

DATED _____ **20[]**

(1) [EARLS COURT PARTNERSHIP LIMITED]

(2) EC PROPERTIES LP

(3) LONDON UNDERGROUND LIMITED

LILLIE BRIDGE DEPOT RIGHTS AGREEMENT

COMMERCIAL IN CONFIDENCE



Pinsent Masons

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- (F) LUL has agreed to undertake certain on site works at the Lillie Bridge Depot (at the reasonable and proper cost of ECP) to accommodate the changes to the Beaumont Avenue access to the Lillie Bridge Depot.
- (G) When JVCo wishes to close the Existing Lillie Road Access and provides a replacement secondary access road for use by Very Long Vehicles (which cannot use Beaumont Avenue), LUL has agreed to use the replacement secondary access road (which may be relocated from time to time during the development of the surrounding land) on the terms of this Agreement and to surrender its rights to use the Existing Lillie Road Access. Where any such replacement secondary access road is significantly reconfigured or significantly relocated so as to require (in the opinion of LUL acting reasonably) a period of testing prior to its acceptance, a suitable trial period up to a maximum of 2 months will be applied to demonstrate that such replacement secondary access road is acceptable to LUL.
- (H) LUL agrees to permit JVCo to remove any redundant services and re-route any existing live utility services serving the Lillie Bridge Depot that currently pass through the Earls Court Village and the bus forecourt adjoining the Empress State Building and relocate any supply meters relating to live utility services (and remove any redundant supply meters) serving the Lillie Bridge Depot to a location to be approved by LUL (such approval not to be unreasonably withheld or delayed) on the terms of this Agreement provided that (in the case of live services) there is no interruption in the supply of the relevant services to Lillie Bridge Depot.

IT IS AGREED as follows:-

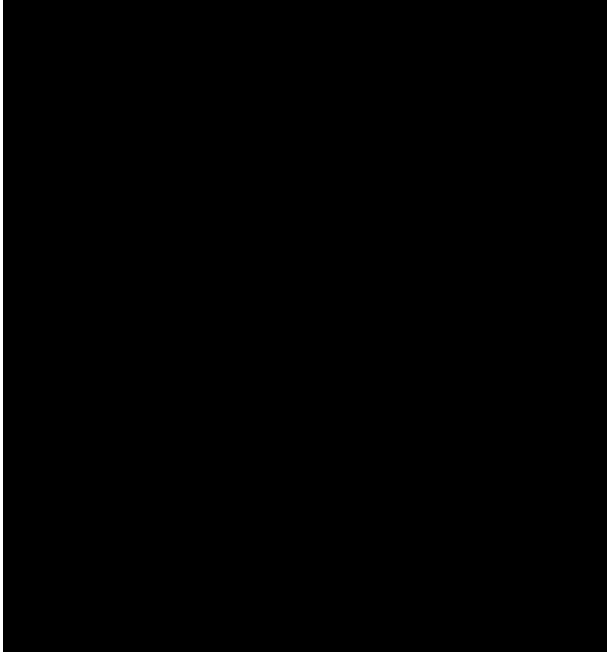
1. DEFINITIONS AND INTERPRETATION

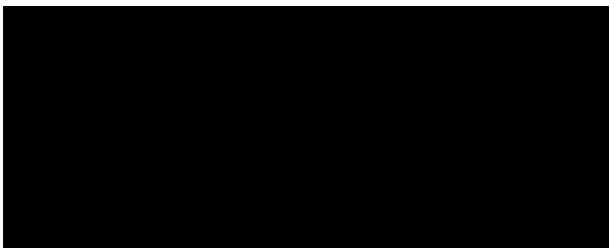
1.1 In this Agreement, the following definitions shall apply:-

"1987 Deed"	a deed dated 29 May 1987 made between (1) Land Securities Plc and (2) London Underground Limited
"1993 Deed"	a deed dated 15 February 1993 made between (1) Ravenseft Properties Limited and (2) London Underground Limited
"Acceptance Certificate"	a certificate to be issued by LUL in accordance with the terms of this Agreement in respect of the Beaumont Avenue Works or any Secondary Access Works confirming that the relevant works have been completed without any BAW Adverse Effect or Secondary Access Adverse Effect (as the case may be) and in accordance with the BAW Criteria or the Secondary Access Performance Criteria (as the case may be)
"Base Rate"	either the base lending rate of Barclays Bank plc or such other clearing bank nominated by LUL at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as LUL may reasonably determine
"BAW Acceptance Date"	the date of the Acceptance Certificate for the Beaumont Avenue Works
"BAW Adverse Effect"	any of the following events or circumstances <ul style="list-style-type: none"> (a) the Beaumont Avenue Works not being completed in all material respects in accordance with the S278 Agreement (including the BAW

Detailed Specification and Plans);

- (b) restrictions being imposed by the relevant local authority, or highway authority in any Statutory Consent (or other statutory power including a general refusal to grant Exemptions where needed) which prevent entirely or limit to specific times or numbers or types of vehicles the use of Beaumont Avenue for access to and egress from Lillie Bridge Depot by vehicles up to 23.41 metres (77 feet) in length;
- (c) restrictions being imposed by the relevant local authority or highway authority in any Statutory Consent which limit the duration of any consent in so far as it relates to the use of Beaumont Avenue for access to or egress from Lillie Bridge Depot;

(d) 

(e) 

"BAW Criteria"

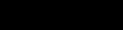
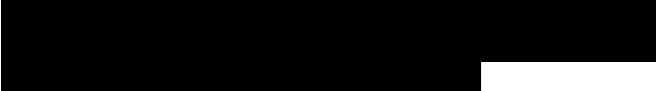
the access by vehicles up to 23.41 metres (77 feet) in length for access to and egress from the Lillie Bridge Depot

"BAW Detailed Specification and Plans"

detailed drawing and specification for the Beaumont Avenue Works with reference 80188/3 revision C annexed to this Agreement at **Appendix 2**

"BAW Testing Period"

six (6) months after the date calculated pursuant to Clause 4.1

"Beaumont Avenue Works"	highways works set out in the BAW Detailed Specification and Plans undertaken to Beaumont Avenue and the junction of Beaumont Avenue and North End Road pursuant to the S278 Agreement
"COT"	Close of Traffic, being the end of traffic hours where passenger trains cease operating, traction current is switched off and engineering hours commence
"Crew Depot"	such part of the Railway facilities as comprise buildings, equipment and facilities where train crew report at the start and finish of, and during, their shifts
"Date of Completion of the Beaumont Avenue Works"	the date of practical completion of the Beaumont Avenue Works under the S278 Agreement
"Design Trial Drawings"	WSP drawing numbers 0926-SK-245-B, 0926-SK-246-B, 0926-SK-247-B and 0926-SK-248-B all annexed to this Agreement at Appendix 3
"Design Trial Report"	the report dated 13 February 2014 prepared by Jacobs UK Limited, a copy of which is annexed to this Agreement at Appendix 4
"Earls Court Village"	the land identified as Earls Court Village  
"EC2 Headlease"	means the headlease of EC2, Earls Court, London dated [] and made between (1) London Underground Limited and (2) Earls Court Partnership Limited
"Empress State Building"	the building shown edged red on Plan 3 annexed at Appendix 6
"Exemption"	an exemption to the London Lorry Control Scheme to enable vehicles (over 16.5 tonnes in weight) to use and access North End Road as a means of access to Beaumont Avenue outside of the normally restricted hours
"Existing Lillie Road Access"	the principal vehicular access route to the Lillie Bridge Depot running from Lillie Road through the bus forecourt adjoining the Empress State Building and through the Earls Court Village site the approximate route of which is shown on Plan 1 annexed to this Agreement at Appendix 6 for identification purposes only
"Existing Lillie Road Services"	the utility services and supply meters serving Lillie Bridge Depot that run from Lillie Road through the bus forecourt adjoining the Empress State Building and through the Earls Court Village site to the Lillie Bridge Depot
"Final Completion Date"	the final completion date as defined under the Implementation Agreement

"Force Majeure"	<p>any one or more of the following</p> <ul style="list-style-type: none"> (a) fire; (b) storm or other exceptionally adverse weather conditions; (c) war, hostilities, rebellion, insurrection, military or usurped power or civil war; (d) labour lockouts, strikes or other industrial disputes; (e) riot, terrorist action, commotion, disorder; (f) decree of government; (g) non-availability of labour; (h) any event which would entitle LUL's contractor to an extension of time under the building contract (other than due to prevention or breach of the building contract by LUL); or (i) or any causes or circumstances beyond the reasonable control of LUL or the building contractor in the case of the LBD On Site Works; <p>provided always that LUL has taken all reasonable steps to mitigate and avoid any such event</p>
"Implementation Agreement"	<p>the agreement dated [] herewith made between (1) EC Properties LP Limited (2) TTL Earls Court Properties Limited (3) Earls Court Partnership Ltd (4) EC Properties Management Limited (5) Capital & Counties Limited (6) EC Properties LP (7) London Underground Limited and (8) Transport for London</p>
"Landowners Agreement"	<p>the agreement dated [] made between (1) Earls Court Partnership Ltd (2) EC Properties LP (3) Empress State LP and (4) London Underground Limited</p>
"Large Road Vehicles"	<p>all vehicles (including construction traffic) up to (in the case of articulated vehicles) 17 metres in length and (in the case of rigid vehicles) up to 12 metres in length</p>
"LBD Deed of Easement"	<p>the deed of easement in substantially the form of the draft annexed at Appendix 1</p>
"LBD On Site Works"	<p>all those works to be undertaken by LUL within the Lillie Bridge Depot to enable access to, and egress from, the Lillie Bridge Depot to and from Beaumont Avenue, and the provision of replacement car parking, comprising works to Ashfield House access road and car park, alterations to the upper and lower car parks, (latter required to strengthen embankment), new security facilities and the provision of a new car park in</p>

place of tracks 11, 11A and 12 all as outlined and shown in more detail on the attached drawings numbered B1869005-JEG-PRM-DD172_1-DR-C-001 and B1869005-JEG-BAS-DD172_1-DR-C-002 and the LBD On Site Works Specification all annexed at Appendix 5

