

05-AP-2502

Dated 15 October 2008

THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF SOUTHWARK

and

CASTLE HOUSE DEVELOPMENTS LIMITED

and

THE ROYAL BANK OF SCOTLAND PLC

### DEED OF VARIATION

Deed of Variation to Agreement dated 13 June 2006

Pursuant to Section 106 of the Town and Country

Planning Act 1990 and other powers

in relation to:

**Castle House, 2-20 Walworth Road, London SE1**

#### Linklaters

Linklaters LLP  
One Silk Street  
London EC2Y 8HQ  
Telephone (44-20) 7456 2000  
Facsimile (44-20) 7456 2222

Ref Louise Samuel



THIS DEED OF VARIATION is made on the 15<sup>th</sup> day of October 2008

**BETWEEN:**

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of the Town Hall, Peckham Road, London SE5 8UB (hereinafter referred to as "**the Council**");

**AND**

(2) **CASTLE HOUSE DEVELOPMENTS LIMITED** a Company registered in the Isle of Man (Company Number 112290C) whose registered office is Top Floor 14 Athol Street Douglas Isle of Man IM1 1JA (hereinafter referred to as "**the Developer**");

**AND**

(2) **THE ROYAL BANK OF SCOTLAND PLC** a Company registered in Scotland (Company Number 90312) whose registered office is 280 Bishopsgate, London, EC2M 4RB (hereinafter referred to as "**the Mortgagee**")

**WHEREAS:**

- (i) The Council the Developer and Deutsche Postbank AG, London Branch entered into a Section 106 agreement dated 13 June 2006 containing planning obligations and the Council and the Developer varied the terms of that agreement by way of a Deed of Variation dated 15 August 2007 (the two agreements hereinafter are collectively referred to as "**the Agreement**")
- (ii) A copy of the Agreement is annexed in the Appendix hereto
- (iii) This Deed is supplemental to the Agreement and is entered into by the Council, the Developer and the Mortgagee and their successors in title hereto in relation to the Development as defined in the Agreement
- (iv) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area in which the Site is located
- (v) The Developer has sought the agreement of the Council and the Mortgagee to variation of the Agreement in connection with the obligations relating to Affordable Housing provision and the Council agrees that variation is appropriate in the interests of proper planning

**3 Costs**

- 3.1** The Developer shall pay on completion of this Deed the Council's reasonable legal costs and disbursements incurred with the completion of this Deed

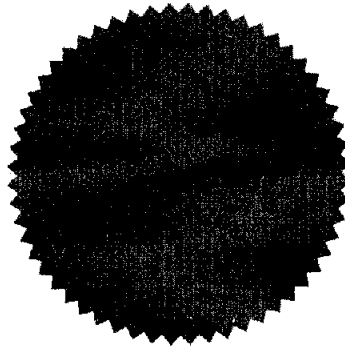
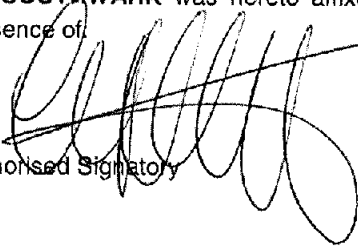
**4 Mortgagee consent and liability**

- 3.1** The Mortgagee hereby agrees to the Developer entering into this Deed and agrees that with immediate effect the Site shall be bound by the provisions of this Deed
- 3.2** The parties hereby acknowledge that the obligations contained in this Deed shall not be binding on, nor enforceable against, the Mortgagee (or any subsequent mortgagee or chargee of the Site or any part thereof) unless and until the Mortgagee (or relevant mortgagee or chargee) shall have entered into possession of the land to which such obligation(s) relates PROVIDED THAT the Mortgagee shall not be bound by any obligations under this Deed that do not relate to the land in respect of which it shall have entered into possession under its registered charge

IN WITNESS WHEREOF the parties hereto have executed this Deed the day and year first before written

The Common Seal of **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** was hereto affixed in the presence of

Authorised Signatory



13562

Executed as a Deed by **CASTLE HOUSE DEVELOPMENTS LIMITED** acting by:

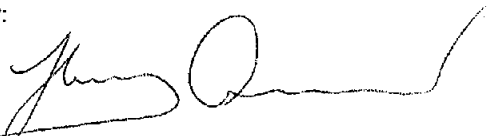
Director

Director / Secretary



Executed as a deed by:

for and on behalf of **THE ROYAL BANK OF  
SCOTLAND PLC** by a duly authorised  
Attorney:



in the presence of:



Witness Signature - Bank Employee

Dated

15 August 2007

THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF SOUTHWARK

and

CASTLE HOUSE DEVELOPMENTS LIMITED

DEED OF VARIATION

Deed of Variation to Agreement dated 13 June 2006

Pursuant to Section 106 of the Town and Country

Planning Act 1990 and other powers

in relation to:

Castle House, 2-20 Walworth Road, London SE1

**Linklaters**

Linklaters LLP

One Silk Street

London EC2Y 8HQ

Telephone (44-20) 7456 2000

Facsimile (44-20) 7456 2222

Ref Rachel Martin/Emma Bennett

**Certified to be a true  
copy of the original**  
*Linklaters LLP*  
**LINKLATERS LLP**  
Date 16 August 2007

THIS DEED OF VARIATION is made on the 15<sup>th</sup> day of August 2007

**BETWEEN:**

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK of the Town Hall, Peckham Road, London SE5 8UB (hereinafter referred to as "the Council");

**AND**

- (2) CASTLE HOUSE DEVELOPMENTS LIMITED a Company registered in the Isle of Man (Company Number 112290C) whose registered office is Top Floor 14 Athol Street Douglas Isle of Man IM1 1JA (hereinafter referred to as "the Developer")

**WHEREAS:**

- (i) The Council the Developer and Deutsche Postbank AG, London Branch entered into an agreement dated 13 June 2006 containing planning obligations a copy of which is annexed in Appendix A hereto (herein after referred to as "the Agreement")
- (ii) This Deed is supplemental to the Agreement and is entered into by the Council and the Developer and their successors in title hereto in relation to the Development as defined in the Agreement
- (iii) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area in which the Property is located.
- (iv) The Developer has sought the agreement of the Council to variation of the Agreement in connection with the obligations relating to Affordable Housing provision and the Council agrees that variation is appropriate in the interests of proper planning provision of Affordable Housing in the manner hereinafter appearing.
- (v) The covenants in the Agreement as modified by this Deed are planning obligations for the purposes of section 106 of the Town and Country Planning Act 1990 and are enforceable by the Council
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**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1 Legal Effect and Commencement**

- 1.1** This Deed is made pursuant to sections 106 and 106A of the Town and Country Planning Act 1990
- 1.2** This Deed is a variation to and is made under the same powers as the Agreement and section 106A of the Town and Country Planning Act 1990 and save where expressly stated otherwise words and expressions used herein shall have the same meaning as defined in the Agreement
- 1.3** It is hereby agreed between the parties that the provisions of this Deed will take effect on the date of this Deed

**2 Modifications**

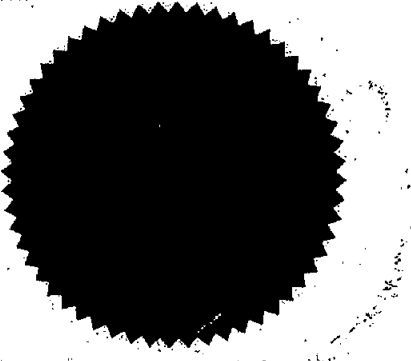
- 2.1** The wording set out as paragraph 6.6 in Schedule One of this Deed shall be inserted as new Schedule 1 paragraph 6.6 to the Agreement
- 2.2** The definition of "Shared Ownership Units" in the Agreement shall be replaced with the definition of "Shared Ownership Units" in Schedule One of this Deed, and the definition of the "Council's Affordability Terms" set out in Schedule One of this Deed shall be added to the Agreement
- 2.3** Save as modified by this clause the Agreement shall remain in full force and effect

**3 Costs**

- 3.1** The Developer shall pay on completion of this Deed the Council's reasonable legal costs and disbursements incurred with the completion of this Deed
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IN WITNESS WHEREOF the parties hereto have executed this Deed the day and year first before written



12342 a

The Common Seal of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK was hereto affixed in the presence of:

Authorised Signatory

Executed as a Deed by CASTLE HOUSE DEVELOPMENTS LIMITED acting by:

