

Dated

9 July

2019

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

- and -

ELEPHANT AND CASTLE PROPERTIES LIMITED

- and -

ELEPHANT AND CASTLE PROPERTIES CO. LIMITED

- and -

DEUTSCHE PFANDBRIEFBANK AG

- and -

UNIVERSITY OF THE ARTS LONDON

- and -

TRANSPORT FOR LONDON

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

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

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

CONTENTS

1	DEFINITIONS AND INTERPRETATION	4
2	STATUTORY PROVISIONS	5
3	LEGAL EFFECT	5
4	OBLIGATIONS OF THE PARTIES	5
5	REGISTRATION	5
6	MISCELLANEOUS	6
7	LENDER	6
	SCHEDULE 1	8

THIS DEED is made the 9 day of July two thousand and nineteen

B E T W E E N

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of 160 Tooley Street London SE1 2TZ (the "**Council**");
- (2) **ELEPHANT AND CASTLE PROPERTIES LIMITED** (company registration number 04434716) whose registered office is situated at 6th Floor Berkeley Square, London, England, W1J 6ER ("**the First Developer**"); and **ELEPHANT AND CASTLE PROPERTIES CO. LIMITED** (incorporated in the British Virgin Islands with company number 1810065) whose registered office is situated at Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, VG1110, British Virgin Islands) ("**the Second Developer**");
- (3) **UNIVERSITY OF THE ARTS LONDON** of 272 High Holborn London WC1V 7EY ("**UAL**");
- (4) **DEUTSCHE PFANDBRIEFBANK AG** incorporated in Germany (Germany company registration number HRB41054) (UK company number FC028655) and whose UK establishment office details are (BR010228) registered at 23rd Floor, 20 Fenchurch Street, London, EC3M 3BY ("**the Lender**"); and
- (5) **TRANSPORT FOR LONDON** of 55 Broadway, London, United Kingdom SW1H 0BD ("**TfL**").

W H E R E A S:

- (A) The Council is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (B) The Developer owns part of the freehold interests in part of the Site and is registered as proprietor of them with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers 151015, 190861, 358989, 360618, SGL473011 at the date of this Deed.
- (C) The Developer owns part of the leasehold interests in the Site and is registered as proprietor of them with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers SGL473013, SGL473014, SGL473015, SGL473016, TGL340343, TGL340344 and at the date of this Deed.
- (D) UAL owns part of the freehold interest in the Site and is registered as proprietor of it with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number TGL394476 at the date of this Deed.

- (E) TfL owns part of the unregistered title of the Transport for London Road Network situated within the Site.
- (F) The Council owns part of the freehold interest in the Site and is registered proprietor of it with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers 170829, 177237, 271661, 294366, LN113754, LN198688, LN202123, LN220261 and TGL190331 at the date of this Deed.
- (G) On 10 January 2019 the Parties entered into the Original Deed and the Council granted the Planning Permission. The Parties wish to vary the Original Deed as shown in this Deed.

NOW THIS AGREEMENT WITNESSETH:

1. **Definitions and Interpretation**

1.1 In this Deed all words and phrases defined in the Original Deed shall have the same meanings in this Deed save where the context otherwise dictates and for the avoidance of any doubt the Original Deed shall remain in full force and effect save as varied by this Deed.

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

"Original Deed" means the the agreement pursuant to Section 106 of the 1990 Act relating to the Site dated 10 January 2019 and made between the Parties

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

1.3.1 Reference to the masculine feminine and neuter genders shall include other genders.

1.3.2 Reference to the singular include the plural and vice versa unless the contrary intention is expressed.

1.3.3 Reference to natural persons are to include corporations and vice versa.

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

1.3.5 A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule of this Deed.

1.3.6 Any reference in this Deed to any statute or to any section of a statute includes any statutory re-enactment or modification of it and any reference to any statutory

instrument includes any amendment or consolidation of it from time to time and for the time being in force.

1.3.7 The expressions the "Developer", "UAL", "Council", "TfL", and the "Lender" shall include their respective successors in title and assigns and the expression "the Council" and "TfL" shall include their successors in statutory function.

1.3.8 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of such restrictions.

1.3.9 Where in this Deed a party includes more than one person any obligation of that party shall be joint and several.

1.3.10 Where any approval, consent, agreement or similar is to be given by the Council or TfL pursuant to the terms of this Deed, such approval, consent, agreement or similar shall not be unreasonably withheld or delayed.

2. Statutory Provisions

2.1 This Deed is made pursuant to the provisions of Sections 106 and 106A of the 1990 Act and all restrictions covenants and undertakings in this Deed are enforceable as planning obligations for the purposes of Section 106 of the 1990 Act.

