

DATED

2014

(1) EARLS COURT PARTNERSHIP LIMITED

(2) EC PROPERTIES LP

(3) EMPRESS STATE LP

(4) LONDON UNDERGROUND LIMITED

**LANDOWNERS' AGREEMENT RELATING TO
COMPREHENSIVE DEVELOPMENT OF LAND AT EARLS
COURT**

**COMMERCIAL IN CONFIDENCE
SUBJECT TO CONTRACT**



Pinsent Masons

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BETWEEN:

- (1) **EARLS COURT PARTNERSHIP LIMITED** a private limited company registered in England, (Company Number 8872070) whose registered office is at 15 Grosvenor Street, London, W1K 4QZ ("**JVCo**");
- (2) **EC PROPERTIES LP** a limited partnership registered in England and Wales under number LP14695 whose registered office is at 15 Grosvenor Street, London, W1K 4QZ acting by its general partner **EC PROPERTIES GP LIMITED** (Company Number 7696161) and EC Properties Nominee Limited (Company Number 07696994) whose registered offices are at 15 Grosvenor Street, London, W1K 4QZ ("**ECP**");
- (3) **THE EMPRESS STATE LIMITED PARTNERSHIP** (registered number LP012946) acting by its general partner **EMPRESS STATE GP LIMITED** (Company Number 06532038) and **EMPRESS STATE NO.1 NOMINEE LIMITED** (Company Number 6532051) and **EMPRESS STATE NO.2 NOMINEE LIMITED** (Company Number 6531999) (together known as "**ESLP**") all of 15 Grosvenor Street, London, W1K 4QZ;
- (4) **LONDON UNDERGROUND LIMITED** of 42-50 Windsor House, Victoria Street, London SW1H 0TL ("**LUL**");

together, the "**Parties**", and each, a "**Party**".

WHEREAS:

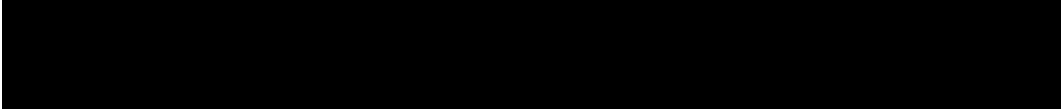
- (A) Planning permission has been granted for the comprehensive redevelopment of the Development Area.
- (B) Each of ECP, ESLP and LUL are owners (freehold or leasehold) of land within the Development Area as shown on the Land Ownership Plan.
- (C) JVCo holds options to acquire new 999 year leases and other freehold land which together will comprise the site upon which it intends to develop Earls Court Village in accordance with the Consented Scheme.
- (D) ECP has an option pursuant to the CLSA to acquire some or all of the CLSA Land in accordance with the terms of the CLSA and has agreed that such land as it acquires pursuant to the CLSA, will (subject to the existing rights of LBHF under the CLSA) become subject to the terms of this Agreement.
- (E) LUL intends to bring forward LBD for development or disposal in accordance with the Consented Scheme when its operational use thereof for Railway purposes ceases in whole or part.
- (F) The Parties have agreed to provide each other with support and assistance with a view to enabling each Party to carry out the development of its own land and in order to achieve comprehensive regeneration of the Development Area in accordance with the Consented Scheme.
- (G) The Parties have agreed to make provision for the long term estate management of estate roads, footpaths, public realm and other shared services and facilities which are required by the Consented Scheme for the Development Area.
- (H) In order to achieve comprehensive redevelopment of the Development Area in accordance with the Consented Scheme, the Parties have agreed to enter into certain commitments to avoid conflicts and ransoms arising between them so as to facilitate the implementation of the Planning Permissions and the separate development by each Party of its own land in accordance with the Consented Scheme.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise required:

"Area"	any part of the Development Area in the ownership of a Party
"CLSA"	a Conditional Land Sale Agreement in respect of land at West Kensington and Gibbs Green Estates, London W1 dated 23 January 2013 and made between (1) The Mayor and Burgesses of the London Borough of Hammersmith and Fulham; (2) EC Properties LP; and (3) Earls Court Limited as varied or supplemented from time to time
"CLSA Land"	the land identified as "CLSA Land" and shown shaded yellow on the Land Ownership Plan (as varied from time to time in accordance with the CLSA)
"Consented Scheme"	the comprehensive redevelopment of the Development Area in accordance with the Planning Permissions and Section 106 Agreement
"Conservation Area Consent"	shall have the meaning defined within the Section 106 Agreement
"Development Area"	the area shown for identification only edged red on the Development Area Plan
"Development Area Plan"	the plan annexed to this Agreement at Appendix 1



"ESB"	Empress State Building as shown at Appendix 7
"Estate Management Deed"	a deed (or tenant's covenant in a lease) in the form agreed as determined under Clause 6.7 of this Agreement which binds the relevant Party and its successors in title to contribute service charge payments in respect of the estate management and services upon the terms which are agreed between the Parties pursuant to Clause 6 of this Deed.
"Estate Management and Service Charge Strategy"	the Strategy attached as Schedule 1
"Group"	means in relation to an undertaking, that undertaking, any subsidiary undertaking or parent undertaking of that undertaking, and any other subsidiary undertaking of any parent undertaking of that undertaking (as each such term is defined in section 1161 or section 1162 (as applicable) of the Companies Act 2006)
"Land Ownership Plan"	the plan annexed to this Agreement at Appendix 4

"LBD"	Lillie Bridge Depot as shown shaded red on the Land Ownership Plan
"LBHF Planning Permission"	shall have the meaning defined within the Section 106 Agreement



