

Appendix 6
CONFIRMATORY DEED

DATED _____ **20[]**

(1) [THE COVENANTOR]

(2) EC PROPERTIES GP LIMITED and EC PROPERTIES NOMINEE LIMITED

(3) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM

(4) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

(5) LONDON UNDERGROUND LIMITED

(6) TRANSPORT FOR LONDON

(7) [MORTGAGEE]

CONFIRMATORY DEED

Relating to the redevelopment of Earl's Court

pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974, section 33 of the Local Government (Miscellaneous Provision) Act 1982, section 1 of the Localism Act 2011 and section 156 and Schedule 11 of the Greater London Authority Act 1999

THIS CONFIRMATORY DEED is made the _____ day of _____ 20[]

BETWEEN:-

- (1) [THE COVENANTOR (Company Number []) of [] (the "Covenantor")];
- (2) **EC PROPERTIES GP LIMITED** (Company Number 7696161) and **EC PROPERTIES NOMINEE LIMITED** (Company Number 7696994) both of 15 Grosvenor Street, London, W1K 4QZ (together "EC Properties");
- (3) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM** of The Town Hall, King Street, Hammersmith, LONDON W6 9JU ("LBHF");
- (4) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of The Town Hall, Hornton Street, LONDON W8 7NX ("RBKC");
- (5) **LONDON UNDERGROUND LIMITED** (Company Number 01900907) of 55 Broadway, London SW1H 0BD ("LUL");
- (6) **TRANSPORT FOR LONDON** of Windsor House, 42 – 50 Victoria Street, London SW1H 0TL ("TfL"); and
- (7) [MORTGAGEE]

WHEREAS:-

- (A) This Confirmatory Deed relates to the Covenantor's land and interests the details of which are set out in the Schedule to this Confirmatory Deed and which is shown edged red on the plan annexed to this Confirmatory Deed (the "**Land**").
- (B) On [] 2013 the parties hereto entered into the Principal Deed (as defined within this Confirmatory Deed).
- (C) LBHF and RBKC are the local planning authorities for the area within which the Land and the Earl's Court Site is situated and by whom the obligations contained in the Principal Deed (insofar as they are relevant and applicable to the Land and its development in accordance with either the RBKC Planning Permission or the LBHF Planning Permission, as appropriate) and this Confirmatory Deed are intended to be made enforceable by the Councils against the Covenantor and to be binding in respect of the Land in accordance with this Confirmatory Deed and the Principal Deed.
- (D) TfL is the strategic transport authority and there are covenants and obligations contained in the Principal Deed which are stated to be made or entered into by the Owner in favour of (and to be enforceable by) TfL and in respect of which TfL together with the Councils is entitled to enforce the covenants and obligations in accordance with the terms of the Principal Deed and these provisions (insofar as relevant and applicable to the Land and its development in accordance with either the RBKC Planning Permission or the LBHF Planning Permission, as appropriate) are intended to be made enforceable by TfL against the Covenantor and to be binding in respect of the Land in accordance with this Confirmatory Deed and the Principal Deed.
- (E) This Confirmatory Deed is required pursuant to Clause 18 of the Principal Deed to enable the Earl's Court Development to be carried out in that part of the Earl's Court Site within which the Land falls and is entered into for the purpose of ensuring that the agreements, covenants, undertakings and obligations contained in the Principal Deed (insofar as relevant and applicable to the Land and its development in accordance with either the RBKC Planning Permission or the LBHF Planning Permission, as appropriate) are binding on the Covenantor and the Land insofar as they remain to be complied with and relate to the Land.

1. INTERPRETATION

1.1 Save where provided otherwise words and expressions used in this Confirmatory Deed have the meaning assigned in the Principal Deed.

1.2 For the purposes of this Confirmatory Deed the following words and expressions have the following meanings:-

"Principal Deed" means the agreement dated [] 2013 between EC Properties GP Limited and EC Properties Nominee Limited, the Mayor and Burgesses of the London Borough of Hammersmith and Fulham, the Mayor and Burgesses of the Royal Borough of Kensington and Chelsea, Transport for London and London Underground Limited and entered into pursuant to section 106 of the Act.

2. OPERATION OF THIS CONFIRMATORY DEED

2.1 This Confirmatory Deed is supplemental to the Principal Deed and is made pursuant to section 106 of the Act.

2.2 The obligations, covenants and undertakings contained in this Confirmatory Deed given to the Councils and TfL are planning obligations for the purposes of section 106 of the Act and are enforceable by the Councils for the area within which the Land is situated.