Director

Director / Secretary

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## SCHEDULE ONE

### Amendments to the Agreement

- 6.6** The obligations relating to Affordable Housing in paragraphs 6.1 to 6.5 above shall not:
- 6.6.1** bind any mortgagee of the Affordable Housing Provider (the "Affordable Housing Mortgagee") or any receiver or manager (including any administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to the Affordable Housing Provider (the "Receiver") where such Affordable Housing Mortgagee or Receiver exercises a power of sale;
  - 6.6.2** apply to any Affordable Housing Unit should such Affordable Housing Unit be transferred or leased by the Affordable Housing Mortgagee or Receiver to any third party;
  - 6.6.3** apply to any Affordable Housing Unit where the Affordable Housing Provider:
    - (i) has disposed of that Affordable Housing Unit pursuant to a right to buy or acquire under Part V of the Housing Act 1985 or section 16 of the Housing Act 1996 or any applicable similar or substitute right in respect of a particular Affordable Housing Unit; or
    - (ii) has sold to a tenant with the benefit of a voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 or any applicable similar or substitute right in respect of that Affordable Housing Unit; or
    - (iii) has disposed of 100% of the equity in a Retained Equity Unit;
  - 6.6.4** apply to any tenant who has been granted a shared ownership lease by an Affordable Housing Provider in respect of a particular Affordable Housing Unit or any mortgagee or chargee of any such person or any receiver appointed by such mortgagee or chargee or any person deriving title through such a party.

"**Shared Ownership Units**" Affordable Housing Units to be made available within the Development (on the Council's Affordability Terms) where a proportion of the equity is sold on a long lease to the purchaser and the remainder of the equity is retained by the Affordable Housing Provider subject to rent being charged in respect of the retained equity and on terms that entitle the purchaser to acquire up to 95% of the equity through Staircasing (unless otherwise agreed by the Council and the Developer);

"**Council's Affordability Terms**" means that one, two, three and four bedroom units are to be offered at prices affordable to households with total incomes of £29,192, £31,771, £33,913 and £42,485 respectively, assuming that no more than one third of their gross income is spent on mortgage, rent and service charges PROVIDED THAT these income thresholds are to rise annually from the date of this Deed in accordance with the annual percentage increase in the consumer price index issued by the Office of National Statistics or in the absence of any such index such analogous index as the Council may reasonably nominate;

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Dated

*13 June*

2006

THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF SOUTHWARK  
and  
CASTLE HOUSE DEVELOPMENTS LIMITED  
and  
DEUTSCHE POSTBANK AG, LONDON BRANCH

AGREEMENT PURSUANT TO SECTION 106 OF  
THE TOWN AND COUNTRY PLANNING ACT 1990  
AND OTHER POWERS

in relation to

**Castle House, 2-20 Walworth Road, London SE1**

**Linklaters**

One Silk Street  
London EC2Y 8HQ

Telephone (44-20) 7456 2000  
Facsimile (44-20) 7456 2222

Ref Emma Bennett/Ray Jackson

THIS DEED is made the 13<sup>th</sup> day of June Two thousand and six

**BETWEEN:**

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of the Town Hall Peckham Road London SE5 8UB (hereinafter referred to as "the Council");

**AND**

(2) **CASTLE HOUSE DEVELOPMENTS LIMITED** a Company registered in the Isle of Man (Company No. 112290C) whose registered office is Top Floor, 14 Athol Street, Douglas, Isle of Man IM1 1JA (hereinafter referred to as "the Developer");

**AND**

(3) **DEUTSCHE POSTBANK AG, London Branch** of 61 Queen Street, London EC4R 1AF (hereinafter referred to as "the Mortgagee").

**WHEREAS:**

- (A) The Developer wishes to construct the Development in accordance with the Planning Permission and the obligations contained herein upon the Site.
- (B) The Developer is the freehold owner of the Site as the same is registered with Title Absolute under the Title Number TGL251176 at H.M. Land Registry.
- (C) The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Town and Country Planning Act 1990 (as amended).
- (D) The Council is the local planning authority by whom the obligations contained in this Deed are enforceable.
- (E) Having regard to the provisions of the UDP, the London Plan, the adopted Supplementary Planning Guidance entitled "A Development Framework for the Elephant & Castle" adopted by the Council on 19<sup>th</sup> February 2004 and all other material considerations affecting the Site (including the emerging Southwark Plan) the Council considers that in the interests of the proper planning of its area the Development of the Site ought only be permitted subject to the terms hereof and for that purpose the parties are willing to enter into this Deed.
- (F) The regeneration of Elephant & Castle provides an opportunity to introduce a mix of sustainable energy, water management and waste management infrastructure to manage the carbon footprint of the proposed new developments in the area and to reduce the

requirement for a fully treated potable supply of water. The supplementary planning guidance referred to in recital (E) sets out targets for energy and water efficiency, the deployment of renewable energy technology, a local sustainable source of non-potable water and a move towards a decentralised low carbon energy supply from on-site combined heat and power plant. A sustainable energy system will connect individual sites to a community heating and power network compatible with many forms of renewable energy.