"LUL Land"	LBD the LUL Void and all of LUL's retained premises which are excluded from the leases of Earls Court Village which are vested in JVCo
"LUL Operational Land"	all that LUL Land that is used for the purposes of the Railway from time to time
"LUL Void"	all those premises at Earls Court Village to be demised by an underlease to be granted pursuant to an agreement for lease to be made between (1) JV Co and (2) LUL on or about the date hereof
"Network Rail Lease"	a lease dated 28 March 2013 of premises at Earls Court London (known as Earls Court 2) and made between (1) Network Rail Infrastructure Limited (2) EC Properties GP Limited as General Partner of EC Properties LP and EC Properties Nominee Limited and (3) Capital & Counties Limited as varied or supplemented from time to time
"Operation of the Railway"	the safe, efficient and economic construction, operation, use, inspection, repair, maintenance, protection, monitoring and security of the Railway and/or the Railway Premises including the safety of the public, passengers and persons employed in connection with the Railway
"Planning Authorities"	The London Borough of Hammersmith and Fulham and The Royal Borough of Kensington and Chelsea and the successors to their respective statutory functions
"Planning Permissions"	the RBKC Planning Permission, the LBHF Planning Permission and the Conservation Area Consent (subject to Clause 1.2.12)
"Principal Service Conduits"	means the ducts, channels or conduits to be laid within the Principal Estate Infrastructure within which supplies of foul and surface water drainage, and other utility services are to be laid
"Principal Estate Infrastructure"	means the roads, footpaths, public realm and the Principal Service Conduits to be laid therein in the areas shown for identification only coloured on the Principal Estate Infrastructure Plans
"Principal Estate Infrastructure Deed"	a deed of grant of easements to use the Principal Estate Infrastructure (or relevant parts thereof) in the form determined in accordance with the provisions of Schedule 2

"Principal Estate Infrastructure Plans"	the plans annexed to this Agreement at Appendix 3
"Railway"	the railway business or businesses or railway undertaking or undertakings carried on by LUL or their successors in respect of the London underground system or any similar public transport system running on under over or through the Railway Premises
"Railway Premises"	the LUL Land and other amenities and plant and machinery and all other things serving or used or to be used in connection with the Railway
"RBKC Planning Permission"	shall have the meaning defined within the Section 106 Agreement
[REDACTED]	[REDACTED]
"Section 106 Agreement"	an Agreement dated 14 November 2013 made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) and other enabling powers referred to therein entered into between EC Properties LP acting by EC Properties GP Limited and EC Properties Nominee Limited (1), The Mayor and Burgesses of the London Borough of Hammersmith and Fulham (2), The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea (3), London Underground Limited (4) and Transport for London relating to the redevelopment of Earls Court Exhibition Centre and surrounding land (subject to Clause 1.2.12)
"Working Day"	9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business

1.2 This Agreement shall be interpreted according to the following provisions, unless the context otherwise requires:

1.2.1 The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.

1.2.2 A statutory provision includes a reference to:

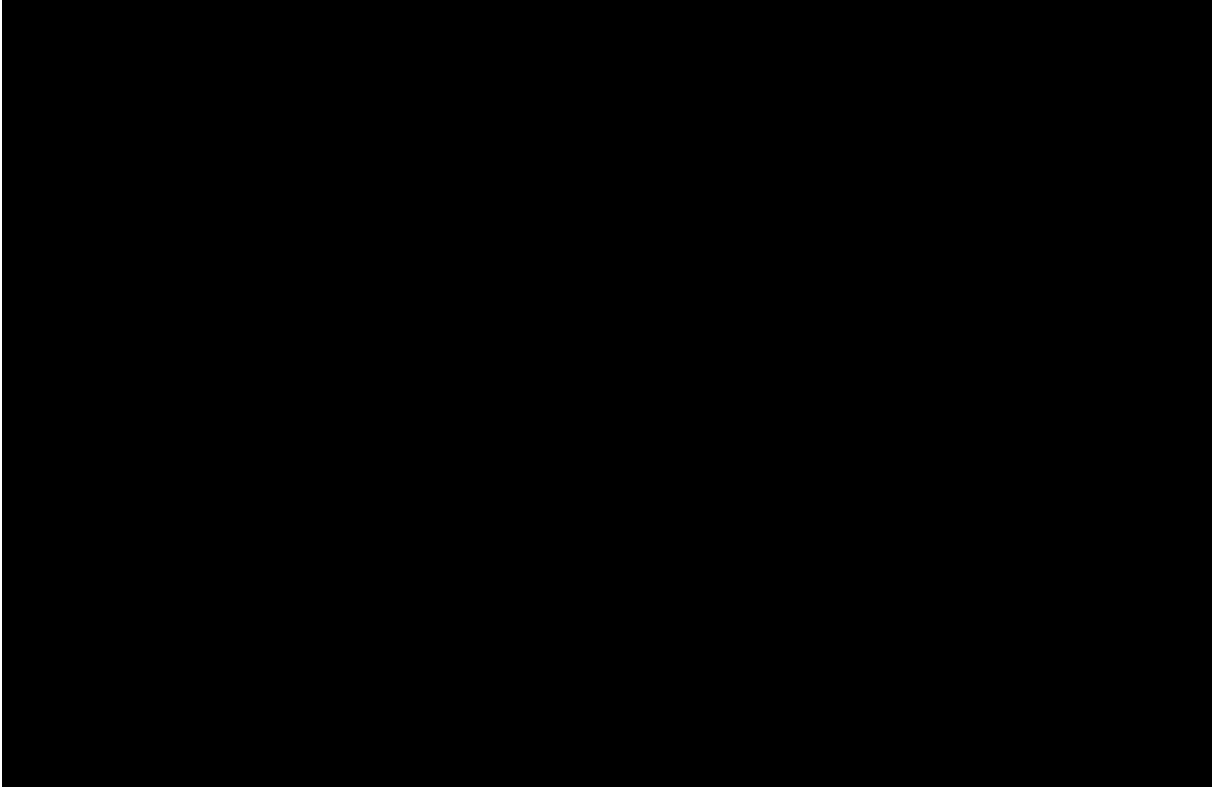
- (a) the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
- (b) any subordinate legislation made under the statutory provision (whether before or after the date of this Agreement),

provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision.