2.3 This Confirmatory Deed is executed by the [Covenantor][EC Properties] so as to bind and subject its freehold interest or Relevant Leasehold Interest in the Land (as detailed in the Schedule hereto) to the obligations, covenants, agreements and other provisions contained in the Principal Deed (insofar as relevant and applicable to the Land and its development in accordance with either the RBKC Planning Permission or the LBHF Planning Permission, as appropriate) and the Covenantor agrees that as from the date hereof the obligations, covenants and undertakings in the Principal Deed given by the Owner to the Councils and/or TfL, as appropriate, shall be binding on the Land pursuant to section 106 of the Act as if the said obligations, covenants and undertakings in the Principal Deed were set out herein in full with the intent that, subject to clause 6 below, the said obligations, covenants and undertakings shall be enforceable by the Councils and/or TfL, as appropriate, not only against the Covenantor but also against any successors in title to or assignees of the Covenantor and any person claiming through or under it an interest or estate in the Land as if the Covenantor had been an original covenanting party in respect of the Land when the Principal Deed was entered into.

2.4 The Councils covenant severally with Covenantor in respect of the Land to perform the obligations, covenants and undertakings on their part contained in the Principal Deed.

3. COVENANTOR'S OBLIGATIONS

3.1 The Covenantor hereby covenants agrees and undertakes (for itself and its successors in title to the Land) that its freehold interest or Relevant Leasehold Interest in the Land shall henceforth be bound by the obligations, covenants, agreements and other provisions contained in the Principal Deed and expressed as being obligations of (or covenants or agreements made by) the "Owner" as if the Covenantor were a party to the Principal Deed when it was executed by the parties set out in the Principal Deed and insofar as the terms and obligations, covenants, agreements and other provisions remain to be complied with in accordance with the Principal Deed which are expressed to bind the whole or any part of the Earl's Court Site or any specified Development Plot or other part of the Earl's Court Site which includes the Land or the part of the Earl's Court Development to be accommodated or located on the Land. For the avoidance of doubt, any references in the Principal Deed to the "Owner" shall be read to the extent required in accordance with this Confirmatory Deed as including references to the Covenantor.

4. **COMPLIANCE BY THE COUNCILS AND TFL**

4.1 The Councils and TfL agree severally with the Covenantor that if and insofar as relevant to the Land and the development of it in accordance with either the RBKC Planning Permission or the LBHF Planning Permission, as appropriate they will comply with their respective obligations, covenants, agreements and undertakings contained in the Principal Deed if and to the extent that they affect or apply or relate to the Land and the obligations, covenants, agreements and/or other provisions under the Principal Deed which the Covenantor shall have undertaken in accordance with the terms of this Confirmatory Deed.

5. **REGISTRATION**

5.1 Immediately after the execution of this Confirmatory Deed, the Covenantor shall make an application to the Land Registry for entries relating to this Confirmatory Deed to be made against the Land and will inform the Councils' solicitors in writing as soon as such registration has been completed and supply the Councils' solicitors (at no cost to the Councils or their solicitors) with copies of such registration.

5.2 If the Covenantor fails to make the application as aforesaid within 3 (three) months of the date of this Confirmatory Deed, the Covenantor hereby gives its consent to the Councils making an application to register this Confirmatory Deed as aforesaid and thereafter the Councils shall be entitled to recover the expenses incurred in doing so from the Covenantor and the Covenantor hereby covenants with the Councils to do or concur in doing all things necessary or advantageous to enable the entries to be made.

5.3 This Confirmatory Deed is a local land charge and shall be registered as such by the relevant Council.

5.4 The Covenantor may at any time after all the obligations set out in the Principal Deed relevant to the Land have been performed or otherwise discharged apply to the Land Registry to remove the entries relating to this Confirmatory Deed against the Land.

6. **RELEASE**

6.1 The Covenantor will upon disposing of the whole or part of the Land be released from all obligations and covenants under this Confirmatory Deed in relation to the Land or the relevant part thereof (as the case may be) but without prejudice to the rights of the Councils in relation to any antecedent breach of those obligations or covenants.

7. **MORTGAGEE'S CONSENT**

7.1 The Mortgagee consents to [] entering into this Confirmatory Deed and acknowledges that the [] Land will be bound by the terms and obligations contained in this Confirmatory Deed and that the security of the mortgage over the [] Land shall take effect subject to this Confirmatory Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Confirmatory Deed unless it becomes a mortgagee in possession of the whole or any part of the [] Land in which case it too will be bound by the terms and obligations contained in this Confirmatory Deed as if it were a person deriving title from [].

IN WITNESS whereof the parties have executed this Deed and delivered it on the day and year first above written

EXECUTED as a deed by **[the Covenantor]**
acting by two directors or a director and a
secretary:-
)
)
)
)
)

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

The Common Seal of)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF HAMMERSMITH AND)
FULHAM)
was affixed to this Deed in the presence of:-)
)
)
)

Duly Authorised
Signatory

The Common Seal of)
THE MAYOR AND BURGESSES OF THE)
ROYAL BOROUGH OF KENSINGTON)
AND CHELSEA)
was affixed to this Deed in the presence of:-)
)
)
)

Duly Authorised
Signatory

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

The Common Seal of **TRANSPORT FOR**)
LONDON)
was affixed to this Deed in the presence of:)
)
)
Duly Authorised Signatory

EXECUTED as a Deed by **[MORTGAGEE]** acting)
by:-)

)
)
)
)
)
Director

Director/Secretary