- (G) It is the Council's intention to establish in due course a special purpose joint venture delivery vehicle to be known as MUSCO ("Multi Utility Services Company") as a means of securing the key environmental infrastructure and services required to underpin a sustainable community at the Elephant & Castle and it is therefore desirable to make provision at this stage for future connection of the Development into such arrangements.

## NOW THIS DEED WITNESSES:

### 1 Definitions and Interpretation

- 1.1 The following words and phrases shall unless the context otherwise requires bear the following meanings:

<b>"Acts"</b>	Section 106 of the Town and Country Planning Act 1990 (as amended, including by the Planning and Compulsory Purchase Act 2004), section 27 of the Greater London Council (General Powers) Act 1969, section 16 of the Greater London Council (General Powers) Act 1974, section 111 of the Local Government Act 1972, section 2 Local Government Act 2000 together with all other statutory powers and Acts pursuant to which the parties hereto shall be empowered to enter this Deed;
<b>"Affordable Housing"</b>	Housing that will be available to persons whose incomes are insufficient to enable them to rent or buy housing locally available on the open market and the term "Affordable Housing Unit" shall be construed accordingly;
<b>"Affordable Housing and Related Infrastructure Contribution"</b>	The sum of £1,300,000 Index Linked which is payable by the Developer to be used by the Council towards the provision of Affordable Housing in the Borough or paid into a managed pool of funds invested and operated for such purposes (which may include the purposes of enabling supporting works for development of infrastructure services supplying the Elephant & Castle Regeneration Area and the Early Housing Sites in such a manner as to achieve the carbon emission targets set out in the Development Framework) (which sum may be reduced by a maximum of

£250,000 Index Linked in accordance with paragraph 16 of Schedule 1 hereto in providing infrastructure relating to the Affordable Housing Units to be provided within the Development);

**"Affordable Housing Provider"**

A registered social landlord as defined in Part I of the Housing Act 1996 who is registered with the Housing Corporation pursuant to Section 3 of that Act (and has not been removed from the register pursuant to Section 4 of that Act) or other provider of Affordable Housing, in either case being a provider which is either included in a shortlist of at least two providers willing to provide the Affordable Housing Units to be approved by the Council for the purposes of providing the Affordable Housing Units (such approval not to be unreasonably withheld, and to be deemed given by the Council if not expressly given or withheld within fifteen working days of the Developer's submission) or included in Appendix 4 of the Council's Affordable Housing Supplementary Planning Guidance;

**"Application"**

The application for planning permission submitted by the Developer to the Council on 29 November 2005 to carry out the Development upon the Site (LBS Registered Number 05-AP-2502);

**"Archaeology Contribution"**

The sum of £1,800 Index Linked to be paid by the Developer to the Council and to be expended by the Council towards the monitoring costs of the Council's Archaeological Service in relation to the Site;

**"Baxter Indices"**

The price adjustment formulae for construction contracts produced by the Department of Trade and Industry which said Indices shall be used for the purpose of calculating the following Site and Development Contributions, namely, Affordable Housing and Related Infrastructure Contribution, Draper House Contribution, Environmental Improvement Budget and Public Space Budget;

**"Borough"**

The London Borough of Southwark in which the Site is situated;

**"Borough Market Food School Contribution"**

The sum of £10,000 Index Linked to be paid by the Developer to the Council and to be expended by the Council towards the renovation of the building at 1 Cathedral Street and its use by the Borough Market Food School (or for similar purposes if that proves impossible or impracticable);

**"Brief"**

A paper detailing various design options for the Environmental Improvement Works to be produced by the

Developer in accordance with paragraph 4 of schedule 1 in conjunction with Martha Schwartz Partners (whose UK address is 70 Cowcross Street, London EC1M 6EJ) or such other design team approved by the Council (such approval not to be unreasonably withheld or delayed);

**"Car Club"**

The car club to be promoted by the Developer;

**"Committed"**

Means that a payment or part payment of the Site and Development Contributions has been authorised either by a committee resolution or by an officer with appropriate written delegated authority;