- 1.2.3 Except where the context expressly requires otherwise, references to Clauses and sub-Clauses, are references to Clauses and sub-Clauses of this Agreement.
- 1.2.4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, companies, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
- 1.2.5 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
- 1.2.6 The language of this Agreement is English. All correspondence, notices, and information shall be in English.
- 1.2.7 References to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.
- 1.2.8 The words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- 1.2.9 In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 1.2.10 Where this Agreement states that an obligation shall be performed no later than or within or by a stipulated date or event which is a prescribed number of Working Days after a stipulated date or event the latest time for performance shall be 5pm on the last Working Day for performance of the obligations concerned provided always that time shall only be of the essence where time is specifically expressed to be of the essence.
- 1.2.11 Unless expressly stated otherwise, where consent or approval of any party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall (if given) be given in writing and within a reasonable time following a receipt for a request in writing for such consent or approval.
- 1.2.12 References in this Agreement to the Planning Permissions and/or the Section 106 Agreement shall be deemed to include any additional or replacement planning consents (or section 106 agreements) and/or any amendments or variations thereto and/or any detailed consents or approval of reserved matters which in each case permit development only for the same (or substantially the same) uses as any of the uses which are permitted anywhere on the Development Area under the Planning Permissions and Section 106 Agreement as the same exist at the date hereof.
- 1.2.13 References in this Agreement to "**Principal Estate Infrastructure**", "**Principal Service Conduits**" and "**Principal Estate Infrastructure Plans**" shall all be deemed to include any replacements thereof, or amendments or variations thereto which are permitted under the Consented Scheme from time to time.

2. **NO RANSOM**

- 2.1 No Party shall hold to ransom any other Party in respect of any matter relating to the development, disposal or use of the Development Area in accordance with the Consented Scheme, but it is agreed that this shall not prevent any Party from requiring any transaction or dealing with another Party to be on reasonable arm's length commercial terms (excluding any element of ransom).
- 2.2 The Parties shall co-operate and render reasonable support and assistance to each other to enable each Party to develop and/or dispose of its Area in accordance with the Consented Scheme and to comply with its obligations in the Planning Permissions and the Section 106 Agreement (to the extent that it is bound by the terms of the Section 106 Agreement) provided that no Party shall be required to incur material financial or other liabilities in providing such support or assistance (save where indemnified under paragraph 2.3) or (subject to paragraph 2.1) to act against its own reasonable commercial interests in providing such support or assistance.
- 2.3 Where a Party requests the support or assistance of another Party pursuant to Clause 2.2 the requesting Party shall be responsible for the reasonable and proper costs incurred by the Party providing such support or assistance and shall also indemnify such Party in respect of any other material liabilities against which such Party reasonably requires to be indemnified.
- 2.4 No Party shall be required to agree to any change or variation to the Consented Scheme or the Section 106 Agreement which such Party (acting reasonably), considers will adversely affect the value, cost, timing or delivery of the Consented Scheme on its Area.
- 2.5 The Parties agree that if the rights and agreements contained in or otherwise referred to in this Agreement in respect of the Principal Estate Infrastructure are inadequate or insufficient to enable each of the Parties to develop and use their respective Areas for the purposes of the Consented Scheme then the Parties (acting reasonably) will enter into such additional deeds or agreements in respect of the Principal Estate Infrastructure as shall be necessary on such terms as the relevant Parties may reasonably agree in order to rectify such inadequacy or insufficiency.





4. TEMPORARY RIGHTS DURING DEVELOPMENT

- 4.1 During the period that a Party is in the course of demolition or development (or for the purposes of planning any such demolition or development) of its Area for the Consented Scheme, the other Parties undertake (subject as set out below), to use reasonable endeavours to assist such Party to implement the Consented Scheme by entering into licences or consents where reasonably necessary which permit such Party to:-
- 4.1.1 enter for the purposes of carrying out surveys, non intrusive tests, examining and testing any boundary or other structures thereon or similar purposes;
 - 4.1.2 construct temporary hoardings, scaffolding or similar structures;
 - 4.1.3 oversail with cranes (with or without loads except in the case of occupied buildings or the Railway and subject always to appropriate requirements in respect of health and safety);
 - 4.1.4 stop up any redundant services or divert existing live services which serve the land on which the development is being undertaken provided that such live services are not required for the continuing use and occupation of the other Parties' Areas;
 - 4.1.5 to assist and co-operate in any application by any other Party for stopping up diversion or closure orders in respect of highways or services provided that such highways or services are not required for the continuing use and occupation of the other Parties' Areas;
 - 4.1.6 to permit such other temporary rights of access or servicing which can reasonably be permitted without material detriment to the Party permitting the same.
- 4.2 Any Party requesting another Party to provide assistance or rights of the type outlined in Clause 4.1 shall apply to the Party concerned for consent (such consent not to be

unreasonably withheld) and supply that Party with details of the rights required, the land affected, any works to be undertaken, timing and appropriate works methodology or works sequences and all other information the Party receiving the request may reasonably require in order properly to consider the request and such consent shall be documented by way of such reasonable form of deed or licence customary for the purpose as the Parties to that deed or licence may reasonably agree.

4.3 The Party applying for any such rights or co-operation shall pay the reasonable and proper costs of the Party granting the same (but shall not be required to pay any additional premium or consideration for the grant of such rights).

4.4 No Party shall be required to grant any rights under this Clause 4 other than for the implementation of the Consented Scheme and any such rights must not unreasonably interfere with the beneficial use and occupation of its property or the rights of any occupier thereof.



4.5 Where any such rights may affect ESB (or the means of access thereto or its security) the Parties acknowledge that the obligations of ESLP to grant such rights are subject to ESLP obtaining the consent of its mortgagees and tenants of ESB which consents ESLP shall use all reasonable endeavours to obtain but not so as to require ESLP to pay material amounts of money or give other material commercial consideration which is unacceptable to ESLP in order to obtain such consent unless the Party requesting such rights agrees to indemnify it for such money or other material commercial consideration.

