

Dated

29 October

2020

THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF SOUTHWARK

- and -

ELEPHANT AND CASTLE PROPERTIES LIMITED

- and -

ELEPHANT AND CASTLE PROPERTIES CO. LIMITED

- and -

UNIVERSITY OF THE ARTS LONDON

- and -

TRANSPORT FOR LONDON

Second 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	6
5	REGISTRATION	6
6	MISCELLANEOUS	6
7.	MORTGAGEE	7
	SCHEDULE 1	8

THIS DEED is made the 29<sup>th</sup> day of October two thousand and twenty

BETWEEN

- (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**"); and
- (4) **TRANSPORT FOR LONDON** of 5 Endeavour Square, London E20 1JN ("**TfL**").

WHEREAS:

- (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 Number 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) TfL owns part of the freehold interest in the Site and is registered proprietor of it with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Numbers 170829, 177237, 271661, 294366, LN113754, LN198688, LN202123, LN220261 and TGL190331 at the date of this Deed.
- (G) On 10 January 2019 the Parties entered into the Original Deed and the Council granted the Planning Permission. On 9 July 2019, the Parties entered into the First Deed of Variation. The Parties wish to further 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 (and where repeated they are done so only for ease of reference) save where the context otherwise dictates and for the avoidance of any doubt the Original Deed, as varied by the First Deed of Variation and by this Deed, shall remain in full force and effect.

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

TERM	MEANING
"First Deed of Variation"	means the agreement dated 9 July 2019 entered into pursuant to Section 106 of the 1990 Act between the Council, the First Developer, the Second Developer, UAL, Deutsche Pfandbriefbank AG and TfL to vary the Original Deed
"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" and "TfL" shall include their respective successors in title and assigns and the expression "the Council" and "TfL" shall include their successors in statutory function.
- 1.3.8 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of such restrictions.
- 1.3.9 Where in this Deed a party includes more than one person any obligation of that party shall be joint and several.
- 1.3.10 Where any approval, consent, agreement or similar is to be given by the Council or TfL pursuant to the terms of this Deed, such approval, consent, agreement or similar shall not be unreasonably withheld or delayed.

## **2. Statutory Provisions**

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

## **3. Legal Effect**

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

4. **Obligations of the Parties**

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

5. **Registration**

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

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

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

6. **Miscellaneous**

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

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

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

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

7. **Mortgagee**

Any Mortgagee or chargee who from time to time shall have the benefit of a charge or mortgage over or registered against any part or parts of the Site, 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

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

"**Second Deed of Variation**" means the deed of variation to this Deed made between the Parties dated \_\_\_\_\_ 2020

#### 2. VARIED OBLIGATIONS

The Parties agree as follows:

- 2.1 paragraph 1.3 of Part 7 of Schedule 2 of the Original Deed shall be deleted and replaced with the following:

"1.3 The Developer shall not:

1.3.1 Commence the Development until an agreement between the Developer and LUL which secures infrastructure protection provisions required in LUL's proper opinion for the protection of, and LUL's access to, LUL infrastructure and assets has been entered into and the Developer has provided the Council with a copy of the completed agreement;

1.3.2 Implement the Development until:

(i) the Development Agreement or such other agreement between the Developer and LUL which secures the key terms in paragraph 1.2 above has been entered into; and

(ii) the Developer has provided the Council with a copy of the completed Development Agreement or such other agreement between the Developer and LUL which secures the key terms in paragraph 1.2 above but with financial information redacted,

with the intention that the Developer and LUL shall seek to ensure that the Development Agreement is completed within 6 months following the start of Demolition PROVIDED THAT where a further period of time is required to enable completion of the Development Agreement the Developer is able to continue Demolition but shall not be permitted to carry out any material operation other than Demolition or Excluded Works unless and until the Development Agreement has been completed."



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:

*Katharine Reed*



32550

Authorised Signatory

KATHARINE REED

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

*[Signature]*

Director

*Rick & Ruby*

Name of Director (Block Capitals)

Witness SARAH TERRY  
22 WOODLAND ROAD  
NN10 6UT

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:

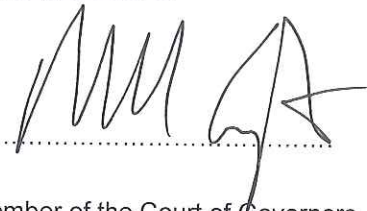
*[Signature]*

Authorised Signatory

Executed a Deed by affixing the Common  
Seal

of The University of the Arts, London

In the presence of



Member of the Court of Governors



Member of the Court of Governors

SIGNED as a DEED by SHAMUS KENNY

as attorney for

TRANSPORT FOR LONDON

Signature of attorney.....

SK TL 004

in the presence of:

(Name of witness)..... GILL KENNY

(Address of witness)..... 15 MEADOWBANK WD4 8EP

(Signature of witness)..... 