"LBD On Site Works Specification"

means:

- (i) the Performance Specification for Security Building, Cleaning Consumables Store & Maintenance Consumables Stores prepared by Jacobs dated October 2013 (with reference no: B1869005-JEG-SPE-AR-0001-A02); and
- (ii) the Specification for New Car Park Walkway prepared by Jacobs dated January 2014 (with reference no: B1869005-JEG-REP-CIV-0001 Rev 01); and
- (iii) the Specification for Highway Works prepared by Jacobs dated 22 October 2013; and
- (iv) the Civil & Structural Specification for Access Road Widening Slopeworks and Steel Sheet Pile Wall prepared by Jacobs dated February 2014 (with reference B1869005-JEG-SPE-CV-0003 Rev C02); and
- (v) such relevant parts (if applicable) of:
 - (a) the Electrical & Mechanical Services Specification prepared by Jacobs dated 13th December 2013 (with reference no: B1869004-JEG-SPE-ME-0001 Rev C01); and
 - (b) the Specification for the Design, Supply & Installation of the Security Systems at Lillie Bridge Depot prepared by London Underground Limited dated 30 August 2013;
 - (c) the New Car Park Walkway Report (with reference B1869005-JEG-REP-CV-0001);
 - (d) the Depot Car Park Entrance Ramp, GA & Section drawing (with reference B1869005-JEG-MAC-DD172_0-DR-C-0201);
 - (e) the Security Cabin & Bin Store at Beaumont Avenue Entrance drawing (with reference B1869005-JEG-MAC-DD172_0-DR-C-0202);
 - (f) the Car Park Entrance Ramp Joint Details drawing (with reference B1869005-JEG-MAC-DD172_0-DR-C-0209);
 - (g) the Standard Notes (with reference B1869005-JEG-MAC-DD172_0-DR-C-0210);
 - (h) the RC Drawings and Schedules: Sec Cabin Slab (with reference B1869005-JEG-MAC-DD172_0-DR-C-0221);
 - (i) the RC Drawings and Schedules:

Ramp & Ret wall (with reference B1869005-JEG=-MAC-DD172_0-DR-C-0222);

(j) the RC Drawings and Schedules: Ramp & Ret wall (with reference B1869005-JEG=-MAC-DD172_0-DR-C-0223);

(k) the RC Drawings and Schedules: Ramp & Ret wall (with reference B1869005-JEG=-MAC-DD172_0-DR-C-0224);

that relate only to the areas identified by the manuscript annotation on drawing (reference B1869005- JEG-000-DD172_O-DR-C0004 rev C01);

as all annexed at Appendix 5

"LBD On Site Works Costs"	the reasonable and proper costs properly incurred by LUL in carrying out the LBD On Site Works which includes LUL's proper and reasonable internal overheads and proper and reasonable administrative expenses for the monitoring checking approval inspection and testing of the LBD On Site Works
"LBHF"	London Borough of Hammersmith and Fulham
"Lillie Bridge Depot"	means (i) all that land registered at the Land Registry forming part of title number BGL71558 shown edged green on Plan 4 annexed hereto at Appendix 6 and (ii) (following the grant of the LUL Void Underlease) the LUL Void
"LUL Train Operator"	a person certified by LUL to drive an electric, battery or diesel train or locomotive
"LUL Void"¹	all those premises in the approximate location shown for the purposes of identification only edged red on Plan 5 annexed hereto at Appendix 6 to be demised by JVCo (or its successors in title) to LUL by the LUL Void Underlease to be entered into pursuant to an agreement for underlease made on or after the date hereof
"LUL Void Underlease"	an underlease of the LUL Void to be entered into by (1) JVCo (or its successors in title) and (2) LUL (or its successors in title) pursuant to an agreement for underlease made on or after the date hereof
"Operation of the Railway"	the safe, efficient and economic construction, operation, use, inspection, repair, maintenance, protection, monitoring and security of the Railway including the safety of the public, passengers, persons employed in connection with the Railway
"Prescribed Rate"	four per centum (4%) per annum above Base Rate from time to time
"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
"Replacement Secondary Access"	any replacement Secondary Access provided pursuant to Clause 8.3
"Road Safety Audit"	a road safety audit to be carried out by an appropriately qualified transport engineer to determine the safety of the use of Beaumont Avenue by LUL as contemplated herein

¹ [DN: A more accurate Void Plan is to be annexed to this agreement prior to completion.]

"S278 Agreement"

an agreement dated 7 March 2014 and made between (1) LBHF and (2) ECP under section 278 of the Highways Act 1980 which provides for the carrying out of the Beaumont Avenue Works by LBHF

"Secondary Access"

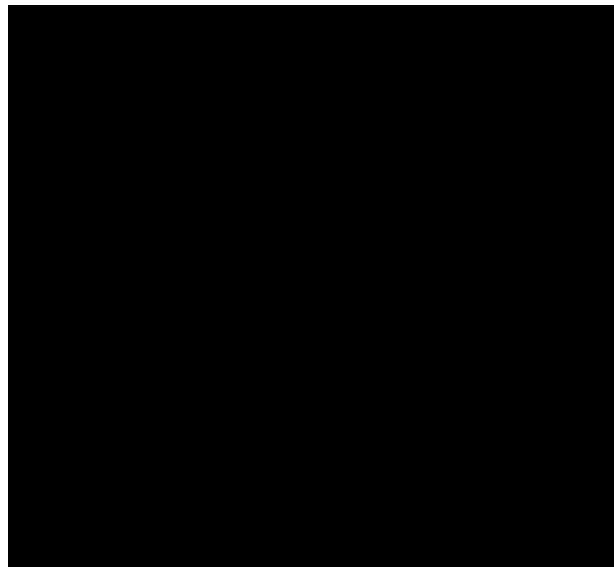
a secondary access road providing access to and egress from Lillie Bridge Depot in accordance with the relevant terms of this Agreement for all purposes connected with the use of Lillie Bridge Depot as operational railway and/or by a public transport undertaking and/or for use by construction traffic but not for any other purpose (save where there is a planning and/or emergency requirement under Clause 8.13.2 when the Secondary Access shall be used for such applicable uses)

"Secondary Access Adverse Effect"

any of the following events or circumstances:

- (1) restrictions being imposed by the relevant local authority, or highway authority in any Statutory Consent (or other statutory power) which prevent entirely or limit to specific times or numbers of vehicles the use of the Secondary Access for access to and egress from Lillie Bridge Depot by Very Long Vehicles or emergency vehicles in each case to a lower number or less frequently than is reasonably required by LUL for the Operation of the Railway at Lillie Bridge Depot;
- (2) restrictions being imposed by the relevant local authority or highway authority in any Statutory Consent which limit the duration of any consent in so far as it relates to the use of the Secondary Access by Very Long Vehicles or emergency vehicles in each case for access to or egress from Lillie Bridge Depot for less than the period for which such access is intended to be used;

(3)



- (4) JVCo does not deduce title to any part of the route which is not publicly adopted or dedicated

to the public of the Secondary Access to enable LUL to register the LBD Deed of Easement over that Secondary Access at the Land Registry free from restrictions which would prevent the use of the Secondary Access, provided that JVCo shall not be considered to have failed to deduce title where existing prescriptive rights can be used by LUL; or

- (5) restrictions being imposed on the use of the Secondary Access which are more onerous than the restrictions at Clause 8.8 of this Agreement

"Secondary Access Performance Criteria"	an access road providing access to and egress from Lillie Bridge Depot for Very Long Vehicles and emergency vehicles in accordance with the performance criteria set out in Schedule 2 of this Agreement
"Secondary Access Works"	the works (if any) for the construction and/or preparation of any Replacement Secondary Access in accordance with the Secondary Access Performance Criteria
"Secondary Access Works Acceptance Date"	the date of the Acceptance Certificate for the Secondary Access Works
"Shareholders' Agreement"	means an agreement dated [] made between JVCo, TTL Earls Court Properties Limited and EC Properties LP Limited relating to JVCo
"Shunter"	a shunt trained and competent member of staff assigned to shunting duties
"Statutory Consents"	the planning permissions, planning agreements and any other statutory approvals, consents, licences or permissions required from any local or other competent authority to enable the relevant party lawfully to carry out and complete or to reinstate following their damage or destruction the relevant works including all orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the relevant works to be carried out
"Transparency Deed"	means a Deed made between Transport for London (1) Capital & Counties Properties PLC (2) and Earls Court Partnership Limited (3) entitled Transparency Commitment and Confidentiality
"Very Long Vehicles"	vehicles of a length which is greater than 23.41 metres (77 feet) but not exceeding 27.74 metres (91 feet)
"Working Days"	9.00am to 5.00pm 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.