4.6 To the extent that any such rights are requested from LUL which may affect LUL Operational Land the terms upon which such rights are granted shall be such terms as LUL would normally require in order to protect the Operation of the Railway.

5. DESIGN AND DELIVERY OF PRINCIPAL ESTATE INFRASTRUCTURE

5.1 Each Party agrees that when its Area is being developed in accordance with the Consented Scheme any parts of the Principal Estate Infrastructure which are to be constructed on its Area will be constructed in accordance with the requirements of the Section 106 Agreement and the Consented Scheme and in the case of the drainage and water supplies which are to be laid within the Principal Service Conduits, to have the capacity required to serve as the principal conduits for drainage and water for the whole of the Consented Scheme assuming that the whole of the Consented Scheme (as existing at the date hereof) is implemented and so as to be capable of being connected to or continued as part of any Principal Estate Infrastructure which is to be constructed by a Party whose land adjoins the same (having regard for example to the nature of its design, location and the level at which it is constructed).

5.2 Each Party agrees that when designing any part of the Principal Estate Infrastructure which is to be constructed on its Area (the "**Constructing Party**"), it will, when carrying out such design, notify any Party whose Area adjoins that of the Constructing Party (the "**Adjoining Party**") that such design work is being undertaken and will provide the Adjoining Party details of the design as it progresses and such other information as the Adjoining Party may reasonably require in relation to the capacity, location and manner in which such Principal Estate Infrastructure is capable of interfacing with any Principal Estate Infrastructure which may subsequently be constructed on the Area of the Adjoining Party.

5.3 In respect of the Principal Service Conduits which are to be located by the Constructing Party within the Principal Estate Infrastructure on its Area the Adjoining

Party may (so long as it acts expeditiously and does not delay the design or other work being undertaken by the Constructing Party) notify the Constructing Party of the capacity and any other relevant specifications which the Adjoining Party requires to be provided and reserved for its future use which exceed the requirements set out in paragraph 5.1 hereof. To the extent that such additional capacity or increased specification causes an increase in the costs of constructing the Principal Estate Infrastructure beyond that which the Constructing Party would otherwise have incurred in meeting the design and capacity requirements set out in paragraph 5.1 hereof insofar as it relates to the Constructing Party's own Area ("**Additional Costs**") then if the Adjoining Party shall agree to bear the Additional Costs and shall agree to pay them not later than 5 Working Days before the Additional Costs are due to be paid by the Constructing Party, then upon such agreement being entered into, the Constructing Party shall subject to any planning or other statutory consents which may be required, amend the design of the Principal Estate Infrastructure to be constructed on its Area in order to meet the reasonable requirements of the Adjoining Party for additional capacity.

- 5.4 Any Additional Costs shall be specified by the contractor, quantity surveyor, engineer or other relevant party acting on behalf of the Constructing Party (acting reasonably) and using the same pricing methodology as applies to the remainder of the Principal Estate Infrastructure works being carried out by the Constructing Party and if the Parties cannot agree the amount of the Additional Costs, then the same shall be determined in accordance with the provisions of Clause 17.
- 5.5 Notwithstanding anything else in this Clause 5, no Party shall be required to install or construct any Principal Estate Infrastructure or Principal Service Conduits on its Area earlier than it requires to serve the development of its own Area.
- 5.6 Subject to Clause 5.9 below, each Party agrees that it will not grant to any other Party (or any third party not being a tenant or occupier of such Party's own land) rights to use any Principal Estate Infrastructure on its Area unless a Principal Estate Infrastructure Deed has first been entered into by the Party who owns the land which will benefit from such rights.
- 5.7 The Constructing Party shall arrange for its contractors and other relevant professional consultants to provide a collateral warranty or other appropriate duty of care (upon normal market terms) in respect of the design and construction of the Principal Estate Infrastructure ("**Duty of Care**") in favour of any Party who has contributed towards the costs thereof and that Party's funders.
- 5.8 The Party applying for any such Duty of Care shall pay the reasonable and proper costs of the Party granting the same for the preparation and completion of the Duty of Care (but shall not be required to pay any additional premium or consideration for the grant of such Duty of Care).
- 5.9 When constructing Principal Estate Infrastructure on its Area each Party will construct the same in accordance with the requirements of the Planning Permissions and the Section 106 Agreement (including adoption or dedication for public use) and each Party will join into deeds of adoption or dedication or easements with utility providers as necessary to achieve this.

6. **ESTATE MANAGEMENT AND SERVICE CHARGE STRATEGY**

- 6.1 The Parties agree that in respect of new development within their respective Areas in accordance with the Consented Scheme, they wish to implement an estate management and service charge strategy in respect of the Principal Estate Infrastructure and other public realm, structures, areas, estate services and facilities which may be provided or managed for the general benefit of the Development Area (or relevant parts of it).

- 6.2 The principles agreed between the Parties in respect of such estate management and service charges are set out in the Estate Management and Service Charge Strategy attached as Appendix 1.
- 6.3 The Parties agree that they will not grant rights in favour of land within the Development Area to access or use of the Principal Estate Infrastructure (or other common estate facilities or services) unless the owner of such land agrees to implement the Estate Management and Service Charge Strategy and pay a service charge by entering into an Estate Management Deed to reflect the principles outlined in the Estate Management and Service Charge Strategy but the Parties acknowledge that some or all of the Principal Estate Infrastructure will be dedicated for public use as required by the Section 106 Agreement.
- 6.4 As the Consented Scheme is implemented across the Development Area the Parties will work together to agree a form of Estate Management Deed and service charge covenant reflecting the services to be provided and the allocation of service charge liabilities.
- 6.5 JVCo shall as soon as reasonably practicable commission the advice of a suitably qualified service charge expert in connection with the extent and cost of estate services to be provided within the Development Area and the basis of allocating service charge contributions, and the Parties will work together to agree a detailed service charge and estate management strategy for the Development Area which each Party will implement when its Area is re-developed in accordance with the Consented Scheme.
- 6.6 The Parties acknowledge that the existing rights of LBHF under the CLSA may not entitle ECLP to require LBHF to enter into an Estate Management Deed in respect of land to be transferred back to LBHF.
- 6.7 The form of the Estate Management Deed shall be agreed between the Parties (acting reasonably) or in default of agreement it shall be determined under Clause 16 of this Deed.

