing so including (where requested to do so by the Developer and in accordance with a strategy set out by the Developer) assisting in discussions and negotiations with any other relevant stakeholders or parties, such as Transport for London, London Underground Limited, the Greater London Authority and Network Rail.
- 7.4 Any approval agreement consent direction or authority given by the Council as local or other statutory authority shall not be or be deemed to be an approval agreement consent direction or authority given under this Agreement and vice versa.

## **8. APPROVALS**

Where in accordance with the interpretation set down in Clause 1.8 the acceptance, consent, approval, agreement, expression of satisfaction or opinion of the Council (each of which shall be referred to in this clause 8 as a "**consent**") is not to be unreasonably withheld or delayed, the following provisions shall apply:

- 8.1 the Developer shall seek the relevant consent by an application in writing addressed to the Council;
- 8.2 the Council shall use its reasonable endeavours to give a written response to an application for such consent within 10 Working Days of receipt of the application and that response will either be:

- 8.2.1 the consent requested is given, with or without conditions;
  - 8.2.2 (where reasonable and proper) a request for further information will be made; or
  - 8.2.3 a refusal of such consent, accompanied by reasonable and proper written reasons,
- provided that it is accepted that if a consent requires the approval of the Council's Cabinet it may not be practicable for that consent to be given within 10 Working Days but in that event the Council shall act promptly and take the matter to its Cabinet at the earliest opportunity.

## **9. VALUE ADDED TAX**

- 9.1 The parties agree that all supplies made under this Agreement are made on a VAT exclusive basis and that the paying party will (subject to the delivery of a valid VAT invoice addressed to that party) pay any VAT which is properly payable on such supplies (and, for this purpose, each party agrees that it will provide a back to back invoice, addressed to the other party, for any supplies made to it where the supplier does not provide a VAT invoice addressed to the party required to pay VAT under this Agreement).

## **10. ASSIGNMENT**

- 10.1 Prior to the first occupation of any part of the Development, the Developer may not assign, part with or charge in whole or in part this Agreement or the benefit thereof except by way of:-
  - 10.1.1 an assignment by way of charge or other security of the benefit in the whole of this Agreement in favour of a Mortgagee or its security agent or other similar nominee acting on its behalf which in each case is a reputable and creditworthy entity; and/or
  - 10.1.2 an assignment of the benefit of the whole of this Agreement to a Group Company of the Developer provided that such Group Company will on or prior to such assignment enter into a deed of covenant with the Council to comply with and perform the obligations of the Developer under this Agreement (including the provision of such financial security as may be required under this Agreement) in such form as the Developer may propose and the Council shall approve as if such Group Company had been party to this Agreement; and/or
  - 10.1.3 an assignment of the benefit of the whole of this Agreement to any entity which has the requisite financial resources (when taking into account any security arrangements which may be required under this Agreement and any internal and external funds available to it) and skills (whether in-house or through its proposed project team) in respect of the Development and for which evidence of those matters satisfactory to the Council has been provided to the Council provided that such entity will on or prior to such assignment enter into a deed of covenant with the Council to comply with and perform the obligations of the Developer under this Agreement (including the provision of such financial security as may be required under this Agreement) in such form as the Developer may propose and the Council shall approve as if such entity had been party to this Agreement; and/or
  - 10.1.4 an assignment of the benefit of the whole of this Agreement to an assignee approved by the Council provided that such entity will on or prior to such assignment enter into a deed of covenant with the Council to comply with and perform the obligations of the Developer under this Agreement (including the provision of such financial security as may be required under this Agreement) in such form as the Developer may propose and the Council shall approve as if such entity had been party to this Agreement .
  - 10.1.5 a novation of this Agreement to any entity referred to in Clause 10.1.2, 10.1.3 or 10.1.4 in which case the Developer shall prior to such novation provide the Council with

information as to the identity of the intended novatee, and shall provide to the Council for its approval a draft deed of novation with the said entity and any such novation shall be completed in accordance with the approved deed of novation so that the Developer's obligations under this Agreement shall pass to the said entity and the Council for its part agrees to promptly enter into such a deed of novation.

