

DATED

2015

MEMORANDUM OF UNDERSTANDING

between

DEVELOPMENT SECURITIES (SOUTHWARK) LIMITED

and

LONDON UNDERGROUND LIMITED

THIS MEMORANDUM OF UNDERSTANDING ('Memorandum') relating to joint venture arrangements for the development of land over and adjacent to Southwark underground station is made on 2015

BETWEEN:

- (1) **DEVELOPMENT SECURITIES (SOUTHWARK) LIMITED** (Company No. 0821651) ("DS"); and
 - (2) **LONDON UNDERGROUND LIMITED** (Company No. 01900907) ("LUL")
- (together the "**Parties**")

BACKGROUND

- A The Parties have today entered into a Joint Venture Agreement ("**JVA**") and a Pre-Development Services Agreement (appointing Development Securities (Projects) Limited as development manager) ("**PDSA**"), to collaborate in securing planning permission(s) for the Property and the resolution of any development constraints affecting the development of the Property pursuant to such planning permission(s). This is the first phase of the Parties' collaboration ("**Phase 1**").
- B Each of the Parties has the right to withdraw from the arrangements following completion of Phase 1 but, subject to that right, the Parties have contemplated the basis on which they would enter into arrangements for the development of the Property ("**Joint Venture**"). This is the second phase of their collaboration ("**Phase 2**"). This Memorandum sets out certain proposed terms of the Joint Venture which the parties have agreed (subject to contract and subject to further negotiation) and the timetable for implementation.
- C This Memorandum is not intended to be legally binding except as specifically provided.
- D Save as otherwise provided in this Memorandum:
 - (i) terms defined in the JVA and PDSA have the same meaning when used in this Memorandum; and
 - ((ii) "**Procurement Exercise**" means a selection process to be undertaken by LUL or a TfL Group Member in accordance with the Regulations to appoint a limited number of development partners potentially to enter into arrangements with LUL or a TfL Group Member to exploit the development potential of land over and around underground stations and other land owned by LUL including the First Property.

1 PROPOSED JOINT VENTURE

- 1.1 The Parties will negotiate and seek to agree terms for Phase 2 [REDACTED]
[REDACTED]
[REDACTED]

- 1.2 In negotiating the arrangements for Phase 2 the Parties will seek to adopt a structure which is tax efficient for both Parties and which will allow third party investors to be introduced to finance the construction and letting phases of the Development.
- 1.3 The Parties intend to negotiate the arrangements for Phase 2 in a timely manner such that if formal arrangements are concluded the Parties can move seamlessly from the Phase 1 to Phase 2.

2 TERMINATION

- 2.1 During the term of this Memorandum the parties will negotiate in good faith exclusively with each other (and if appropriate with any third parties) provided that that neither the inclusion of the First Property or references to the First Property in the Procurements Exercise nor the conduct of the Procurement Exercise shall amount to a breach of these obligations by LUL.
- 2.2 Each party undertakes that until execution of formal legal agreements or termination of negotiations, it shall not enter or seek to enter into negotiations or discussions with another person or entity for participation in a joint venture covering broadly the same subject matter as that described in this Memorandum.
- 2.3 This Memorandum will cease to have effect on the earliest of:
- (a) completion of formal legal agreements for Phase 2;
 - (b) the expiry or earlier termination of the JVA and PDSA;
 - (c) [REDACTED]
 - (d) [REDACTED]

3 CONFIDENTIALITY

- 3.1 Provisions equivalent to clause 15 (*Confidentiality and Transparency*) and clause 16 (*Freedom of Information*) of the JVA shall apply to this Memorandum as if they were incorporated herein.
- 3.2 This paragraph 3 is legally binding.

4 GOVERNING LAW

- 4.1 This Memorandum is to be construed in all respects in accordance with English Law and shall be subject to the exclusive jurisdiction of the English Courts in relation to the determination of any dispute or matter relating to or arising out of this (whether contractual or otherwise).
- 4.2 This paragraph 4 is legally binding.

Each Party hereby confirms its agreement to the terms contained in this Memorandum of Understanding

SCHEDULE

1. Entering into the Joint Venture shall not put LUL in breach of the Regulations and the process to establish the Joint Venture shall comply with the Regulations.
2. The Joint Venture will be controlled equally by DS and TfL (50/50). The Joint Venture board is envisaged to comprise 4 non-executive members (2 from DS, 2 from TfL) with a rotating chairman (who will not have a casting vote).
3. [REDACTED]
4. If neither Party is willing to make up any funding shortfall through an increase in its holding, then the intention is to introduce additional investors (potentially through the Joint Venture) to finance the construction and letting phases of the scheme. In these circumstances, debt may be considered if available on more favourable terms and agreed by both Parties. Either Party may use equity dilution, equity sale, or debt. Either Party will have an option of first refusal to match the new equity being proposed at the optimum rate available in the market. The aim of introducing third party funding must be in the best interests of the Joint Venture (i.e. to build out the Development in order to maximise profit to the participants).
5. DS and LUL profit share from the Joint Venture will be 50:50 after land and interest payments and on the basis that the parties have shared the cost of Phase 2 on a 50:50 basis.
6. At the time of moving into Phase 2, DS will be responsible for managing the development process prior to commencing a material start on site. For this management service DS will receive a fee of [REDACTED] in instalments of [REDACTED]/month, starting from commencement of Phase 2. Any outstanding fee will be payable at the time of commencing a material start on site. Scope of services to be agreed but to include the services set out in an email from David Enticknap dated 2nd December 2013 (copy annexed) and to include a sweep-up clause 'other development management services reasonably required'. [REDACTED]

- 7. DS to be appointed by the Joint Venture to provide project and development management services with a fee of █% of total construction costs plus professional fees, commencing on a material start on site of one or both buildings, but excluding circumstances where there is a disposal with rights to develop granted to a third party (e.g. sale of the over-station site to a housebuilder with appropriate resources and experience).
- 8. LUL will offer a 'right of support' for those parts of the existing structure that were designed to support an over-station development (subject to the loading imposed by the structure above not exceeding pre-agreed limits).
- 9. Where a decision by the Parties in relation to the Joint Venture has potential for a conflict of interest, this will be declared in advance by the relevant Director or Member and the Joint Venture will ensure information or decision making is appropriately restricted to deal with such declared conflicts. Examples of such decisions include:-
 - I. enforcement of a guarantee (if any);
 - II. entry into an arrangement with a connected party other than as set out in the business plan;
 - III. enforcement action under the development management agreement or material variations to that agreement;
 - IV. change of control of DS as development manager;
- 10. Activities affecting the Railway Undertaking or Railway Assets and Property will always be determined by LUL alone.
- 11. Exit strategies to be formulated, e.g. in events of default, deadlock or on a voluntary basis
- 12. LUL is subject to the Code of Practice on Data Transparency. LUL/TfL's standard transparency and Freedom of Information Act provisions to be included, which may require publication. Saving of statutory powers provisions to be included.

Director:

duly authorised for and on behalf of Development Securities Plc

Director:

duly authorised for and on behalf of London Underground Limited

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