7. CONSTRUCTION PROTOCOLS

- 7.1 During the carrying out of development works on the Development Area each of the Parties will use reasonable endeavours to procure that:
- 7.1.1 any roads or other access ways on its Area which serve the other Parties' Areas are kept as clean from mud and material from its own contractors vehicles as reasonably possible and unobstructed;
 - 7.1.2 its contractors vehicles are kept as clean from mud and material as reasonably possible before entering any other Parties' Areas;
 - 7.1.3 its contractors comply with the relevant local authority's Considerate Constructors Scheme or any replacement or substitute scheme; and
 - 7.1.4 in carrying out development works on its Area proper provision is made within its Area for the security and protection of any adjoining parts of the Development Area owned by another Party, including taking proper precautions to secure all materials, plant and machinery within its Area.
- 7.2 No materials will be stored by any Party outside its Area without the consent in writing of the Party on whose land it is to be stored.

8. PLANNING AND S106 AGREEMENT

The Parties will observe and perform the terms set out in Schedule 3.

9. LUL POWERS

- 9.1 Nothing contained or implied in this Agreement or any consent or approval granted pursuant to it shall prejudice or affect the rights, powers, duties and obligations of LUL in the exercise of its functions as a transportation authority or other statutory authority.
- 9.2 Nothing contained or implied in Clause 4 (Temporary Rights During Development), Clause 5 (Design and Delivery of Principal Estate Infrastructure) shall compel LUL to suspend or cease its use of the LUL Land as Operational Land nor shall LUL be obliged to do anything which would interfere with that use.
- 9.3 The Parties acknowledge that matters or concerns of the Operation of the Railway are paramount and that the LUL's rights as a consequence may override other express or implied provisions of this Agreement where such matters or concerns would or may result in an adverse effect on the Operation of the Railway (but not further or otherwise).

10. VAT

- 10.1 Save as the context requires or as otherwise stated all references to payment made in this Agreement are references to such payments exclusive of VAT chargeable in respect of the supply of goods or services for which the payment is or is deemed to be consideration and insofar as such payments fall to be made under this Agreement such VAT shall be added to the amount thereof and against provision of a proper tax invoice therefore paid in addition.
- 10.2 Without prejudice to the generality of Clause 10.1 where any supply of goods or services is made or deemed to be made pursuant to this Agreement the recipient of such supply shall following provision of a valid VAT certificate pay to the supplier the amount of any VAT chargeable in respect of it against provision of a proper tax invoice for that VAT.

[REDACTED]

[REDACTED]

12. NOTICES

- 12.1 Any notice or other communication pursuant to, or in connection with, this Agreement shall be in writing and delivered personally, or sent by pre-paid first class post (air mail if overseas), to the Party due to receive such notice at its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other Parties in accordance with this Clause).
- 12.2 Subject to Clause 12.3, any notice or other communication shall be deemed to have been served:
 - 12.2.1 if delivered personally, when left at the address referred to in Clause 12.1;
 - 12.2.2 if sent by pre-paid first class post (other than air mail), two days after posting it; and
 - 12.2.3 if sent by air mail, six days after posting it.
- 12.3 If a notice is given or deemed given at a time or on a date which is not a Working Day, it shall be deemed to have been given on the next Working Day.

13. **THIRD PARTY RIGHTS**

Save to the extent expressly set out in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act. No party may declare itself as a trustee of the rights under this Agreement for the benefit of any third party save as expressly provided in this Agreement.

14. **AMENDMENTS**

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the Parties, provided that the amendment of any provision of this Agreement solely affecting any of the respective rights or obligations of the Parties or either of them inter se shall not require the agreement of JVCo.

15. **GOVERNING LAW AND JURISDICTION**

15.1 This Agreement shall be governed by and construed in accordance with English law.

15.2 Each Party hereby submits to the exclusive jurisdiction of the English courts to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably waives any objection which it may have to the Courts of England being nominated as the forum to hear and determine any such proceedings and to settle any such disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

16. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

17. **DISPUTE RESOLUTION**

17.1 Any dispute at to any matter of law under this Agreement shall be determined by the Courts in accordance with English law.

17.2 Subject to paragraph 15.1 if there shall be any dispute between the Parties arising out of this Agreement it shall be determined in accordance with this Clause 17.

17.3 Where any matter or dispute is to be referred to an independent person for determination pursuant to Clause 17.1 or any other provision of this Agreement the following provisions shall apply:-

17.3.1 The independent person will act as an expert and not as an arbitrator.

17.3.2 If the dispute relates to the rights and liabilities of any Party to this Agreement or to any other terms or conditions of this Agreement which are appropriate to be determined by a solicitor such independent person shall be a solicitor of not less than 10 years standing and experienced in the subject matter of the dispute agreed upon by the Parties to the dispute but in default of agreement appointed at the request of any Party to the dispute by or on behalf of the President for the time being of the Law Society.

17.3.3 If the dispute relates to a matter which is appropriate to be determined by a surveyor such independent person shall be a chartered surveyor agreed upon by the Parties to the dispute but in default of agreement appointed at

the request of any Party by or on behalf of the President of the Royal Institution of Chartered Surveyors.

- 17.4 Where an independent person is appointed in accordance with this Clause 17:-
- 17.4.1 he will give to the relevant Parties written notice of his appointment and in such notice he will invite the relevant Parties to submit to him within 10 Working Days their representations on the dispute;
 - 17.4.2 he will consider the representations of the relevant Parties but his decision will not be limited or fettered by them;
 - 17.4.3 he will rely on his own judgment and opinion;
 - 17.4.4 he will be required to state reasons for his determination;
 - 17.4.5 he will give the relevant Parties written notice of his determination within 20 Working Days after his appointment or such longer or shorter period as the relevant Parties may agree in writing; and
 - 17.4.6 his determination will be final and binding on the relevant Parties.