- 10.2 In the case of any assignment pursuant to Clause 10.1.2, 10.1.3 or 10.1.4, the Council shall at the request of the Developer release the Developer from its obligations under this Agreement if the Council has received the completed deed of covenant referred to in those clauses.

## **11. RELEASE**

- 11.1 Subject to clause 11.2, the Developer shall be released from any obligations under this Agreement if:

11.1.1 it procures a replacement indemnity from an alternative entity provided that the Developer has received the Council's prior written approval of the alternative entity, such approval not to be unreasonably withheld or delayed; and

11.1.2 the indemnity agreement from the alternative entity has been lawfully and validly entered into by way of a deed with the Council on the same terms as this Agreement or on such alternative terms as are approved by the Council, such approval not to be unreasonably withheld or delayed. The Developer shall pay the Council's reasonable and proper fees and costs in connection with such substitution.

- 11.2 The release contained in clause 11.1 does not apply to any antecedent breach of covenant by the Developer.

## **12. CONFIDENTIALITY**

- 12.1 Subject to clause 12.2 the parties acknowledge that this Agreement is a public document.

- 12.2 The parties agree and undertake not to make public or to reveal to any third party:

12.2.1 the amount of compensation payable under the Code;

12.2.2 the discussions and/or negotiations leading up to and/or in connection with this Agreement

(each "**Confidential Information**").

- 12.3 Clause 12.2 shall not prevent disclosure:

12.3.1 to the extent necessary to comply with any legal obligation or legal requirement (including in the case of the Council pursuant to the FOI Act);

12.3.2 to the extent necessary to comply with any requirements of any relevant stock exchange or other regulatory, governmental or official body;

12.3.3 to HM Revenue & Customs or any other governmental, public or official body for taxation, rating or registration purposes; or

12.3.4 by way of a joint press announcement previously agreed by the parties acting reasonably.

- 12.4 In the event that the Council receives a request to disclose any Confidential Information to a third party under the FOI Act, the Council shall:

12.4.1 inform the Developer about the request and the nature of the information being sought as soon as reasonably possible;

12.4.2 consult with the Developer prior to the disclosure of any such information; and

12.4.3 consider and apply all lawful exemptions provided under the FOI Act and then to withhold information sought in terms of the request for information consistent with the exercise of its discretion and duties under the FOI Act.

12.5 The provisions of this Clause 12 shall continue to apply notwithstanding any termination of the other provisions of this Agreement.

### **13. GOOD FAITH**

The Council and the Developer shall each act in good faith in their dealings with each other in relation to all matters which are the subject of this Agreement.

### **14. WORKING GROUP**

14.1 The Council and the Developer shall use all reasonable endeavours to set up as soon as practicable after the date hereof a working group in respect of the various matters under this Agreement. The working group's role will be to seek and achieve co-operation between the Developer and the Council on all matters pursuant to this Agreement and to review and monitor progress of the various obligations under this Agreement.

14.2 The working group will seek to meet at least once every month or otherwise as agreed.

14.3 The working group will comprise representatives of the Developer and the Council (and may include their professional advisors) and each party will notify the other of the names of their respective representatives.

14.4 It will be the responsibility of each party to ensure that their respective representatives attend the working group meetings. If those representatives are not available, the relevant party shall ensure that a suitable substitute, who has sufficient knowledge of the Development and this Agreement, shall attend the meeting.

### **15. NOTICES**

15.1 All notices relating to this Agreement shall be in writing and delivered by hand or sent by post (but not electronic mail) to the party concerned at the relevant address shown at the start of this Agreement (or such other address as may be notified from time to time in accordance with this Clause by the relevant party to the other party).

15.2 Each of those notices shall take effect:

15.2.1 if delivered, upon delivery; and

15.2.2 if posted, at the earlier of delivery and, if sent by first class registered post, 10.00 a.m. on the first Working Day after posting.

### **16. GOVERNING LAW**

This Agreement is governed by and shall be construed in accordance with the laws of England and (subject to the provisions of Clause 6) the parties submit to the exclusive jurisdiction of the English courts in respect of any claim difference or dispute between them.

