

Dated

2014

- (1) LONDON UNDERGROUND LIMITED
- (2) EARLS COURT PARTNERSHIP LIMITED

Deed of Indemnity for

Section 106 Liabilities arising before Final Completion Date

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THIS DEED is made on

BETWEEN

- (3) **LONDON UNDERGROUND LIMITED** (Company Number 01900907) of Windsor House, 42 – 50 Victoria Street, London SW1H 0TL (“LUL”);
- (4) **EARLS COURT PARTNERSHIP LIMITED** (Company Number 8872070) of 15 Grosvenor Street, London, W1K 4QZ (“JVCo”)

BACKGROUND

- (A) LUL is the freehold owner of that part of the Earls Court Village shown on the plans attached to the draft Confirmatory Deed set out in Schedule 9 of the Implementation Agreement.
- (B) JVCo intends to progress the development of Earls Court Village in accordance with the Planning Permissions.
- (C) The Parties have agreed certain matters in relation to the Planning Agreement and liabilities and obligations relating to thereto in respect of the period before JVCo acquires its leasehold (and other interests) in Earls Court Village on the Final Completion Date.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Deed, the following words and expressions have the following meanings:

“Commence”	has the meaning as set out in the Planning Agreement
“Earls Court Village”	has the meaning as set out in the Shareholders Agreement
“Final Completion Date”	has the meaning as set out in the Implementation Agreement
“Implementation Agreement”	the agreement of even date with this Deed made between EC Properties LP Limited, Earls Court Village Properties Limited, Earls Court Partnership Limited, EC Properties Management Limited, Capital & Counties Limited, EC Properties LP, Empress State LP, London Underground Limited and Transport for

London

“LBHF Land”

has the meaning as set out in the Planning Agreement

Planning Agreement

the deed made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), Section 111 of the Local Government Act 1972, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 16 of the Greater London Council (General Powers) Act 1974, Section 1 of the Localism Act 2011 and Section 156 and Schedule 11 of the Greater London Authority Act 1999 dated 14th November 2013 made between (1) EC Properties GP Limited and EC Properties Nominee Limited (2) The Mayor and Burgesses of the London Borough of Hammersmith and Fulham (3) The Royal Borough of Kensington and Chelsea (4) LUL and (5) Transport for London relating to the redevelopment of Earls Court

“Planning Permissions”

the planning permissions and conservation area consent granted in relation to the Earls Court Development as defined in the Planning Agreement with reference numbers 2011/02001/OUT and PP/11/01937 for the planning permissions and with reference number 2011/02002/CAC for the conservation area consent and dated 14 November 2013

“Shareholders Agreement”

the agreement of even date with this Deed made between (1) EC Properties LP, (2) Earls Court Village Properties Limited and (3) JVCo

“Specialist”

a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature

of the Earls Court Village, as per clause 2

“Working Days”

a day other than a Saturday or Sunday or a public holiday in England and Wales

1.2 In this Deed:

1.2.1 the clause headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses are to clauses of this Deed;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and

1.2.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;

1.2.4 references to the Earls Court Village include any part of it;

1.2.5 “including” means “including, without limitation”;

1.2.6 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each individually; and

1.2.7 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed is to be unaffected.

1.3 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. DETERMINATION OF DISPUTES

2.1 If any dispute arises relating to or arising out of the terms of this Deed any party may give to the others written notice requiring the dispute to be determined under this clause 2. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 2.2 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer from time to time of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 2.
- 2.3 Any dispute over the identity of the Specialist is to be referred at the request of a party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 2.4 The Specialist is to act as an independent expert and:
- 2.4.1 any party may make written representations to the Specialist within ten Working Days of his appointment and will copy the written representations to the other party;
 - 2.4.2 each party is to have a further ten Working Days to make written comments on the other's representations and provide them to the Specialist and at the same time will copy the written comments to the other party;
 - 2.4.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 2.4.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 2.4.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 2.4.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.
- 2.5 Responsibility for the costs of referring a dispute to a Specialist under this clause 2 including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

2.6 This clause 2 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

3. **COVENANT AND INDEMNITIES**

To the extent that the Planning Agreement contains terms and obligations in relation to Earls Court Village which take effect before the Final Completion Date, JVCo will observe and perform such terms and obligations and in the event of any failure by JVCo to do so, JVCo will indemnify and keep LUL indemnities against all legal fees and other costs, expenses and liabilities incurred in complying with those terms including without limitation the payment of all and any sums due and in accordance with the Planning Agreement before the Final Completion Date.

4. **ASSIGNMENT**

4.1 LUL may at any time assign the benefit of this Deed, without the consent of JVCo, to its successors in title to the freehold of Earls Court Village.

5. **ENFORCEMENT**

This Deed is to be governed by and interpreted in accordance with English law.

6. **TERMINATION**

This Deed will terminate on the Final Completion Date (or if later, upon the date which JVCo exercises the Options (as defined in the Implementation Agreement) but without prejudice to any accrued liability.

7. **EXECUTION**

JVCo and LUL have executed this Deed of Indemnity as a deed date and year first before written.

Executed as a deed by affixing)
the common seal of)
LONDON UNDERGROUND LIMITED)
in the presence of:)

Duly Authorised Signatory

Signed as a deed by)
EARLS COURT PARTNERSHIP LIMITED)
acting by two directors or)
one director and its secretary)

Signature of director

Signature of director/secretary