

Appendix 11

FORM OF DEED OF DEDICATION



Deed of Dedication

Dated

Owner
(**Party role**)

LBHF
(as local highway authority)

RBKC
(as local highway authority)

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Deed of Dedication

Dated

Between

- (1) **[Owner (**)]** [registered in England with Company number ** whose registered office is at **][a corporation organised and existing under the laws of ** whose principal place of business is at **][of **] (the "**Owner**") [; and]
- (2) **[The Mayor and Burgesses of the London Borough of Hammersmith and Fulham]** of the Town Hall, King Street, Hammersmith, London W6 9JU ("**LBHF**");
- (3) **[The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea]** of the Town Hall, Hornton Street, London W8 7NX ("**RBKC**");

Recitals

- A The Owner is responsible for the construction of the [Broadway] [High Street] [On-site Street] as part of the Earls Court Development.
- B [LBHF] [RBKC] is the local highway authority for highway within its borough which includes responsibility for the regulation of traffic.
- C The Owner will be responsible for the permanent maintenance of the [Broadway] [High Street] [On-site Street] and they will not be made available for adoption to be maintained at the public expense pursuant to Section 38 of the Highways Act 1980 (without prejudice to clause 10.4 hereto).
- D [LBHF] [RBKC] will continue to be responsible for the regulation of traffic and management of highway safety for the purposes of the relevant obligations and powers under the Road Traffic Regulation Act 1984 and the Highways Act 1980.
- E [LBHF] [RBKC] wishes to ensure that the [Broadway] [High Street] [On-site Street] remain open and available for use by the public as highway and are maintained to a standard as a minimum which is equal to an Adoptable Standard and the Owner has agreed to enter into this Deed of Dedication to secure this.

It is agreed:

1 Definitions

- 1.1 For the purposes of this Deed the following words and phrases shall have the following meanings:

Acts means the Highway Act 1980, the Road Traffic Regulation Act 1984 and New Road and Street Works Act 1991

Adoptable Standard means a standard of construction, including drainage, that meets the standard applied to adopted streets by [LBHF] [RBKC], or is otherwise confirmed as acceptable by [LBHF] [RBKC] and a standard of design (including material type and quality) which complies with or exceeds, as a minimum, the principles set out in [RBKC's Streetscape Guide 2012] [LBHF's "StreetSmart (towards streets that are well designed and well engineered)"] [TfL's Streetscape Guidance (2009) and/or the Manual for Streets 1 (2007) and

2 (2010)], as appropriate, for surfacing materials, workmanship, speed restraint measures, street lighting, street furniture, and complies with or exceeds, as a minimum, the Manual for Streets 1 (2007) and 2 (2010) for road alignment, widths, forward visibility sight lines and vision splays and, for the avoidance of doubt, any bespoke materials required by the Owner will be agreed with the highway authority in accordance with Section 11.8.4 of the Manual for Streets 1 (2007) and 2 (2010), which requires that such materials meet the test of enhancing the environment and the living experience of the residents of the Earls Court Development and is appropriate for the vehicle types intended to use the Earls Court Development and provided always that reference to [RBKC's Streetscape Guide] [LBHF's "StreetSmart (towards streets that are well designed and well engineered)"] and the Manual for Streets 1 (2007) and 2 (2010) shall include any amendment, modification or replacement thereof

Approval[s] means the planning permission[s] granted for the redevelopment of the Earls Court Development pursuant to the planning application[s] given reference[s] [PP/11/01937] [and] [2011/02001/OUT]

Approved Drawings means [list all detailed drawings relevant to the road this Deed of Dedication relates]

[Broadway means *identified by reference to plan ***]

Certificate of Completion means a certificate issued by [LBHF] [RBKC] upon it being reasonably satisfied the [Broadway] [High Street] [On-site Street] has been Completed

Completion or Completed means the completion of the [Broadway] [High Street] [On-site Street] to such an Adoptable Standard and that it can be open to and made available for use by the public and all relevant forms of vehicular traffic

[Director of Transport and Highways means RBKC's and LBHF's Director of Transport and Highways his successor in title or such other officer for RBKC from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment]

Earls Court Development means the redevelopment of the Earls Court Site pursuant to [one or more of the Approvals][the Approval]

Estate Management Strategy means the site wide estate management framework to be submitted in accordance with [condition [**]/condition [**] of the Approval[s]]

[Executive Director of Transport and Technical Services means LBHF's and RBKC's Executive Director of Transport and Technical Services his successor in title or such other officer for LBHF from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment]

[High Street means *identified by reference to plan ***]

Licences means any licences which may be granted by the [Owner] pursuant to Section 50 of the New Roads and Street Works Act 1991 and any other licences the [Owner] may be permitted to grant as the street authority for the [Broadway] [High Street] [On-site Street]

Maintenance Works means the permanent management and maintenance of the [Broadway] [High Street] [On-site Street] in accordance with the Estate Management Strategy