**17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**18. PARTNERSHIP EXCLUSION**

Nothing contained in this Agreement shall be construed as effecting any partnership between the parties.

**19. COSTS OF THIS AGREEMENT**

The Developer shall pay to the Council on the date hereof the Council's reasonable legal surveyor's and officers fees in connection with the negotiation and completion of this Agreement.

**20. SEVERABILITY**

If any provision of this Agreement is held invalid, unlawful or unenforceable by a court of competent jurisdiction, that provision shall be severed and the remaining provisions of this Agreement shall continue in full force and effect as if it had been executed without the invalid, unlawful or unenforceable provision.

**21. NON-MERGER**

The provisions of this Agreement shall not merge on the completion of any act or step contemplated by this Agreement to the extent they remain to be performed and capable of being performed the provisions of this Agreement shall continue in full force and effect.

**22. FURTHER ASSURANCE**

Each party agrees to do all acts and things reasonably necessary to give meaning and effect to this Agreement and the things contemplated by it.

**23. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement.

**24. COUNTERPARTS**

This Agreement may be executed in any number of separate counterparts each of which when executed and dated shall be an original but all the counterparts shall together form the same instrument.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a deed the day and year first before written

The COMMON SEAL of  
**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF SOUTHWARK**  
was hereunto affixed in the presence of:

}



Authorised Signatory

SIGNED AS A DEED on behalf of  
**ELEPHANT AND CASTLE PROPERTIES  
CO. LIMITED** a company incorporated in  
British Virgin Islands, by

being (a) person(s) who, in accordance with the  
law of that territory is/are acting under the  
authority of the company

Signature in the name of the company:

*Elephant and Castle Properties Co. Limited*

Signature of authorised signatory/signatories:

SIGNED as a DEED by  
**GET LIVING PLC**  
acting by a director and its secretary or  
by two directors:

Signature of Director:.....

Signature of Secretary/Director:.....

**SCHEDULE**  
**GUARANTEE**

**1. Guarantee**

1.1 The Guarantor hereby irrevocably and unconditionally undertakes and guarantees the full, prompt and complete performance and observance by the Developer of its financial obligations in this Agreement and agrees that if the Developer shall in any respect fail to perform any of its financial obligations under this Agreement that the Guarantor will in accordance with paragraph 6 perform and fulfil or procure to be performed or fulfilled in place of the Developer each and every one of the obligations in respect of which the Developer has defaulted.

1.2 The Guarantor agrees that any sum payable to the Council by it pursuant to this Agreement will be paid without deduction or set-off.

**2. Continuing Guarantee**

The guarantee in paragraph 1 shall be a continuing guarantee and shall remain in force until such time as it determines in accordance with clauses 4.2 or 4.3 and shall not be affected by any legal limitations, disability or other circumstances relating to the Guarantor or the Developer.

**3. No release**

3.1 None of the following or any combination of them shall release, discharge or lessen or affect the liability of the Guarantor under this Agreement:

3.1.1 any neglect, delay or forbearance of the Council in endeavouring to obtain payment of any sum due under this Agreement or in enforcing compliance with the Developer's obligations in this Agreement;

3.1.2 any extension of time indulgence or any other concessions given by the Council to the Developer or to the Guarantor or any third party;

3.1.3 any variation or arrangement or alteration of terms being made or agreed with the Developer with the consent of the Guarantor;

3.1.4 any lack of or limitation on the powers of the Developer;

3.1.5 the absence of authority of any person purporting to represent or act on behalf of the Developer;

3.1.6 the liquidation administration or other insolvency of or any change in the constitution of the Developer or the Guarantor;

3.1.7 any other act, omission, dealing, matter or thing as a result of which but for this provision the Guarantor would or might be exonerated or discharged wholly or in part (other than an express release given by the Council, whether pursuant to clause 4.2 or otherwise).

**4. Disclaimer of Agreement**

If the Developer (being an individual) becomes bankrupt or (being a corporate body) enters into liquidation and the trustee in bankruptcy or liquidator disclaims this Agreement then the Guarantor shall on demand pay to the Council sums equal to the sums that would have been due under this Agreement but for the disclaimer.