PART A - BEAUMONT AVENUE WORKS

2. DESIGN TRIAL

- 2.1 Before entering into this Agreement, for the purpose of testing as accurately as reasonably possible whether or not the design of the Beaumont Avenue Works would satisfy the BAW Criteria, ECP created a mock-up of each of:-
- 2.1.1 the double mini-roundabout at the junction of Lillie Road and North End Road;

- 2.1.2 the right hand turn from North End Road into Beaumont Avenue;
 - 2.1.3 the left hand turn from Beaumont Avenue into North End Road; and
 - 2.1.4 the junctions of Beaumont Avenue and the Lillie Bridge Depot Road internal roads,
- and tested them with vehicles as specified by LUL of 23.41 metres (77 feet) in length with static rear wheels and in respect of Clause 2.1.1 above with static rear wheels and re-tested with rear wheel steer (self tracker rear axle) in accordance with the Design Trial Drawings and Design Trial Report (the "**Design Trial**").

2.2 LUL attended and participated in the Design Trial and hereby confirms its acceptance that (subject to the minor modifications to the design of the Beaumont Avenue Works arising from such Design Trial as noted in the Design Trial Report) the BAW Criteria was met in the Design Trial and hereby approves the BAW Detailed Specification and Plans (subject to those modifications).

3. **S278 AGREEMENT AND CARRYING OUT OF BEAUMONT AVENUE WORKS**

- 3.1 ECP has entered into the S278 Agreement pursuant to which LBHF will carry out the Beaumont Avenue Works and ECP will pay the costs thereof.
- 3.2 ECP will use all reasonable endeavours to enforce its rights under the S278 Agreement to ensure that the Beaumont Avenue Works are completed in accordance with the BAW Detailed Specification and Plans.

4. **ACCEPTANCE OF BEAUMONT AVENUE WORKS**

- 4.1 ECP will give written notice to LUL of the date on which the Beaumont Avenue Works have been practically completed pursuant to the S278 Agreement and Beaumont Avenue is available for use for the purposes of this Agreement and (subject to Clause 6.10) the BAW Testing Period will commence upon the date that notice of practical completion is received by LUL or, if later, 1 June 2014, or earlier by agreement by the Parties.
- 4.2 On the application of ECP, LUL shall issue an Acceptance Certificate in respect of the Beaumont Avenue Works when both of the following conditions have been met:
 - 4.2.1 the Beaumont Avenue Works have (subject to snagging items) been completed and Beaumont Avenue is available for use; and
 - 4.2.2 the BAW Testing Period has elapsed without the occurrence of a BAW Adverse Effect (or where any BAW Adverse Effect(s) has occurred it has been remedied to the reasonable satisfaction of LUL).
- 4.3 Throughout the BAW Testing Period, and the period of the Road Safety Audit, LUL shall keep ECP properly informed in writing on a regular basis of any potential BAW Adverse Effect(s) arising providing full details of any concern, issue and/or complaint together with any further details reasonably requested by ECP to enable ECP to rectify the issue.
- 4.4 Throughout the BAW Testing Period either ECP or LUL (or both) may carry out ongoing testing to establish whether or not a BAW Adverse Effect is likely to arise or has arisen.
- 4.5 During the BAW Testing Period a Road Safety Audit shall be carried out by ECP and/or LBHF and a copy of any such audit shall be sent to LUL. Any remedial action that is reasonably required by LBHF (in their capacity as Highway Authority) as a result of such Road Safety Audit (insofar as it relates to or affects the use of Beaumont Avenue by LUL) will be completed before LUL is required to issue an Acceptance Certificate under Clause 4.2.

- 4.6 Before and during the BAW Testing Period, the Parties agree to take reasonable steps to avoid a BAW Adverse Effect(s) from arising (and in the event a BAW Adverse Effect(s) does arise, shall take reasonable steps to mitigate its effect) and enable an Acceptance Certificate to be issued ("**BAW Remedial Action**") including in particular (but without limitation):-
- 4.6.1 JVCo may (but shall not be obliged to) propose the use by LUL of one or more additional or alternative means of vehicular access to or from Lillie Bridge Depot (generally or for specific types of vehicles or for use at specific times); and
 - 4.6.2 the use of such reasonable traffic management arrangements and safety supervision for traffic flow; and
 - 4.6.3 making suitable changes and adjustments to LUL operations as are proposed by ECP and accepted by LUL (acting reasonably) or as otherwise proposed by LUL
- provided that any additional proper costs that LUL incur as a result of any such operational changes and/or adjustments are met by ECP in accordance with Clause 6.11 and 6.12 provided further that it shall be reasonable for LUL to withhold its approval of ECP's proposals where such proposals would or would be likely to have an adverse effect on the Operation of the Railway.
- 4.7 LUL and ECP (and/or JVCo) shall hold fortnightly meetings during the carrying out of the Beaumont Avenue Works and the BAW Testing Period to update each other on the performance of Beaumont Avenue and any issues that may have arisen. LUL shall at its discretion provide ECP with a minimum of 10 Working Days notice of, and allow a representative of ECP to attend, any internal LUL meetings with representatives of the Lillie Bridge Depot to discuss and agree any changes and adjustments to LUL operations as proposed by ECP pursuant to Clause 4.6.3 to avoid and/or mitigate any BAW Adverse Effect from arising.
- 4.8 ECP may by notice in writing to LUL apply for an Acceptance Certificate not earlier than twenty (20) Working Days before it considers the requirements of Clause 4.2 will be met.
- 4.9 LUL shall (acting reasonably) within twenty-five (25) Working Days after receipt of ECP's application for an Acceptance Certificate or if later within 10 Working Days after the requirements of Clause 4.2 are actually met either:
- 4.9.1 issue an Acceptance Certificate to ECP; or
 - 4.9.2 reject the application giving its reasons (acting in accordance with Clause 4.2) and (where the BAW Adverse Effect can be remedied) specifying the work to be done as part of the Beaumont Avenue Works or the steps to be taken to enable an Acceptance Certificate to be issued.
- 4.10 If LUL fails to respond within the period specified in Clause 4.9, ECP shall serve a further written notice to LUL applying for an Acceptance Certificate (a "**Further Notice**") and if LUL fails to respond within 10 Working Days of receipt of the Further Notice, LUL shall be deemed to have issued an Acceptance Certificate to ECP.
- 4.11 The proper cost of any BAW Remedial Action shall be borne by ECP.
- 4.12 LUL will act reasonably in approving any BAW Remedial Action proposed by ECP under Clause 4.6 in order to enable an Acceptance Certificate to be issued provided that LUL shall not be obliged to issue an Acceptance Certificate if any BAW Adverse Effect remains after any steps have been taken under Clause 4.6.
- 4.13 If a suitable relief road is made available by ECP at ECP's cost as part of the BAW Remedial Action:-

- 4.13.1 LUL shall be given a suitable testing period to ascertain that the relief road is suitable for its intended use which period is commensurate with the changes proposed in using the relief road;
- 4.13.2 LUL shall act reasonably in accepting use of such relief road in addition to, but as a means of reducing, the use of Beaumont Avenue;
- 4.13.3 ECP agrees that (save where it is legally unable to do so as it is relying upon LUL's existing prescriptive rights and/or in respect of any access through the Empress State Building which is already the subject of a charge) it is able to:
- (a) procure the grant and LUL agrees to accept the grant at the cost of ECP of a deed of easement in respect of any part of the relief road which is not publicly adopted or dedicated to the public for such period as the relief road may be used by LUL in such form as ECP and LUL (both acting reasonably) may agree; and
 - (b) deduce title to any part of the relief road which is not publicly adopted or dedicated to the public to enable LUL to register the deed of easement over the relevant part of the relief road at the Land Registry; and
- 4.13.4 LUL shall use reasonable endeavours to procure that such relief road is used in such a manner as to minimise any BAW Adverse Effect.
- 4.14 If LUL serves notice under Clause 4.9.2 and BAW Remedial Action is taken pursuant to Clause 4.6 ECP and LUL shall comply with their obligations (as appropriate) at Clauses 4.2 to 4.13 (inclusive) in respect of such BAW Remedial Action and this process shall be repeated until an Acceptance Certificate has been issued by LUL to ECP in respect of the Beaumont Avenue Works.
- 4.15 LUL may issue an Acceptance Certificate otherwise than on the application of ECP at any time after the requirements of Clause 4.2 have been satisfied for the Beaumont Avenue Works.
- 5. DISPUTES IN RESPECT OF A BAW ADVERSE EFFECT**
- 5.1 If ECP disagrees with LUL's decision to reject the application for an Acceptance Certificate, and the matter in dispute relates to anything falling under paragraphs (a), (b), (c) and (e) of the definition of "BAW Adverse Effect" either party may refer the decision as to whether or not an Acceptance Certificate should be issued, to an Independent Person under the provisions of Schedule 1.
- 5.2 If the Independent Person determines pursuant to Clause 5.1 that an Acceptance Certificate should be issued, LUL shall issue an Acceptance Certificate immediately upon such determination.
- 5.3 If ECP disagrees with LUL's decision to reject the application for an Acceptance Certificate and the matter in dispute relates to the circumstances set out in paragraph (d) of the definition of "BAW Adverse Effect" then the parties shall jointly commission a study by an independent traffic consultant (to be agreed upon by the parties or in default of agreement to be appointed upon the application of either party by the President or other most senior available officer of the organisation generally recognised as being responsible for the subject matter of the dispute). Such independent traffic consultant shall be required to determine whether or not a BAW Adverse Effect as defined in that paragraph (d) has occurred and shall act as the Independent Person under the provisions of Schedule 1.
- 5.4 If the Independent Person determines pursuant to Clause 5.3 that an Acceptance Certificate, shall be issued LUL shall be directed to issue an Acceptance Certificate immediately upon such determination.