[On-site Street means ** (as identified on the attached plan)]

Relevant Highway Authority means [RBKC] [LBHF]

Safety Audit means the four stage evaluation of the Approved Drawings and accompanying specification against applicable safety standards and best practice employed or recommended in highway design at the time by the Department for Transport (or its successor) or the [LBHF] [RBKC] as relevant

Statutory Undertaker shall have the meaning assigned to the term "undertaker" in section 48 of the New Roads and Street Works Act 1991 (as amended)

Supervision and Testing Fee means the reasonable fees (*to be determined at the time the relevant deed is entered in to*) incurred by [LBHF] [RBKC] in testing the materials proposed to be used and in supervising the completion of the [Broadway] [High Street] [On-site Street] such fees to be payable by the Owner following issue of an invoice or invoices (to include a detailed narrative of work undertaken and costs involved) by [LBHF] [RBKC] following Completion

Traffic Regulation Order(s) shall have the meaning given under section 1 and schedule 1 of the Road Traffic Regulation Act 1984 as it relates to Greater London pursuant to section 6 of that Act

2 Interpretation

- 2.1 References to any statute include any statutory extension, modification, amendment or re-enactment of such statute and any subordinate instruments, regulations or orders made pursuant to it.
- 2.2 Where under this Deed any notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction is required to be given, reached or taken by any Party or any response is requested to any such notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction such notice, approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed.
- 2.3 The headings in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.4 Where reference is made to a Clause, Paragraph, Recital or Schedule such reference (unless the context otherwise requires) is a reference to a clause, paragraph, recital or schedule in this Deed.
- 2.5 In this Deed the singular includes the plural and vice versa and the masculine includes the feminine and vice versa.
- 2.6 References in this Deed to the Owner include its respective successors in title and assigns and references to the [RBKC] [LBHF] include successors to its function as highway authority.

3 Effect of This Deed

- 3.1 This Deed is made pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and all other enabling powers and for the avoidance of doubt nothing in this Deed is intended to restrict or prevent [LBHF] [RBKC] from exercising its powers or duties as highway authority and traffic regulatory authority over the [Broadway] [High Street] [On-site Street] as permitted by the Acts.
- 3.2 The obligations and covenants given by the Owner in this Deed are given pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and shall be enforceable by [LBHF] [RBKC] against the Owner and any person deriving title from them.
- 3.3 This Deed shall be effective from the date of this Deed.

4 Duty to Notify of Commencement of Roads

- 4.1 The Owner shall notify the [Executive Director of Transport and Technical Services] [Director of Transport and Highway] in writing no less than 7 (seven) days prior to the proposed date to commence any works to construct the [Broadway] [High Street] [On-site Street] and for the avoidance of doubt no works shall commence until the Approved Drawings have been approved and passed all such necessary Safety Audits as [LBHF] [RBKC] may reasonably require.

5 Construction and Completion of the [Broadway] [High Street] [On-site Street]

- 5.1 The Owner shall construct and Complete the [Broadway] [High Street] [On-site Street] in accordance with the Approved Drawings to an Adoptable Standard.
- 5.2 On receipt of no less than 24 hours notice (except in emergencies) the Owner shall during the construction of the [Broadway] [High Street] [On-site Street] give to any officer of [LBHF] [RBKC] access to every part of the [Broadway] [High Street] [On-site Street] for the purpose of inspecting the [Broadway] [High Street] [On-site Street] and all materials used or intended to be used for the purpose of such works.
- 5.3 The Owner shall pay within 1 (one) month following receipt of an invoice(s) (together with detailed narrative of works) the Supervision and Testing Fee to [LBHF] [RBKC].
- 5.4 During the periods when construction works for the [Broadway] [High Street] [On-site Street] are being executed the Owner shall institute at their own expense measures (previously agreed with the [Executive Director of Transport and Technical Services] to maintain the safe flow of traffic on the highways within the vicinity of the [Broadway] [High Street] [On-site Street] being constructed.
- 5.5 The Owner will not allow the [Broadway] [High Street] [On-site Street] to open for use by the public until it has notified [LBHF] [RBKC] that the [Broadway] [High Street] [On-site Street] has been Completed and received the Certificate of Completion pursuant to Clause 5.6 below.
- 5.6 Within [14 (fourteen)] days of being notified pursuant to Clause 5.5 [LBHF] [RBKC] shall inspect the [Broadway] [High Street] [On-site Street] and upon being satisfied the [Broadway] [High Street] [On-site Street] has been constructed to an Adoptable Standard and in accordance with all Approved Drawings shall issue a Certificate of Completion.