**5. Deferral of Guarantor's rights**

The Guarantor shall not in priority to or in competition with the Council exercise any rights which it may have by reason of the performance by it or its obligations under this schedule:

- (a) to receive or claim payment from or be indemnified by the Developer;
- (b) to take the benefit (in whole or part and whether by way of subrogation or otherwise) of any rights of, or any guarantee or security taken by, the Council in respect of the Developer's obligations in this Agreement;
- (c) to exercise any rights of set-off against the Developer; or
- (d) to claim or prove as a creditor of the Developer in competition with the Council.

**6. Failure to perform**

In the event of the Developer failing to observe and perform any of the financial obligations and stipulations in this Agreement in respect of which the Guarantor has given this guarantee and following service of written notice by the Council upon the Developer and the Guarantor to remedy such failure and within 20 Working Days from the date of service of that notice neither the Guarantor nor the Developer has remedied such obligation then the Council shall be entitled to enforce such provisions against the Guarantor without the need to pursue the Developer further.

**APPENDIX**  
**Plan 1, Plan 2 and Plan 3**

## **APPENDIX 3**

### **New Plan 1**



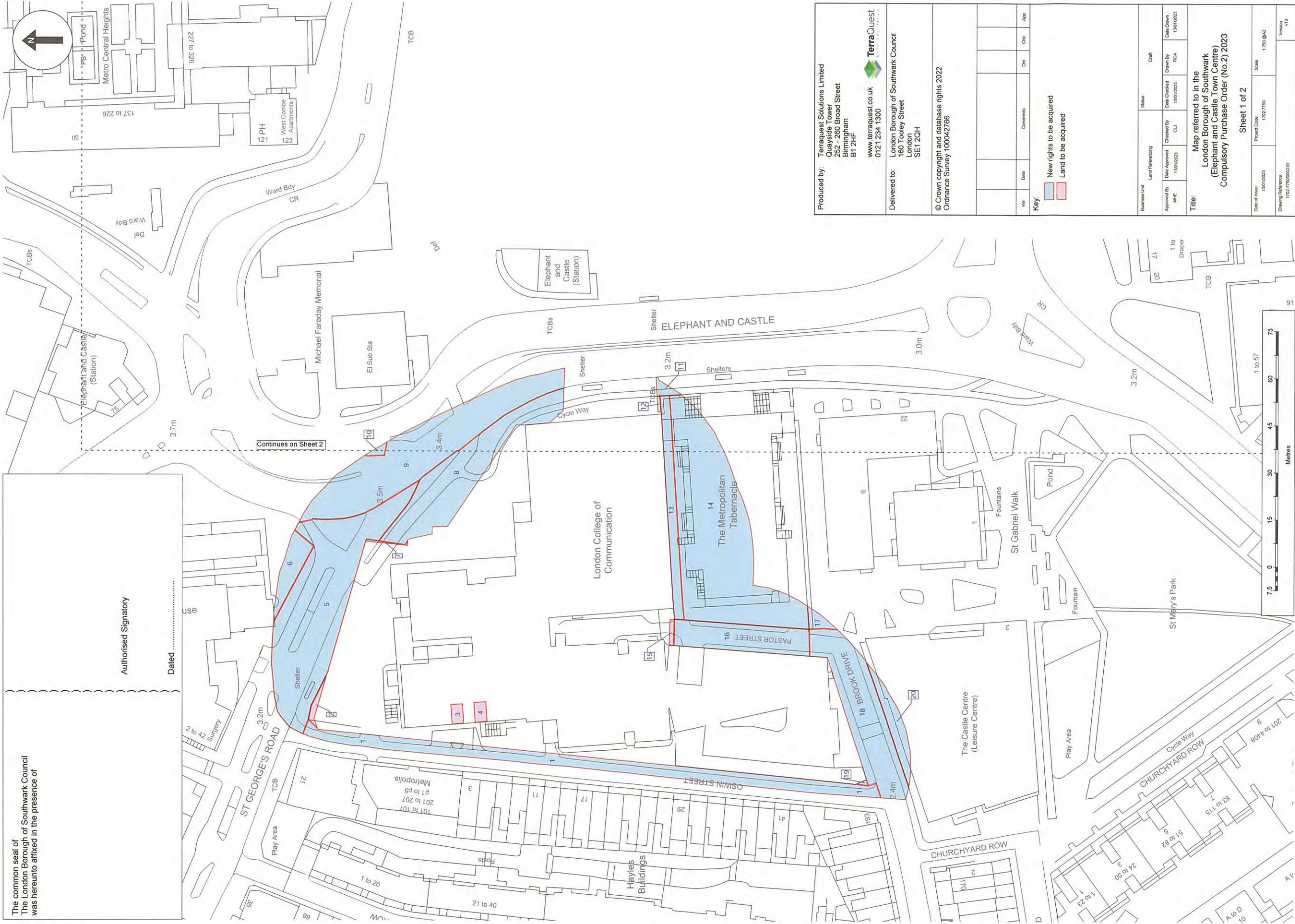



Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No.2) 2023

The common seal of  
The London Borough of Southwark Council  
was hereunto affixed in the presence of

Authorised Signatory

Dated .....

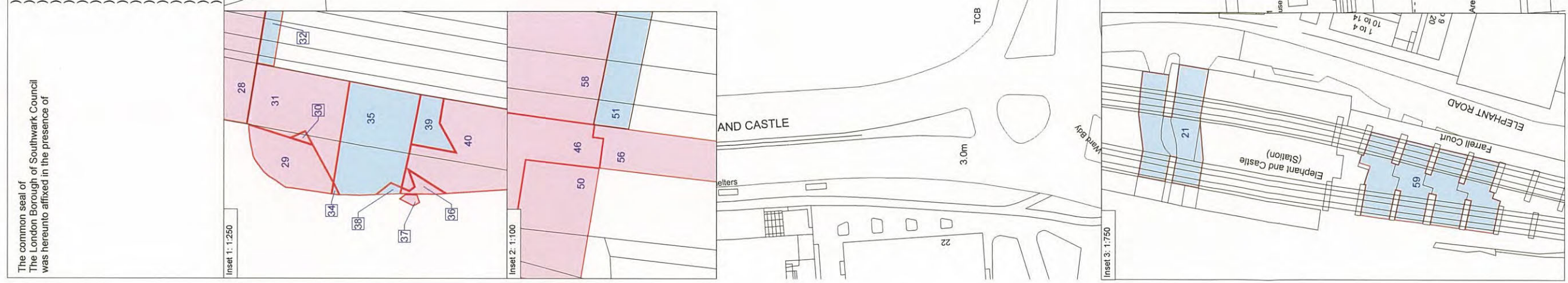


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Delivered to: London Borough of Southwark Council 160 Tooley Street London SE1 2QH						© Crown copyright and database rights 2022 Ordnance Survey 100042766	
Ver	Date	Comments	Dr	Chk	App		
<div>Key:</div> <div><div></div> New rights to be acquired</div> <div><div></div> Land to be acquired</div>							
Business Unit		Land Referencing		Status	Draft		
Approved By MHE	Date Approved 13/01/2023	Checked By CLJ	Date Checked 13/01/2023	Drawn By RCA	Date Drawn 13/01/2023		
Title: Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No.2) 2023							
Sheet 1 of 2							
Date of Issue 13/01/2023		Project Code 1102-7750		Scale 1:750 (A4)		Version v13	
Drawing Reference 1102-7750-0020							