5.5 Subject to Clause 7, it is agreed and acknowledged by LUL that once an Acceptance Certificate is issued or deemed to be issued in accordance with Clause 4 or this Clause 5 in respect of the Beaumont Avenue Works, JVCo and ECP are no longer liable for any BAW Adverse Effect or other issue arising as a result of the Beaumont Avenue Works and/or the use by LUL of Beaumont Avenue and JVCo and ECP shall be deemed to have fully observed and performed their obligations in respect of the Beaumont Avenue Works.

6. LUL OBLIGATION TO CARRY OUT LBD ON SITE WORKS

6.1 LUL has prepared a detailed specification and drawings detailing the LBD On Site Works (attached to this Agreement at Appendix 5) and ECP confirms its approval of them.

6.2 LUL is to proceed diligently with and carry out the LBD On Site Works as soon as reasonably practicable following the date of this Agreement and use reasonable endeavours to complete those works before 31 May 2014 (subject to extension in accordance with Clause 6.3) in accordance with the detailed specification and drawings attached to this Agreement at **Appendix 5**.

6.3 If there is any delay in completing the LBD On Site Works arising from Force Majeure the period of time for carrying out and completing the LBD On Site Works is to be extended by such period as is reasonable and proper in the light of the reasons for the delay, such period to be notified in writing to and approved by ECP (acting reasonably).

6.4 ECP is to pay to LUL within twenty eight (28) days of written demand and provision of a valid VAT invoice addressed to ECP the proper and reasonable LBD On Site Works Costs properly incurred by LUL.

6.5 The LBD On Site Works Costs (including costs already incurred by LUL as at the date of this Agreement) are estimated to be £1,275,000 (one million two hundred and seventy five thousand pounds). Unless expressly stated to the contrary they are exclusive of Value Added Tax.

6.6 LUL is not to make a request for payment of the LBD On Site Works Costs under this Agreement more frequently than once every 28 days after the date of this Agreement.

6.7 LUL is to provide to ECP every 28 days a written cashflow statement showing:

6.7.1 the total of all LBD On Site Works Costs properly incurred by or on behalf of LUL;

6.7.2 the LBD On Site Works Costs which LUL reasonably anticipates will be incurred before the next cashflow statement is produced; and

6.7.3 except in the case of the first cashflow statement, the LBD On Site Works Costs properly incurred by LUL since the previous cashflow statement indicating:

(a) whether the LBD On Site Works Costs incurred were included in the anticipated expenditure shown in the previous cashflow statement; and

(b) any variations between the sums anticipated and the sums actually incurred and any variation to the estimate given in Clause 6.5 of this Agreement.

6.8 The LBD On Site Works Costs include any VAT which LUL is unable to recover from HM Revenue and Customs.

6.9 LUL shall keep annotated time records of its internal overheads and administrative expenses and shall produce such records for inspection when reasonably requested to do so.

- 6.10 In the event that the LBD On Site Works are not completed by the later of (i) the Date of Completion of the Beaumont Avenue Works and (ii) 1 June 2014, it is acknowledged and agreed by LUL that this shall not prevent the commencement of the BAW Testing Period, nor shall it prevent or delay the request and/or issue of an Acceptance Certificate in respect of the Beaumont Avenue Works, save that the commencement of the BAW Testing Period may be delayed to the extent that the LBD On Site Works are delayed as a result of a Force Majeure event in accordance with Clause 6.3 and such delays prevent (in the reasonable opinion of LUL) the use by LUL of Beaumont Avenue for vehicles (up to 23.41 metres (77 feet) in length) to enable Beaumont Avenue to be adequately tested.
- 6.11 ECP is to pay to LUL all reasonable and proper costs and expenses reasonably and properly incurred by LUL (provided that LUL may not charge any premium):
- 6.11.1 in using Beaumont Avenue (and any replacement and/or relief road) as the principal vehicular access route to and from the Lillie Bridge Depot; and
- 6.11.2 in using any Secondary Access in accordance with this Agreement (including without limitation all proper costs and expenses incurred by LUL:
- (a) due to any restriction imposed pursuant to Clause 8.8 of this Agreement; and
- (b) in negotiating the junctions at North End Road and Lillie Road); and
- 6.11.3 under Clause 10 of this Agreement;
- in each case only to the extent that such costs are in addition to the costs incurred by LUL (prior to completion of the Beaumont Avenue Works and/or LBD On Site Works) in using the Existing Lillie Road Access in the amount and/or the type of cost item, provided that LUL shall use its reasonable endeavours to keep any such additional costs to a minimum and provided further that:
- (a) the payment obligations at Clauses 6.11.1 and 6.11.2 shall cease to apply once a permanent Secondary Access is provided to LUL and the restrictions set out in Clause 8.8 have ceased to apply, or the requirement for a Secondary Access ceases in accordance with the terms of this Agreement; and
- (b) the payment obligations at Clause 6.11.3 shall cease to apply once a permanent pedestrian access right has been provided in accordance with Clause 10.2, or the requirement for a permanent pedestrian access right ceases in accordance with the terms of this Agreement.
- 6.12 Subject to Clause 6.13, ECP is to pay to LUL the costs incurred pursuant to Clause 6.11 within 28 days of the later of:-
- 6.12.1 written demand and provision of a valid VAT invoice addressed to ECP; and
- 6.12.2 provision of satisfactory written evidence to ECP that the costs incurred by LUL are in addition to the costs incurred by LUL prior to completion of the Beaumont Avenue Works and/or the LBD On Site Works in using the means of vehicular (and/or pedestrian as appropriate) access to and from and within the Lillie Bridge Depot in amount and/or type of cost item and are a necessary additional cost in connection with their use and operation of the Lillie Bridge Depot.
- 6.13 Where ECP is to pay to LUL any costs incurred pursuant to Clauses 6.11 and 6.12 the following provisions shall apply:
- 6.13.1 where reasonable and possible not later than 28 days before incurring any costs that LUL seeks to recover pursuant to Clause 6.11, LUL shall provide an estimate

of the amount together with details of the rate (or other basis) upon which such costs will be charged (the "**Estimate**"); and

- 6.13.2 where LUL has given an Estimate, such Estimate shall not be exceeded unless:
- (a) LUL has previously notified ECP and JVCo in writing as to why the Estimate is likely to be exceeded and given a revised estimate; or
 - (b) such costs have been incurred by LUL in preventing or remedying or avoiding the occurrence of an adverse effect to the Operation of the Railway; and
- 6.13.3 LUL's costs which are charged in respect of its own employees shall not be more than would normally be charged by LUL to third parties in respect of such matters; and
- 6.13.4 LUL's costs will be invoiced to ECP within 2 months of the relevant costs being incurred and each such invoice will be accompanied by a statement giving reasonable details of the items charged, the calculation of the charges and copies of all relevant invoices or valuations, in addition to the information required at Clause 6.12.2; and
- 6.13.5 in the event of emergency or other urgent action required to avoid or prevent an adverse effect on the Operation of the Railway, LUL shall not be required to comply with Clauses 6.13.1 to 6.13.4 to any greater extent than would be reasonable to expect LUL to do so in the circumstances having regard for the need for such urgent action.

7. ALTERNATIVE ACCESS ROAD

- 7.1 Notwithstanding Clause 5.5 if at any time following the issue of an Acceptance Certificate in respect of the Beaumont Avenue Works LUL is prevented from using Beaumont Avenue or any replacement access road as a means of vehicular access to the Lillie Bridge Depot ECP shall use reasonable endeavours at the proper cost of LUL (provided that ECP may not charge any greater sum than the actual costs incurred by it in providing such replacement access (such costs to be suitably evidenced)):-
- 7.1.1 to provide an alternative access road to and from the Lillie Road Depot (in addition to the Secondary Access) which (either alone or with such use of the Secondary Access that is available) satisfies the BAW Criteria; and
 - 7.1.2 to the extent it is legally able to do so, to procure the grant (and LUL agrees to accept the grant) of a deed of easement in such form as ECP and LUL (both acting reasonably) may agree in respect of the alternative access road which is not publicly adopted or dedicated to the public; and
 - 7.1.3 to the extent it is legally able to do so, to deduce title to such parts of the route of the alternative access road which are not publicly adopted or dedicated to the public to enable LUL to register the deed of easement at the Land Registry.