2.2 To the extent only that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in the Acts.

3. Legal Effect

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

4. Obligations of the Parties

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

5. Registration

5.1 As soon as reasonably practicable after the completion of this Deed, the Developer shall make an application to the Land Registry for entries relating to this Deed to be made in the charges register(s) of the Title Number(s) referred to in recital B above so as to bind the Site as provided for in the before-mentioned statutory provisions.

5.2 If the Developer fails to make application as referred to in clause 5.1 above the Council shall (without prejudice to any other right) be entitled to register this Deed and recover the expenses incurred in doing so from the Developer and the Developer covenants with the Council to do or concur in doing all things necessary or advantageous to enable the said entries to be made.

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

6. **Miscellaneous**

6.1 The construction, validity and performance of this Deed shall be governed by English law.

6.2 Each clause, sub-clause or schedule shall be separate distinct and severable from each other to the extent only that if any clause, sub-clause or schedule becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause or schedule shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause or schedule contained herein.

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

6.4 The Council shall endorse its executed copy of the Original Deed with the insertion of the following words: "This Deed has been modified and supplemented by the First Deed of Variation".

7. **Lender**

The Lender has a registered legal charge over part of the Site and consents to the Developer entering into this Deed and consents to that part of the Site being bound by the covenants, obligations and undertakings contained herein and that the said covenants obligations and undertaking shall take priority over its interest. Each of the Lender, and any Mortgagee or chargee who from time to time shall have the benefit of a charge or mortgage over or registered against any part or parts of the Site, shall have no liability under this Deed unless and until it becomes mortgagee in possession or successor in title of the Site or part of the Site (the "**Relevant Part**") in which case it too will be bound by the obligations of the Developer under this Deed that relate to that Relevant Part from the date it becomes

mortgagee in possession or successor in title of that Relevant Part to the date which is the earlier of (i) the date the mortgagee or chargee disposes of its interest in that Relevant Part and (ii) the date it is no longer mortgagee in possession or successor in title of that Relevant Part.

SCHEDULE 1

VARIATION TO ORIGINAL DEED

1. NEW DEFINITIONS

The Parties agree that the Original Deed shall be varied by insertion of the following definition into clause 1.1 of the Original Deed:-

"Affordable Housing" means affordable housing for sale or rent for those whose needs are not met by the market

"First Deed of Variation" means the deed of variation to this Deed made between the Parties dated 9 July 2019

2. VARIED DEFINITIONS

The Parties agree as follows:

- 2.1 At clause 1.1 of the Original Deed, the definition of the term "Additional Affordable Housing" shall be deleted and replaced with the following definition:

"means provision of additional Affordable Housing up to a maximum of the Affordable Housing Cap as follows:

- following Viability Review 1 or Viability Review 2, additional London Living Rent Habitable Rooms up to a maximum of 389 to be provided on the East Site with a commensurate decrease in the number of Discounted Market Rent Habitable Rooms; or
- following Viability Review 3, additional London Living Rent Habitable Rooms up to a maximum of 172 to be provided on the West Site with a commensurate decrease in the number of Discounted Market Rent Habitable Rooms; or
- where the West Site provides Open Market for Sale Units, up to a maximum of 15 additional Social Rent Equivalent habitable rooms to be provided on the West Site with a commensurate decrease in the number of Intermediate Housing habitable rooms".

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

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


SIMON TODD

Authorised Signatory



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


Director
Elepre

GAVAIN SMART
Name of Director (Block Capitals)

Witness

EMILY LUDLOW-ETRE, PINSENT MASONRY LTD
30 CROWN PLACE, EARL STREET,
LONDON EC2A 4ES
Name of Witness (Block Capitals) and
Address of Witness

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

Authorised Signatory



Executed as a Deed by **DEUTSCHE
PFANDBRIEFBANK AG** by an authorised
signatory in the presence of:



JEAN HOFFMAN

Authorised Signatory

Name of Authorised Signatory (Block Capitals)



Andrea Winkelsdorf
Authorised Signatory

Witness

Name of Witness (Block Capitals) and
Address of Witness



LIBA WOODROW
20 FENCHURCH ST
LONDON EC3M 3BY

Executed as a Deed by **UNIVERSITY OF THE
ARTS LONDON** ~~by two directors or one~~
~~director and the company secretary:~~



Member of the Court of Governors

NIGEL CARRINGTON

Name of Member (Block Capitals)



Member of the Court of Governors

D. G. FISON

Name of Member (Block Capitals)

Executed as a Deed by **TRANSPORT FOR LONDON** by affixing the common seal in the presence of:



Authorised Signatory

MICHAEL KWON



7258