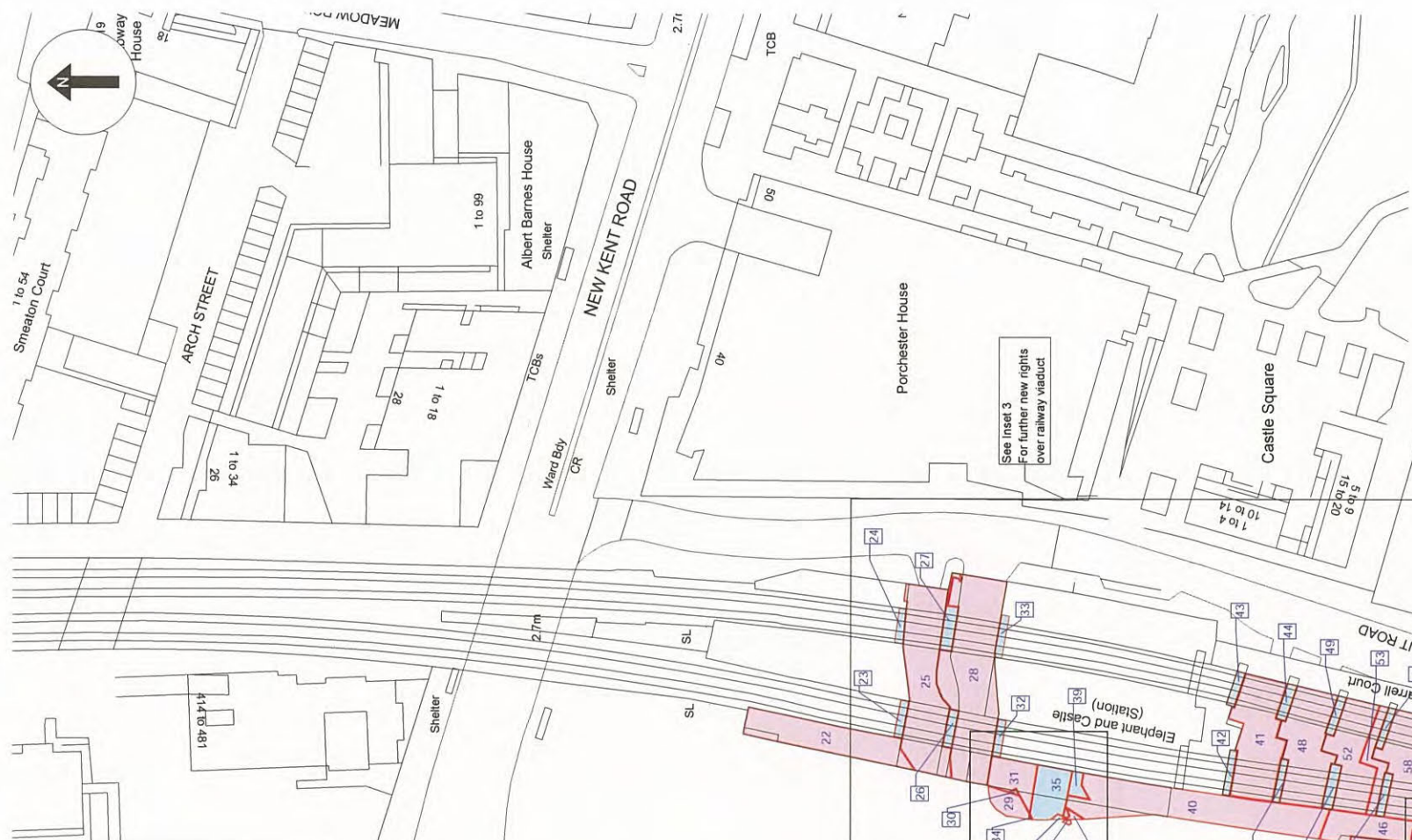
Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No.2) 2023



The common seal of  
The London Borough of Southwark Council  
was hereunto affixed in the presence of

Authorised Signatory

Dated .....



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Ver	Date	Comments	Drn	Chk	App

Key:  
New rights to be acquired  
Land to be acquired

Business Unit	Land Referencing	Scale	Drawn
Approved By MHE	Checked By BMC	Date Checked 13/01/2023	Date Drawn 13/01/2023

Title:  
Map referred to in the  
London Borough of Southwark  
(Elephant and Castle Town Centre)  
Compulsory Purchase Order (No.2) 2023

Sheet 2 of 2

Date of Issue  
13/01/2023

Project Code  
1702-2750

Scale  
1:750 gk2

Version  
1.01

Drawing Reference  
1702-2750-000230