8. SECONDARY ACCESS AND VLV REQUIREMENTS

- 8.1 JVCo will at its own expense provide a Secondary Access to Lillie Bridge Depot which meets the Secondary Access Performance Criteria until such time as this Agreement provides for such rights to be terminated or surrendered.
- 8.2 Upon the later of the issue of an Acceptance Certificate for the Beaumont Avenue Works and 31 March 2015 LUL and JVCo will (at the proper cost and election of JVCo):-

- 8.2.1 enter into a deed of easement (substantially in the form attached at Appendix 1) granting LUL rights to use the Secondary Access along the route of the Existing Lillie Road Access; and
- 8.2.2 (save to the extent that Clause 8.4.2 applies, and once an alternative form of access has been provided in accordance with Clause 10.1.4) enter into a deed of surrender (in a form to be agreed by the parties (each acting reasonably)) surrendering LUL's rights to use the Existing Lillie Road Access.
- 8.3 JVCo will be entitled from time to time to relocate the Secondary Access by providing a replacement Secondary Access ("Replacement Secondary Access") and shall at all times keep LUL up to date on its proposals for the provision of any Replacement Secondary Access.
- 8.4 Subject (where applicable) to the issue by LUL of an Acceptance Certificate in respect of the Replacement Secondary Access, LUL and JVCo shall (at the proper cost of JVCo):-
- 8.4.1 enter into a deed of easement in respect of the Replacement Secondary Access substantially in the form attached at **Appendix 1**, with such amendments as JVCo and LUL (both acting reasonably) may agree, provided that LUL shall not be required to accept any amendments which would create a Secondary Access Adverse Effect; and
- 8.4.2 (save where it is legally unable to do so as it is relying upon LUL's existing prescriptive rights and/or in respect of any access through the Empress State Building which is already the subject of a charge) deduce title to the route of the Secondary Access to enable LUL to register the LBD Deed of Easement over that Secondary Access at the Land Registry free from restrictive covenants or other restrictions or adverse rights which would have an adverse effect on the beneficial use of the Secondary Access;
- 8.4.3 immediately following completion of the deed of easement pursuant to Clause 8.4.1 above enter into a deed of surrender (in a form to be agreed by the parties (each acting reasonably)) surrendering LUL's existing rights to use any Secondary Access or other secondary access which shall have been made available previously.
- 8.5 The procedure for the issue by LUL of an Acceptance Certificate in respect of any Replacement Secondary Access shall be as set out in Clause 4 and Clause 5 of Part A of this Agreement mutatis mutandis save that for these purposes:-
- 8.5.1 reference to "the Beaumont Avenue Works" therein shall be deemed to be replaced with reference to "the Secondary Access Works";
- 8.5.2 the expression "BAW" therein shall be deemed to be replaced with "Secondary Access"; and
- 8.5.3 the expression "Beaumont Avenue" shall be deemed to be replaced with the "Replacement Secondary Access"; and
- 8.5.4 a Road Safety Audit shall not be required; and
- 8.5.5 the testing period shall be for a suitable period that is commensurate with the changes proposed up to a maximum of two months and any reference to "BAW Testing Period" shall be deemed to be to the testing period (if any) pursuant to this sub-clause; and
- 8.5.6 at Clause 4.1 the words "pursuant to the S278 Agreement" shall be deleted and the words "or, if later, 1 June 2014" shall be deleted; and

- 8.5.7 at Clause 5.1 the reference to paragraphs (a), (b), (c) and (e) of the definition of "BAW Adverse Effect" shall be replaced with reference to paragraphs (a), (b), (d) and (e) of the definition of Secondary Access Adverse Effect; and
- 8.5.8 at Clause 5.3 the reference to paragraph (d) of the definition of "BAW Adverse Effect" shall be replaced with reference to paragraph (c) of the definition of Secondary Access Adverse Effect.
- 8.6 For the avoidance of doubt no testing period or Acceptance Certificate shall be required in respect of the use of any Secondary Access or Replacement Secondary Access that is not significantly reconfigured (in the opinion of LUL acting reasonably) and which passes through the Earls Court Village site directly to Lillie Bridge Road and continues to afford the same vehicular headroom as enjoyed by LUL at the date of this Agreement.
- 8.7 The provisions of Clauses 8.3 to 8.6 (inclusive) may be operated on as many occasions as JVCo shall require provided that before being required to surrender any such rights LUL shall be granted equivalent rights to use a new Replacement Secondary Access.
- 8.8 It is acknowledged by LUL that the following temporary restrictions ("Temporary Restrictions") may be imposed on the use of any Secondary Access or Replacement Secondary Access (depending upon its location):-
- 8.8.1 limiting its use to emergency vehicles and Very Long Vehicles; and
- 8.8.2 (save in case of access by the emergency services) requiring prior written notice to be given (by email using the form of route request attached at Schedule 3 to this Agreement) before access is permitted (namely 48 hours notice for rail deliveries and track component dispatch, 24 hours notice for nominal emergency dispatch and 5 hours notice for exceptional emergency dispatch); and
- 8.8.3 preventing the use of any part of a Replacement Secondary Access located within the Empress State Building between the hours of 7-10am and 2-6pm (save in case of access by the emergency services) ("Restricted Hours") whilst the Empress State Building remains in use by the Metropolitan Police Authority provided that where any unusual circumstances give rise to the need for access within the Restricted Hours JVCo will use all reasonable endeavours to make such access available, provided further that JVCo is given reasonable prior notice; and
- 8.8.4 preventing the use of any part of a Replacement Secondary Access located on any demolition or construction site between the hours of 8am and 6pm (save in case of access by the emergency services) ("**Construction Hours**") or as otherwise agreed in writing provided that where there is a need for access within the Construction Hours which LUL cannot reasonably avoid, JVCo will use all reasonable endeavours to make such access available, provided that reasonable prior notice is given;
- provided that ECP and JVCo shall not and shall procure that their contractors or agents shall not impose any further restrictions on such use.
- 8.9 JVCo will use reasonable endeavours to ensure that the Temporary Restrictions shall cease to apply after 3.5 years from the Acceptance Certificate in respect of the Beaumont Avenue Works or such later date as agreed by the parties.
- 8.10 For so long as Lillie Bridge Depot (including, for this purpose, the LUL Void) continues to be used for points and crossings manufacture or any other engineering works in connection with the Operation of the Railway for which access by Very Long Vehicles is required (a "**VLV Requirement**"), JVCo shall continue to provide for the benefit of Lillie Bridge Depot a secondary means of access and egress to and from Lillie Bridge Depot to a standard and capacity consistent with the Secondary Access Performance Criteria.

8.11 If Lillie Bridge Depot (including for this purpose the LUL Void) ceases permanently to be used for any purpose which has a VLV Requirement (and such cessation shall be deemed to be permanent if there is a cessation without any proposal for a new or alternative use with a VLV Requirement being transferred by LUL to Lillie Bridge Depot within 6 months of such cessation), then LUL shall immediately notify JVCo in writing of this fact (and if LUL fails to notify JVCo, JVCo can after any such cessation serve written notice(s) on LUL requiring them to notify JVCo whether or not there is an ongoing VLV Requirement) and, at the request of JVCo the parties shall, as soon as reasonably practicable thereafter as JVCo shall elect, either:-

8.11.1 enter into a deed of surrender (in a form to be agreed by the parties (each acting reasonably)) documenting the surrender by LUL of its right to use any such Secondary Access for Very Long Vehicles (but otherwise retaining LUL's rights associated with the use of such Secondary Access); or

8.11.2 enter into a deed surrendering entirely all of LUL's rights associated with the use of such Secondary Access and replacing such rights with new rights (or a new deed of easement (substantially in the form attached at Appendix 1)) granting to LUL rights to use an alternative Secondary Access solely for Large Road Vehicles and emergency vehicles but (if still applicable), subject to the Temporary Restrictions set out in Clause 8.8.

8.12 Until such time as the circumstances set out in Clause 8.13 and/or Clause 8.14 occur, JVCo shall continue to provide for the benefit of Lillie Bridge Depot (including for this purpose the LUL Void) a secondary means of access to Lillie Bridge Depot which is suitable for use by Large Road Vehicles and emergency vehicles and provides LUL (subject to the temporary restrictions set out in Clause 8.8) with non-restricted access and/or egress to and from Lillie Bridge Depot to a standard and capacity consistent with the Secondary Access Performance Criteria ((subject to Clause 8.10) excluding the requirement for use of Very Long Vehicles) but subject to the right for JVCo to relocate such Secondary Access from time to time in accordance with the provisions of Clauses 8.3 to 8.7 (inclusive) of this Agreement.