17.5 If an independent person as referred to in this Clause 17 is appointed and:-

- 17.5.1 he does not give notice of his determination within the time and in the manner referred to above; or
- 17.5.2 he relinquishes his appointment or dies; or
- 17.5.3 for any reason it becomes apparent that he will be unable to complete his duties under the provisions of this Clause 17

any of the relevant Parties may apply for the appointment of a new independent person (and the provisions of this Clause 17 will operate in relation to that appointment) and this procedure may be repeated as many times as may be necessary.

17.6 The fees and disbursements of any independent person appointed pursuant to this Clause 17 shall be borne by the relevant Parties in such shares and such manner as the independent person shall determine and in default of determination shall be borne by the relevant Parties in equal shares.

17.7 If any of the relevant Parties ("**Paying Party**") shall pay the whole or any part of the fees and disbursements of any independent person appointed pursuant to this Clause 17 the remainder of the Relevant Parties ("**Remaining Parties**") shall upon demand repay to the Paying Party the whole or any part of them which the Paying Party shall have paid insofar as the independent person awards such fees and disbursements against the Remaining Parties.

18. **GENERAL**

18.1 Each Party agrees that (save where Clause 18.2 applies) it will not dispose of the legal title to the whole or any part of its land nor grant any leases for a term in excess of 100 years within the Development Area without first procuring that the transferee or disponent shall enter into a deed of adherence obliging such transferee or disponent to observe and comply with the provisions of this Agreement in so far as the same relate to the land being transferred or disposed of, such deed to be in such form as the Parties shall reasonably require and which in default of agreement shall be determined by an independent solicitor in accordance with Clause 17.3 hereof provided that this obligation shall not apply to the grant of occupational leases of any

individual residential or commercial units (nor any further transfers, underleases, charges or other dealings of or derived from such occupational leases) or to the proprietor of any registered charge or to any Deeds entered into pursuant to Clauses 3, 4, 5 or 6 hereof or the grant of any easements or the release of any rights of light or other rights.

18.2 The provisions of this Agreement (other than Clause 6 to the extent that Clause 6 remains to be complied with) shall cease to apply to any part of the Development Area comprising the footprint and curtilage of any residential or commercial building (or building to be occupied for any other use permitted by the Consented Scheme) construction of which has been completed.

18.3 No partnership between the Parties exists or is intended in relation to the development of their respective Areas or the subject matter of this Agreement.

18.4 Each Party agrees that this Agreement will not give rise to any restrictive covenant affecting title to the Development Area.

19. **LAND REGISTRY**

19.1 Each Party shall promptly notify the other Parties following completion of its purchase of any part of the Development Area after the date of this Agreement and promptly following completion of the registration of each title it acquires within the Development Area shall provide them with official copies of that title and the title plan.

19.2 Each Party shall make an application to the Land Registry for a restriction to be entered on the title number(s) for that Party's Area in the following Land Registry standard form:

"No disposition of the registered estate by the proprietor of the registered estate, or the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [NAME OF OWNER] of [ADDRESS OF OWNER] [DN: Owner of the Area on which registration is being made] or its conveyancers that the provisions of Clause 18.1 of [date and description of this Agreement] have been complied with or that they do not apply to the disposition."

19.3 The provisions of Clause 19.2 shall not be binding upon ESLP unless and until it has obtained the consent of its mortgagees currently holding a charge over the title to ESB to such restriction being entered onto the title of ESB which consent ESLP shall apply for (it being acknowledged by the other Parties that such mortgagees may refuse such consent).

19.4 The Parties shall apply to the Land Registry for the restriction referred to in Clause 19.2 to be removed from the title to any land in respect of which this Agreement has ceased to apply (or when this Agreement has expired or been terminated) and the Parties will render to each other (and to any other relevant land owner whether or not a Party to this Deed) all such assistance as may be necessary to achieve such removal.

SCHEDULE 1

EARLS COURT ESTATE MANAGEMENT AND SERVICE CHARGE STRATEGY

1. ESTATE MANAGEMENT AND SERVICE CHARGE STRATEGY

- 1.1 The estate management strategy and service charge computation forms a key element to the successful management of the Earls Court development. The principal objective will be to deliver management of the estate areas and a service charge which represents value and is sufficient to provide services to meet the aspirations of the occupiers and maintain the high standards required.
- 1.2 JVCo will be requested to develop a detailed and costed estate management and estate service charge strategy for all such parts of the Development Area as are re-developed in accordance with the Consented Scheme. This strategy is to be prepared at an early stage in the development as it is likely to require a significant amount of consideration to try to accommodate all of the needs of the site.
- 1.3 The estate management strategy will not be constrained by land ownership boundaries but as properties are developed in accordance with the Consented Scheme and the service charge will seek to embrace all properties which benefit from common or estate wide services and facilities.
- 1.4 Liability to contribute to estate service charge costs incurred in respect of one part of the Development Area following the development of that part in accordance with the Consented Scheme will not arise in respect of any other part of the Development Area until such other part is developed in accordance with the Consented Scheme and is granted rights to use the estate services to which the service charge cost item relates.
- 1.5 Save as otherwise noted in the strategy paper, costs will be spread amongst all who benefit (directly or indirectly) from the relevant service charge item so that costs are spread as widely as possible. The Parties will adopt the principles of this strategy for all their respective land interests within the Development Area as they are brought forward for development in accordance with the Consented Scheme (whether developed by the Parties themselves, or sold for third party development).
- 1.6 Costs will be allocated according to the service charge category into which they fall and will be apportioned on a fair and reasonable basis (which may include fixed contributions) whilst recognising that not all properties will benefit equally from any particular estate service nor will the same level of estate service charge necessarily be sustainable across all tenures.
- 1.7 There will also need to be detailed consideration of how to ensure that a consistent approach to fairness can be applied regardless of whether all or only some of the separate residential or commercial blocks are completed and to take into account the time lag that will occur between the construction periods for each block.