6 Indemnities and Insurance

Public Liability Insurance

- 6.1 The Owner shall on serving notice pursuant to Clause 4.1 above and prior to commencing works on the [Broadway] [High Street] [On-site Street] indemnify and keep indemnified [RBKC] [LBHF] and be insured against public liability risks for a sum of at least £[** in respect of any one claim and shall ensure that any person or persons carrying out the Maintenance Works on its behalf is similarly insured against public liability risks and the Owner or any person authorised by it to carry out the Maintenance Works shall on request by [LBHF] [RBKC] produce for inspection the relevant policies or insurance together with receipts for the premiums paid.

Land Compensation Act Claims

- 6.2 The Owner hereby indemnifies [LBHF] [RBKC] against all claims including (including all costs arising out of or in connection with or incidental to such claims and any such claims made prior to the Owner entering into this Deed in relation to the [Broadway] [High Street] [On-site Street]) under Part I and Part II of the Land Compensation Act 1973 (including claims [LBHF] [RBKC] determines should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975 as amended by the Noise Insulation (Amendment) Regulations 1988) arising out of the use of the [Broadway] [High Street] [On-site Street].

Statutory Undertakers

- 6.3 The Owner shall before connecting the [Broadway] [High Street] [On-site Street] with any highway give notice to each person board or authority being the Statutory Undertaker for the time being of any service or services laid in upon or under the [Broadway] [High Street] [On-site Street] of the proposal to make such connection as if the connection were a work to be executed for road purposes or were mentioned in Sections 48(3) and 84(1) of the New Roads and Street Works Act 1991.
- 6.4 The Owner shall indemnify [LBHF] [RBKC] in respect of the cost of any works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection as set out in Clause 6.3 and shall notify [LBHF] [RBKC] in writing not less than 28 days prior to the commencement of any work connected with Statutory Undertakers' equipment located in on or under any Highway.

7 Dedication

- 7.1 Upon the issue of the Certificate of Completion the Owner dedicates the [Broadway] [High Street] [On-site Street] as highway for use by the public with or without vehicles at all times and shall thereafter be responsible for its on-going maintenance.

8 Maintenance

- 8.1 In the event the Owner intends to carry out Maintenance Work to the [Broadway] [High Street] [On-site Street] following the date of dedication pursuant to Clause 7.1 above it shall give the [RBKC] [LBHF] written notice of the Maintenance Works proposed together with the timescales and potential impact this will have on vehicular traffic together with any hoardings and/or apparatus which will be placed in the dedicated highway during the period of maintenance.

8.2 The Owner shall be responsible for securing all other necessary consents, Traffic Regulations Orders and licences required to carry out the Maintenance Works.

9 Licences

9.1 The parties acknowledge that where a Licence is granted by the [Owner] in relation to works on the [Broadway] [High Street] [On-site Street] additional consents and/or licences may be required from [LBHF] [RBKC].

10 Lack of Maintenance

10.1 The Owner shall make good any damage or carry out any Maintenance Works to the [Broadway] [High Street] [On-site Street] as [LBHF] [RBKC] may notify to the Owner from time to time (following its dedication as highway) in accordance with a timescale agreed with [LBHF] [RBKC] (the "**Remedial Works**").

10.2 If the Owner has not completed the Remedial Works within the agreed timeframe [LBHF] [RBKC] may serve a notice (the "**Default Notice**") identifying:

- (a) the works required to be carried out;
- (b) the timeframe the Owner has for carrying out those works; and
- (c) the estimated cost of those works.

10.3 If the Owner fails to comply with the Default Notice [LBHF] [RBKC] shall enter onto the [Broadway] [High Street] [On-site Street] and shall carry out those works identified in the Default Notice whereupon the Owner shall be responsible for reimbursing the costs incurred by [LBHF] [RBKC] for such works within 14 days of receipt of a written demand from [LBHF] [RBKC].

10.4 In the event of a persistent failure by the Owner to carrying out the Maintenance Works and/or comply with any issued Default Notice [LBHF] [RBKC] may elect to adopt the [Broadway] [High Street] [On-site Street] pursuant to Section 38 of the Highways Act 1980.

11 Rights of Third Parties

11.1 Nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.

11.2 Nothing in this Deed is intended to confer any benefit on any third party (whether referred to herein by name class description or otherwise) or any right to enforce a term contained in this Deed.

11.3 Notwithstanding the provisions contained in Clauses 11.1 and 11.2 a party who is the permitted successor to or an assignee of the rights of a party is deemed to be a party to this Deed.

12 Acknowledgement

12.1 It is acknowledged by the parties to this Deed that this Deed is entered into without prejudice to the respective responsibilities of the Owner as street authority and [LBHF] [RBKC] as local highway authority and traffic authority and the parties [will seek to agree] [have agreed] a series of principles [to be] incorporated within [the Estate Management Strategy] [the Schedule to this Deed] which identify each party's respective responsibilities as part of such functions.

IN WITNESS whereof this document has been executed as a Deed by the parties hereto the day and year first above written.

Signed by)
duly authorised for and)
on behalf of)
[Owner])

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

Duly Authorised
Signatory