8.13 When:

8.13.1 the roads and footpaths forming part of the Principal Estate Infrastructure (as defined in the Landowners' Agreement) have been constructed and provide access for Lillie Bridge Depot to the existing A4 road such that Lillie Bridge Depot has (subject to the temporary restrictions set out in Clause 8.8 to the extent still applicable) a non-restricted means of access and egress to the existing A4 road suitable for use by Large Road Vehicles; and

8.13.2 there is no planning requirement or emergency requirement for LUL to have an ongoing Secondary Access for Large Road Vehicles in addition to such roads and footpaths at clause 8.13.1;

LUL shall, as soon as reasonably practicable at the request of JVCo, surrender all of its rights to use the Secondary Access (and any alternative secondary access over or through Earls Court Village), save for the continuing use by LUL of the Principal Estate Infrastructure (if applicable).

8.14 When:

8.14.1 the roads and footpaths forming part of the Principal Estate Infrastructure (as defined in the Landowners' Agreement) have been constructed and connect into Lillie Bridge Depot such that Lillie Bridge Depot has a non-restricted means of access and egress to and from Lillie Road suitable for use by Large Road Vehicles; or

- 8.14.2 any other roads and footpaths as applicable (excluding any Secondary Access) are permanently available for use by LUL as a means of access and egress to and from Lillie Bridge Depot to and from Lillie Road suitable for use by Large Road Vehicles;

LUL shall, as soon as reasonably practicable at the request of JVCo, surrender all of its rights to use the Secondary Access (and any alternative Secondary Access over or through Earls Court Village), save for the continuing use by LUL of the Principal Estate Infrastructure (if applicable).

- 8.15 It is acknowledged and agreed by the Parties that JVCo shall not be required to grant LUL any rights over the bus forecourt area adjoining the Empress State Building unless and until JVCo is legally able to grant any such rights, and LUL shall use (and shall not be required to surrender) its existing prescriptive rights over this area to the extent that any Secondary Access, Replacement Secondary Access or other alternative access is provided by JVCo to LUL over this area.
- 8.16 The Parties shall act reasonably in agreeing the form of any deed of surrender that is required under this Agreement and shall give due consideration to the need to preserve any existing prescriptive rights as against third parties (including without limitation the Metropolitan Police Authority) together with the need to surrender all of LUL's rights associated with any Secondary Access, Replacement Secondary Access or other alternative access (whether such rights are prescriptive in nature or otherwise) which may include (without limitation) all relevant rights and covenants contained in the 1987 Deed and the 1993 Deed and the right reserved to LUL at paragraph 9 of Schedule 3 of the EC2 Headlease.

9. **LUL VOID**

- 9.1 If any LBD Deed of Easement is granted before completion of the LUL Void Underlease JVCo shall on completion of the LUL Void Underlease at its own cost procure the grant and LUL agrees to accept the grant of a deed varying each such LBD Deed of Easement so that references to Lillie Bridge Depot include the LUL Void.
- 9.2 If any LBD Deed of Easement is granted following completion of the LUL Void Underlease JVCo shall procure that in each such LBD Deed of Easement references to Lillie Bridge Depot include the LUL Void.

10. **PEDESTRIAN ACCESS**

- 10.1 The Parties acknowledge that:-
- 10.1.1 LUL Train Operators operating from Lillie Bridge Depot are currently required to book on at the Crew Depot at Earls Court Station at the beginning and end of their shifts and when trains are not running they gain access to and egress from Lillie Bridge Depot on foot via the Existing Lillie Road Access. For the current Timetable, access/egress on foot is required between 04:00hrs and 06:30hrs Monday to Saturday (inclusive), between 04:00hrs and 07:50hrs on Sundays for staff arriving to enter trains into service and between 23:00hrs and 01:45hrs for staff required for stabling trains at COT Monday to Sunday (inclusive) (the "Required Access Times");
- 10.1.2 Shunters (Depot Team Leaders) also currently use the Existing Lillie Road Access for on foot access to and egress from the Lillie Bridge Depot at the beginning and end of their shifts during the Required Access Times;
- 10.1.3 outside of the Required Access Times, temporary access to and/or egress from Lillie Bridge Depot (directly to Lillie Road) on foot may be required for LUL Train Operators and Shunters on an ad-hoc basis if:-

- (a) trains are stabled at or re-started from Lillie Bridge Depot due to service disruption or emergency; and
- (b) the LUL Train Operators and Shunters are not able to use the LUL district line trains to travel to West Kensington station and access the Lillie Bridge Depot at its northern end from West Kensington station; and
- (c) the LUL Train Operators and Shunters are not able to use an alternative route to access the Lillie Bridge Depot at the northern end on foot via Warwick Road and West Cromwell Road;

10.1.4 (notwithstanding any other terms of this Agreement) as a pre-condition to the surrender of their rights to use the Existing Lillie Road Access for pedestrian access to the Lillie Bridge Depot the Parties will need to provide at the reasonable and proper cost of JVCo either:-

- (a) an alternative pedestrian access route between Earls Court Station and Lillie Bridge Depot reasonably acceptable to LUL for LUL Train Operators and the Shunters during the Required Access Times and the Parties will also use reasonable endeavours to provide an alternative pedestrian access route between Earls Court Station and Lillie Bridge Depot outside of the Required Access Times on an ad-hoc basis if the circumstances set out in Clause 10.1.3 occur. The alternative routes may be varied by agreement with LUL from time to time but must:-
 - (i) be available during the Required Access Times;
 - (ii) not be materially less safe nor be of materially greater distance than the Existing Lillie Road Access, and any such variation must be agreed between LUL and JVCo (both acting reasonably) following consultation between the Parties and between LUL and the LUL Train Operators and the Shunters; or
- (b) transport to take the LUL Train Operators and the Shunters between Earls Court Station and Lillie Bridge Depot at the times required for their shifts (which shall fall within the Required Access Times save where required under Clause 10.1.3); or
- (c) such other solution as the Parties (each acting reasonably and following appropriate consultation) may agree to enable the LUL Train Operators and the Shunters to gain access to and egress from Lillie Bridge Depot at the times required for their shifts (which shall fall within the Required Access Times save where required under Clause 10.1.3).

Provided Always that the Parties may agree that any combination of the alternative options at Clause (a) to Clause (c) (inclusive) above may be used at any time and in exercising its discretion under this Clause 10, LUL shall only have regard to the need to avoid any adverse effect on the Operation of the Railway and provided further that JVCo shall at all times give reasonable prior written notice of any requirement to vary any alternative pedestrian access route or to require use of an alternative solution pursuant to Clause (b) or (c).

10.2 The provisions of Clause 10.1 shall continue to apply until the earlier of:

- 10.2.1 a permanent right of way being granted for LUL and all persons authorised by it (which for the avoidance of doubt may be contained within the LUL Void Underlease or otherwise) on foot only at all times and for all purposes between Earls Court Station and Lillie Bridge Depot along such route and on such terms as

may be approved by LUL (such approval not to be unreasonably withheld or delayed); or

10.2.2 such roads and pathways forming part of the Principal Estate Infrastructure (as defined in the Landowners Agreement) having been constructed to, and sufficiently connecting into, the Lillie Bridge Depot so as to provide LUL with on foot access and/or egress to and from the Lillie Bridge Depot to and from Earls Court Station across Earls Court Village (as defined in the Landowners Agreement) at all times and for all purposes, and such Principal Estate Infrastructure (as defined in the Landowners Agreement) is dedicated and/or adopted for use by the public; or

10.2.3 Lillie Bridge Depot no longer being used in connection with the Operation of the Railway or for other purposes of a public transport undertaking.

11. **EXISTING SERVICES**

11.1 The Parties agree that JVCo shall (at its own cost) be entitled at any time upon giving to LUL prior written notice to divert or relocate any Existing Lillie Road Services to a location to be agreed with LUL (such approval not to be unreasonably withheld or delayed) and/or remove any redundant services and/or supply meters subject to:-

11.1.1 any such diverted or relocated Existing Lillie Road Services being no less convenient and commodious (the "Varied Lillie Road Services"); and

11.1.2 there being no interruption (whether temporary or otherwise) to the provision of these services to the Lillie Bridge Depot; and

11.2 LUL on being requested in writing by JVCo to do so will enter into a deed at the reasonable and proper cost JVCo to effect the surrender of the relevant right or rights and/or to grant the replacement rights in favour of LUL (and those authorised by it) over the Varied Lillie Road Services in a form approved by LUL (such approval not to be unreasonably withheld or delayed).

12. **DISPUTES**

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

12.2 Subject to Clause 5 and Clause 12.1, any Party may refer any dispute to arbitration by an Independent Person under the provisions of Schedule 1.

13. **SUMS UNDER THIS AGREEMENT**

Any payment due from one party to another under this Agreement which is not made on the due date for payment is to bear interest at the Prescribed Rate from and including the due date of payment to and including the date on which the payment is actually made and that interest is to be paid at the same time as the payment.

14. **CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION**

Each of the parties acknowledges that the provisions of the Transparency Deed apply to the provisions of this Agreement.

15. **NOTICES**

15.1 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).

15.2 Subject to Clause 15.3, any notice or other communication shall be deemed to have been served:

15.2.1 if delivered personally, when left at the address referred to in Clause 15.1;

15.2.2 if sent by pre-paid first class post (other than air mail), two days after posting it; and

15.2.3 if sent by air mail, six days after posting it.

15.3 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.