2. SERVICE CHARGE CATEGORIES

- 2.1 The estate service charge will distinguish between various types of costs, e.g.:
- 2.1.1 Estate Services (to include the Principal Estate Infrastructure, estate-wide public realm, landscaping, roads and other estate-wide services (including costs for the maintenance of load bearing structures forming part of the Lost River Park and Earls Court Village sites)).
- 2.1.2 Phase or Locality Specific Services – these will relate principally to items which affect an individual Area or phase of development but do not benefit other parts of the Estate generally (e.g. phase specific infrastructure, phase common parts, services which are provided for a specific Area only).

- 2.1.3 Building Service Charge (eg roof, exterior walls and foundations, security concierge etc). Service charge items which relate to individual buildings will be managed by the owner of the relevant building and will not be included in the Estate service charge arrangements.
- 2.2 It is intended that so far as practical, all aspects of the Estate Services falling under 2.1.1 above will be managed by a single entity. This will provide a high quality level of maintenance, presentation and services to all occupiers whilst delivery is achieved through economies of scale. It is anticipated that the entity providing the services may need to be set up as a viable commercial business which, as well as undertaking the services, could benefit from the opportunities for commercialisation and income generation from the public realm, advertising, events, public car parking and similar opportunities. These could be pursued so as to reduce the charges to residents for the estate services, cover shortfalls and to enhance the quality and range of services available. It is anticipated that the Parties may eventually transfer ownership of the public realm and Principal Estate Infrastructure to this entity.
- 2.3 The estate service charge arrangements will reflect the level and cost of services received by the occupiers and also the levels of service charge which are commercially acceptable across the different uses within the Development Area and without jeopardising capital values. It will comprise:
- 2.3.1 A charge payable by all occupiers be they commercial, private residential or affordable.
- 2.3.2 Where buildings comprise both residential and commercial elements a tiered approach will be adopted to reflect those items from which the commercial derive benefit and therefore contribute and those items which solely serve the residential properties.
- 2.3.3 A contribution to life cycle costings and sinking funds for capital expenditure (e.g. load bearing structures supporting public realm or other areas which are not specific to an individual building) will be incorporated in the estate service charge budgets and collected from the outset.
- 2.4 Service Charges for public realm costs will be allocated on a fair and reasonable basis so as to maximise recover and the area over which such costs can be agreed.
3. **FUTURE SERVICE CHARGE COSTS AS PART OF A COMPREHENSIVE DEVELOPMENT**
- 3.1 It is recognised that service charge levels in respect of Social Rented and Affordable Housing will be constrained by section 106 requirements, Local Authority housing policy as well as levels of service charge costs normally expected for such tenures in London.
- 3.2 The service charge regime will be managed and operated on a transparent basis so that full compliance with all relevant legislation can be readily demonstrated. It will be important to maximise the occupier's level of satisfaction and to minimise the risk of non-recovery.
- 3.3 Owner/occupier representation through an estate owner's association or similar will be encouraged in relation to appropriate aspects of management and delivery of the services.

SCHEDULE 2

INDICATIVE FORM OF EASEMENTS AND COVENANTS TO BE CONTAINED IN A PRINCIPAL ESTATE INFRASTRUCTURE DEED

[Note: Each Principal Estate Infrastructure Deed shall be in such form as the Parties thereto shall reasonably require and shall incorporate (inter alia) the provisions set out below (subject to such amendments as shall be agreed between the Parties (acting reasonably). In the event of any dispute as to the terms of any Principal Estate Infrastructure Deed the matter shall be determined in accordance with the provisions of Clause 17.3.1 of this Agreement.]

RIGHTS GRANTED OVER THE PRINCIPAL ESTATE INFRASTRUCTURE WITHIN THE FIRST PROPERTY

1. UTILITIES

1.1 The right in common with the owners of the First Property and those authorised by them to connect to and use any Principal Estate Conduits in, on, under or over the First Property for the passage of Utilities to and from the Second Property. The benefit of this right is subject to:

1.1.1 the owners of the Second Property obtaining the prior written consent of the owners of the First Property before exercising the right to connect to the Conduits, such consent not to be unreasonably withheld or delayed; and

1.1.2 the owners of the Second Property paying to the owners of the First Property a fair and proper proportion according to use of the costs of repairing, maintaining, replacing, renewing and cleaning any of the Principal Estate Conduits used in common between the Second Property and the First Property and all of such costs so incurred in relation to any Conduits which serve only the Second Property.

1.2 The owners of the First Property may withhold consent under **paragraph 1.1.1** where, in their reasonable opinion, the Conduits would be overloaded by the additional passage of Utilities in or through them following connection to them by the owners of the Second Property, or if the Owners of the Second Property have not paid any Additional Costs as referred to in Clause 5.

2. NEW UTILITIES

2.1 The right in common with the owners of the First Property and those authorised by them to install and use new conduits for the passage of Utilities to and from the Second Property through or within the corridors for conduits which are located within the Principal Estate Infrastructure which has been constructed on the First Property. The benefit of this right is subject to:

2.1.1 the owners of the Second Property obtaining the prior written consent of the owners of the First Property before exercising the right to install new conduits, such consent not to be unreasonably withheld or delayed;

2.1.2 the owners of the Second Property repairing, maintaining, replacing, renewing and cleaning any conduits installed pursuant to this right, whether or not the conduits are used in common between the Second Property and the First Property; and

2.1.3 the right for the owners of the First Property and those authorised by them to connect to and to use any conduits installed pursuant to this right but subject to the owners of the First Property:

- (a) obtaining the prior written consent of the owners of the Second Property before connecting to the new conduits, such consent not to be unreasonably withheld or delayed; and
- (b) paying to the owners of the Second Property a fair and proper proportion according to use of the costs of repairing, maintaining, replacing, renewing and cleaning any of the conduits so used.