16. **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.

17. **AMENDMENTS**

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the Parties.

18. **GOVERNING LAW AND JURISDICTION**

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

18.2 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.

19. **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.

SCHEDULE 1

APPOINTMENT AND POWERS OF AN INDEPENDENT PERSON

1. THE INDEPENDENT PERSON

The Independent Person is to be a duly qualified civil engineer of not less than ten (10) years' standing experienced in railway transport matters.

2. BASIS OF APPOINTMENT

2.1 An Independent Person is to be appointed by agreement between LUL and ECP (or JVCo as appropriate). In the absence of agreement within two (2) weeks of a request from either party to agree an appointment any dispute over the identity of the Independent Person appropriate to resolve the dispute is to be referred at the request of LUL or ECP (or JVCo as appropriate) to the President or other most senior available officer of the organisation generally recognised as being responsible for the subject matter of the dispute who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Independent Person or to arrange his nomination.

2.2 The reference to an Independent Person is to be made to him as an arbitrator and:-

2.2.1 all submissions made or evidence supplied to him are to be in writing unless the parties agree within ten (10) Working Days of his appointment that this requirement does not apply;

2.2.2 the date of his award will be deemed to be the date on which he serves a copy of the award on LUL and JVCo (or ECP as appropriate) or, if the award is served on LUL and JVCo (or ECP as appropriate) on different dates, on the later of the two dates on which the award is served;

2.2.3 he will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;

2.2.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and

2.2.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.

2.3 Responsibility for the costs of referring a dispute to an Independent Person, including costs connected with the appointment of the Independent Person but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Independent Person and in the absence of a decision, they will be shared equally between the parties.

SCHEDULE 2

SECONDARY ACCESS PERFORMANCE CRITERIA

1. TEMPORARY CONDITION

Provide a route, fit for purpose, to accommodate Very Long Vehicles. Provide detailed drawings and specification to demonstrate:-

- 1.1 The required swept path is achievable with 0.5 metre offset envelope tolerance (margin of error)
- 1.2 Route to be constructed to Highways Authority loading with suitable compacted material for temporary use, avoiding the need for a wheel wash facility.
- 1.3 A minimum height clearance of 5 metres is to be provided.
- 1.4 Route to be maintained in good condition by JVCo.
- 1.5 Depot security is maintained at all times.

2. PERMANENT CONDITION

Provide a route, fit for purpose, to accommodate Very Long Vehicles. Provide detailed drawings and specification to demonstrate:-

- 2.1 The required swept path is achievable with 0.5 metre offset envelope tolerance (margin of error)
- 2.2 Route to be constructed to Highways Agency loading with suitable compacted material for long term permanent highway use.
- 2.3 A minimum height clearance of 5 metres is to be provided.
- 2.4 Depot security is maintained at all times.
- 2.5 That the Manual for Specification for Highway Works (Highways Agency) is used as a guide to create the detailed specification.

SCHEDULE 3
FORM OF EMAIL NOTICE

Earls Court Development : LUL ROUTE REQUEST : RESPONSE

100314

Note: Part 1 - all highlighted items to be completed by TfL / LUL.

Note: All route requests to be with the developers nominated representative [redacted] no later than (48hrs for rail deliveries and track component dispatch, *24hrs nominal emergency or *5hrs exceptional emergency dispatch) prior to date and time route required.

Note: All vehicle occupants shall carry photo identification at all times, failure to do so may result in route being denied.

PART (1) LUL ROUTE REQUEST

Request Date [redacted]

Request Time [redacted]

Strike out route / notice not required

OR

For *emergency dispatch provide TfL / LUL Fault Report Centre reference: [redacted] (if applicable) or details of emergency:

Date Route Required

Time Route Required

Name of Haulage organisation

Vehicle Registration number

Name of Driver

Name of Banksman

Details of materials being transported together with details of any hazardous material.

Total Estimated length of vehicle and load combined

[redacted] M

Note: Part 2 - all highlighted items to be completed by the Developers representative

Note: All 48 / 24 route responses to be issued within 4hrs of receipt to LUL [redacted] [e-mail: [redacted]]

Note: 5hr route responses to be issued within 2hrs of receipt to LUL [redacted] [e-mail: [redacted]]

PART (2) Developer ROUTE RESPONSE

Strike out response not required

Name:

Signature:

Date:

Two part process:

- TfL / LUL Complete Part 1 and send via e-mail to the Developers Representative ensuring that all yellow highlighted cells are completed and green selection cells answered.
- Developers Representative Completes Part 2, sign, date and send via e-mail to TfL / LUL ensuring that all yellow highlighted cells are completed and green selection cells answered.

Nominal route frequency

- Assume: 1 delivery per month of 22m rail.
- Assume: 1 non emergency load dispatch per week with assembled 22/23m components
- Assume: 1 emergency load dispatch per week with assembled 22/23m components
- Assume: 1 exceptional emergency load dispatch per quarter with assembled 22/23m components
- Assume: Lorries carrying the above lengths can shorten their trailers when not carrying their load and thus will be able to use Beaumont Avenue when not carrying their load
- Fire Emergency vehicle as required. Assume Ambulance and Police will use Beaumont Av.
- Artics carrying ≤ 18.5 m lengths and smaller vehicles to use Beaumont Av, shall not gain access via the Development.

Route Availability (assumes Development routes are available 24/7):

For 48 hour and 24 hour notice routes requested, avoid deliveries and despatch between 7am to 10am, and 2pm to 6pm weekdays if the Development route is via Empress State Building (ESB) grounds.

For 48 hour and 24 hour notice routes requested, avoid deliveries and despatch between 8am to 6pm weekdays, and 8am to 1pm on Saturdays if the Development route is via Development grounds.

Minimum route request notice:

- For rail deliveries 48hrs notice shall be given.
- For non emergency fabricated components being dispatched 48hrs notice shall be given
- For emergency fabricated components being dispatched 24hrs notice shall be given
- For exceptional emergency fabricated components being dispatched 5hrs notice shall be given

Minimum management requirements

- Name of Haulage organisation to be clearly stated on route request form.
- Vehicle Registration number to be clearly stated on route request form.
- Name of Driver to be clearly stated on route request form.
- Name of Banksman to be clearly stated on route request form.

- Copy of the emergency procedures TfL / LUL shall implement in the event the vehicle breaks down on ESB or Development land.

Notes:

All vehicles to carry a driver and banksman.

Maximum speed limit 5mph

Contact telephone No's:

Developer Representative: Name [REDACTED] **Mob:** [REDACTED]

TfL /LUL: [REDACTED] **Mob** [REDACTED]

Capco: [REDACTED]

APPENDIX 1

FORM OF DEED OF EASEMENT

Dated _____ **20[]**

1. []

2. []²

3. LONDON UNDERGROUND LIMITED

DEED OF EASEMENT

**relating to properties known as Lillie Bridge Depot, [ADDRESSES] [DN:
Details to be added when premises over which rights pass known],
Earls Court**

² Any existing tenants and mortgagees will also need to be joined.

PARTICULARS

Date:

First Owner: [NAME OF FIRST OWNER] [(registered number [COMPANY NUMBER]) whose registered office is at][of] [ADDRESS]

Second Owner: **LONDON UNDERGROUND LIMITED** (registered number [COMPANY NUMBER]) of 42-50 Windsor House, Victoria Street, London, SW1H 0TL

First Property: The [freehold]/[leasehold] property known as [ADDRESS OF PROPERTY] shown edged red on the Plan forming the property comprised in title number(s) [TITLE NUMBER(S)]. [DN: Non-LUL property over which rights are to be granted]

Plan: The plan attached to this Deed

Second Property: All that part of the freehold property known as [ADDRESS OF PROPERTY] registered at the Land Registry under title number [] shown edged green on the Plan forming the property comprised in title number(s) [TITLE NUMBER(S)]. [DN: LBD freehold title] [and the LUL Void] [DN: Reference to LUL Void to be included when LUL Void Underlease has been granted]

THIS DEED OF GRANT OF EASEMENTS is made on the date set out in the Particulars

BETWEEN:-

- (1) The First Owner; and
- (2) The Second Owner.

WHEREAS:-

- (A) The First Owner is the owner of the First Property and the Second Owner is the owner of the Second Property.
- (B) The First Owner has agreed to grant the rights and enter into the covenants in this Deed for the benefit of the Second Property.
- (C) The Second Owner has agreed to enter into the covenants in this Deed for the benefit of the First Property.

1. INTERPRETATION

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

"Access Route"	the roads and paths (if applicable) shown coloured [] on Plan [1] annexed to this Deed
"Empress State Building"	the building shown edged [] on Plan [2] annexed to this Deed
"First Owner's Positive Covenants"	the positive covenants set out in Schedule 2
"LBD Rights Agreement"	means the Lillie Bridge Depot Rights Agreement dated [] made between (1) Earls Court Partnership Limited (2) EC Properties LP and (3) London Underground Limited
"Plan 1"	means the plan attached to this Deed labelled "Plan 1"
"Plan 2"	means the plan attached to this Deed labelled "Plan 2"
"Second Owner's Positive Covenants"	the positive covenants set out in Schedule 3
"Very Long Vehicles"	vehicles of a length which is greater than 23.41 metres (77 feet) but not exceeding 27.74 metres (91 feet)

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 and Schedules are to Clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:

- (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
 - (b) 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 First Property and the Second Property include any part of them;
 - 1.2.5 references to the First Owner and the Second Owner shall include that party's personal representatives, successors in title or permitted assigns;
 - 1.2.6 "including" means "including, without limitation";
 - 1.2.7 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the party receiving the benefit of the indemnity and all costs, damages, expenses, liabilities and losses incurred by that party;
 - 1.2.8 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
 - 1.2.9 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 Particulars form part of this Deed and words and expressions set out in the Particulars are to be treated as defined terms in this Deed.
- 1.4 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. RIGHTS GRANTED**
- The First Owner grants the Second Owner the rights over the First Property set out in **Schedule 1** for the benefit of the Second Property.
- 3. FIRST OWNER COVENANTS**
- 3.1 The First Owner covenants with the Second Owner for the benefit of the owners of the Second Property that the First Owner and its successors in title will comply with the First Owner's Positive Covenants.
- 3.2 The First Owner will not be liable for any breach of the First Owner's Positive Covenants after it has transferred or leased its interest in the Access Route, so long as it procures that its immediate successor in title enters into a deed of covenant with the owners of the Second Property on or before the date of such transfer or lease.
- 4. SECOND OWNER COVENANTS**
- 4.1 The Second Owner covenants with the First Owner for the benefit of the owners of the First Property that the Second Owner and its successors in title will comply with the Second Owner's Positive Covenants.
- 4.2 The Second Owner will not be liable for any breach of the Second Owner's Positive Covenants after it has transferred the whole of its interest in the Second Property so long as it procures that its immediate successor in title enters into a deed of covenant with the owners of the First Property on or before the date of such transfer or lease.

5. **LAND REGISTRY APPLICATION**

The Second Owner is to apply to the Land Registrar for the easements and other rights granted for the benefit of the Second Property that are set out in **Schedule 1** to be noted on the title number of the Second Property and that burden the First Property to be noted against the title number of the First Property.

6. **LAND REGISTRY RESTRICTIONS**

6.1 The First Owner and the Second Owner are to apply to the Land Registrar on form RX1 for a restriction to be entered on the title to the First Property in the following form;

"No transfer or lease of [any part of the land shown coloured [] on Plan [1] (but excluding any building constructed above or below such land)], by the proprietor of the registered estate is to be registered without a certificate signed by [First Owner] of [Address of First Owner] or its conveyancers that the provisions of paragraph 2 of Schedule 2 of this Deed have been complied with, or that they do not apply to the disposition."

6.2 The Second Owner and the First Owner are to apply to the Land Registrar on form RX1 for a restriction to be entered on the title to the Second Property in the following form;

"No transfer or lease of the registered estate, by the proprietor of the registered estate is to be registered without a certificate signed by [Second Owner] of [Address of Second Owner] or its conveyancers that the provisions of paragraph 2 of Schedule 3 of this Deed have been complied with, or that they do not apply to the disposition."

6.3 The Parties shall apply to the Land Registry for the restrictions referred to at Clauses 6.1 and 6.2 above to be removed from the title(s) to any land in respect of which this Deed ceases to apply (or when this Deed is terminated) and the Parties will render to each other all such reasonable assistance as may be necessary to achieve such removal.

7. **EXECUTION**

The First Owner and the Second Owner have executed this Deed as a deed and it is delivered on the date set out in the Particulars.

SCHEDULE 1 - RIGHTS OVER THE FIRST PROPERTY GRANTED FOR THE BENEFIT OF THE SECOND PROPERTY

RIGHTS OVER THE FIRST PROPERTY GRANTED FOR THE BENEFIT OF THE SECOND PROPERTY

1. RIGHT OF WAY

1.1 Subject to compliance at all times with the covenant at Schedule 3, a [vehicular] right of way in common with the owners of the First Property and those authorised by them [with or without vehicles] over and along the roads [and on foot only over and along paths] shown coloured [] on Plan [1] (the "Access Route") [at all times [] and] [for all purposes [connected with the use of the Second Property as operational railway and/or by a public transport undertaking and/or for construction traffic but not for any other purpose] []], subject to:-

- 1.1.1 such right only being used by emergency vehicles and Very Long Vehicles; and
- 1.1.2 (save in case of emergency) first giving to the First Owner prior written notice (by email using the form of route request attached at Appendix 1 to this Deed) before access is permitted (namely 48 hours notice for rail deliveries and track component dispatch, 24 hours notice for nominal emergency dispatch and 5 hours notice for exceptional emergency dispatch); and
- 1.1.3 [preventing the use by vehicles of any part of the Access Route located within the Empress State Building between the hours of 7-10am and 2-6pm (save in case of emergency) (the "Restricted Hours") whilst the Empress State Building remains in use by the Metropolitan Police Authority provided that where any unusual circumstances give rise to the need for access within the Restricted Hours the First Owner will use all reasonable endeavours to make such access available, provided further that the First Owner is given reasonable prior notice]; and
- 1.1.4 [preventing the use by vehicles of any part of the Access Route located on any demolition or construction site between the hours of 8am and 6pm (save in case of emergency) (the "Construction Hours") or as otherwise agreed in writing provided that where there is a need for access within the Construction Hours which the Second Owner cannot reasonably avoid, the First Owner will use all reasonable endeavours to make such access available, provided that reasonable prior notice is given to the First Owner];

Provided further that the First Owner shall (at its own cost) be entitled, at any time upon giving to the Second Owner prior written notice, to divert relocate or remove the Access Route in accordance with the terms of the LBD Rights Agreement as if the same were set out in full herein.

SCHEDULE 2 - FIRST OWNER'S POSITIVE COVENANTS

FIRST OWNER'S POSITIVE COVENANTS

1. ROADS AND PATHS

To repair, maintain, replace, renew and clean and light the Access Route over which rights of access are granted by this Deed.

2. DEED OF COVENANT

2.1 To ensure that all owners of the First Property enter into a direct covenant (the "First Owner's Deed of Covenant") with the owners of the Second Property before they are registered as proprietor of the First Property to:-

2.1.1 comply with the First Owner's Positive Covenants; and

2.1.2 not to transfer or lease any part of the Access Route over which rights are granted under Schedule 1 for the benefit of the Second Property (but excluding any building constructed above or below such land) without ensuring that any transferee or tenant first enters into a direct covenant (which can be by way of unilateral deed) for the benefit of the owners of the Second Property on the terms of this covenant.

SCHEDULE 3 - SECOND OWNER'S POSITIVE COVENANTS

SECOND OWNER'S POSITIVE COVENANTS

1. ROADS AND PATHS

To promptly pay to the owners of the First Property upon written demand a fair and proper proportion according to use of the costs of repairing, maintaining, replacing, renewing, cleaning and lighting the Access Route over which rights are granted by this Deed.

2. DEED OF COVENANT

2.1 To ensure that all owners of the Second Property enter into a direct covenant (the "Second Owner's Deed of Covenant") with the owners of the First Property before they are registered as proprietor of the Second Property to:-

2.1.1 comply with the Second Owner's Positive Covenants; and

2.1.2 not to transfer or lease the Second Property without ensuring that any transferee or tenant first enters into a direct covenant (which can be by way of unilateral deed) for the benefit of the owners of the First Property on the terms of this covenant.

APPENDIX 1 - FORM OF EMAIL NOTICE

FORM OF EMAIL NOTICE

[Insert Form of Email Notice as appropriate from Schedule 3 LBD Rights Agreement]

EXECUTED as a Deed (but not delivered until dated) by affixing the Common Seal of **LONDON UNDERGROUND LIMITED** in the presence of:-

)
)
)

Director

Director/Secretary

EXECUTED as a Deed (but not delivered until dated) by [] acting by two Directors or a Director and the Secretary:-

)
)
)
)
)

Director

Director/Secretary

APPENDIX 2 - BAW DETAILED SPECIFICATION AND PLANS

BAW DETAILED SPECIFICATION AND PLANS

APPENDIX 3 - DESIGN TRIAL DRAWINGS

DESIGN TRIAL DRAWINGS

APPENDIX 4 – DESIGN TRIAL REPORT

DESIGN TRIAL REPORT

APPENDIX 5 – LBD ON SITE WORKS

LBD ON SITE WORKS

APPENDIX 6 - PLANS

PLANS

Plan 1 – Existing Lillie Road Access

Plan 2 – Earls Court Village

Plan 3 – Empress State Building

Plan 4 – Lillie Bridge Depot

Plan 5 – LUL Void

EXECUTED as a Deed (but not delivered until dated) by affixing the Common Seal of **LONDON UNDERGROUND LIMITED** in the presence of:-

)
)
)

Authorised Signatory

EXECUTED as a Deed (but not delivered until dated) by **EARLS COURT PARTNERSHIP LIMITED** acting by two Directors or a Director and the Secretary:-

)
)
)
)
)

Director

Director/Secretary

EXECUTED as a Deed (but not delivered until dated) by **ECP** acting by two Directors or a Director and the Secretary:-

)
)
)
)
)

Director

Director/Secretary