2.2 The owners of the Second Property may withhold consent under **paragraph 2.1.3(a)** where, in their reasonable opinion, the conduits would be overloaded by the additional passage of Utilities in or through them following connection to them by the owners of the First Property.

3. ENTRY

[Note: These rights to be reciprocal as between the First Property and the Second Property]

3.1 The right for the owners of the Second Property and those authorised by them to enter and remain upon so much of the Principal Estate Infrastructure on the First Property as is necessary on reasonable prior notice (except in case of emergency) with or without workmen, plant and equipment to:

- 3.1.1 repair, maintain, replace, renew, clean, connect to and sever connections with any conduits over which rights are granted by this Deed;
- 3.1.2 lay further conduits and apparatus in accordance with the rights granted in **paragraph 2**; and

3.2 The rights of entry granted by this Deed are subject to the owners of the Second Property:

- 3.2.1 first obtaining any consents required under this Schedule for the installation of or connection to any conduits;
- 3.2.2 causing as little inconvenience as reasonably practicable to the owners of the First Property in the exercise of these rights;
- 3.2.3 except in case of emergency, carrying out any works required in accordance with a programme of works, plans and specifications previously approved by the owners of the First Property, such approval not to be unreasonably withheld or delayed;
- 3.2.4 making good as soon as reasonably practicable all damage caused to the First Property and any buildings from time to time on it to the reasonable satisfaction of the owners of the First Property;
- 3.2.5 permitting the owners of the First Property to accompany those exercising the rights; and
- 3.2.6 paying reasonable compensation to any person affected by any damage caused by the exercise of the rights which is not capable of being made good as mentioned above.

4. WAYLEAVES

Each of the First Owner and the Second Owner will upon request by the other enter into any wayleave agreement on such terms as may be properly and reasonably required by any utility company in relation to the installation of any Conduits in, on,

under or over the relevant property by such utility company pursuant to the rights granted above.

SCHEDULE 3

PLANNING AND SECTION 106 AGREEMENT OBLIGATIONS OF THE PARTIES

1. In this Schedule the following words and expressions shall have the meanings set out below:-

"Additional Affordable Housing Unit"	has the meaning given to the term in the Section 106 Agreement
"Adoptable Standards"	has the meaning given to the term in the Section 106 Agreement
"Dedication Plan"	has the meaning given to the term in the Section 106 Agreement
"Deed of Dedication"	has the meaning given to the term in the Section 106 Agreement
"LBHF"	has the meaning given to the term in the Section 106 Agreement
"Mandatory Design Guidelines"	has the meaning given to the term in the Section 106 Agreement
"On-site Streets"	has the meaning given to the term in the Section 106 Agreement
"Owner"	has the meaning given to the term in the Section 106 Agreement
"Practically Complete"	has the meaning given to the term in the Section 106 Agreement
"Pre-Conditions"	a condition of the Planning Permissions or an obligation of the Section 106 Agreement which has to be satisfied prior to the demolition, redevelopment or occupation of any part of the Development Area
"RBKC"	has the meaning given to the term in the Section 106 Agreement

2. **PLANNING**

The Parties will co-operate acting properly, reasonably and with the utmost of good faith to agree as soon as reasonably practicable following a written request from any of the other Parties a strategy for dealing with the discharge of any Pre-Conditions which affects any part of the Development Area PROVIDED THAT no Party may be required by this Agreement to undertake any works or to permit any works to be undertaken or to incur costs in implementing any strategy agreed on any part of an Area in their ownership.

3. **SECTION 106 AGREEMENT**

The Parties to this Agreement shall comply with their obligations as Owners under the Section 106 Agreement including all obligations requiring them to Practically Complete or procure the Practical Completion of the On-site Streets shown on the Dedication Plan that are to be built to an Adoptable Standard and dedicated to the public as highway pursuant to a Deed of Dedication unless agreed otherwise with LBHF or RBKC (as appropriate) and all those On-site Streets shown on the Dedication

Plan which are to be constructed within an Area shall be constructed in accordance with the Mandatory Design Guidelines and dedicated to the public as highway pursuant to a Deed of Dedication unless agreed otherwise with LBHF or RBKC (as appropriate).

EXECUTED and DELIVERED as a deed by
EARLS COURT PARTNERSHIP LIMITED
acting by:

)
)
)
)

Director

Director/ Secretary.....

EXECUTED as a deed by **EC PROPERTIES**
NOMINEE LIMITED acting by two directors or a
director and a secretary:-

)
)
)
)
)

Director

Director/Secretary

EXECUTED as a deed by **EC PROPERTIES GP**
LIMITED acting by two directors or a director and
a secretary:-

)
)
)
)
)

Director

Director/Secretary

EXECUTED and DELIVERED as a deed by **THE
EMPRESS STATE LIMITED PARTNERSHIP** acting
by **EMPRESS STATE GP LIMITED**, general
partner, acting by

)
)
)
)

Director

Director/Secretary

EXECUTED and DELIVERED as a deed by
EMPRESS STATE NO 1 NOMINEE LIMITED acting
by:

)
)
)
)

Director

Director/Secretary

EXECUTED and DELIVERED as a deed by
EMPRESS STATE NO 2 NOMINEE LIMITED acting
by:

)
)
)
)

Director

Director/Secretary

The Common Seal of **LONDON**)
UNDERGROUND LIMITED)
was affixed to this Deed in the presence of:)

)
)
)
)
Duly Authorised Signatory

APPENDIX 1
DEVELOPMENT AREA PLAN

APPENDIX 2



APPENDIX 3
PRINCIPAL ESTATE INFRASTRUCTURE PLANS

APPENDIX 4
LAND OWNERSHIP PLAN

APPENDIX 5



APPENDIX 6



APPENDIX 7
EMPRESS STATE BUILDING PLANS