**"Completion Date"**

The issue to the Developer of a certificate of practical completion of the Development, the Public Space Works or the Environmental Improvement Works as the case may be by the Developer's architect, engineer, project manager, landscape architect or contract administrator as the case may be and the terms "Completion" and "Practical Completion" shall be construed accordingly;

**"Council"**

The party of the first part hereto which shall include any successors to its functions as local planning authority from time to time;

**"Demolition"**

The taking down of the existing building on the Site or any substantial part thereof but excludes inter alia the removal of doors, flooring, fixtures, fittings, services and temporary structures including room partitions;

**"Developer"**

The party of the second part hereto which shall include its successors in title to the Site and persons claiming through or under it from time to time;

**"Development"**

The erection of a 43-storey building (the "Principal Building") with retail, restaurant or takeaway use (Use Class A1/A3/A5) on the ground and first floor and 399 residential units above and a 5-storey pavilion building (the "Pavilion Building") with retail, restaurant or takeaway use (Use Class A1/A3/A5) on the ground floor and 9 residential units above, associated landscaping and public open space, with parking and servicing facilities to the rear and at basement level at the Site in accordance with the Planning Permission;

**"Development Framework"**

The supplementary planning guidance referred to in Recital E;

**"Draper House"**

The sum of £50,000 Index Linked to be paid by the

<b>Contribution"</b>	Developer to the Council and to be applied by the Council on external cleaning works to Drapers House in accordance with paragraph 4 of Schedule 1;
<b>"Early Housing Sites"</b>	The early housing sites as shown on pages 38 and 39 of the Development Framework and attached hereto at Schedule 4;
<b>"Education Contribution"</b>	The sum of £100,000 Index Linked to be paid by the Developer to the Council and to be expended by the Council on the provision of education and/or related facilities in the vicinity of the Site;
<b>"Elephant &amp; Castle Festival Contribution"</b>	The sum of £8,200 to be paid by the Developer to the Council and to be expended by the Council toward a cultural festival to be held within the Elephant & Castle Regeneration Area during 2006;
<b>"Elephant &amp; Castle Regeneration Area"</b>	That area of the Borough defined in Appendix 4 to the emerging Southwark Plan as Site 43P which is shown edged blue on Plan 7;
<b>"Elephant &amp; Castle Shopping Centre"</b>	The existing Elephant & Castle Shopping Centre shown edged and hatched red on Plan 4;
<b>"Environmental Improvement Budget"</b>	The sum of £900,000 Index Linked to be applied by the Developer on undertaking the Environmental Improvement Works pursuant to paragraph 4 of Schedule 1 (which sum may be increased in the circumstances set out in and in accordance with that paragraph);
<b>"Environmental Improvement Specification"</b>	The detailed design and specification including drawings and plans for the Environmental Improvement Works;
<b>"Environmental Improvement Works"</b>	Environmental Improvements to the land (including part of the public highway) outside but in the immediate vicinity of the Site shown edged and hatched red on Plan 3;
<b>"Expert"</b>	Means an independent person appointed in accordance with the provision of Clause 19 to determine a dispute;
<b>"First Interference Survey"</b>	A survey to be carried out as hereinafter provided to assess terrestrial television interference to residential properties within the Survey Area;
<b>"Health and Community Facilities Contribution"</b>	The sum of £60,000 Index Linked to be paid by the Developer to the Council (£50,000 Index Linked of which to be expended by the Council towards the refurbishment of the Brook Advisory Clinic situated at 153a East Street



London SE17 2SD (or for similar purposes if that proves impossible or impracticable) and £10,000 Index Linked of which towards the funding of the Draper's Tenants' Hall);

**"Heygate Estate Leaseholder"**

A person who has a leasehold interest (which at the time of grant was 125 years) in and occupies a residential unit within the housing estate known as the Heygate Estate (which estate is shown edged red on Plan 5) and nominated by the Council in consultation with the Developer and the Affordable Housing Provider (all parties acting reasonably) pursuant to paragraph 2 of Schedule 2;

**"Implementation Date"**

The date upon which a material operation as defined in section 56 of the Town and Country Planning Act 1990 shall be carried out in respect of the Development upon the Site PROVIDED THAT the following matters shall not constitute a material operation and consequently shall not individually or together trigger the Implementation Date;

- (i) demolition;
- (ii) site clearance;
- (iii) the provision of infrastructure boreholes permitted by the Town and Country Planning General Development Order 1995 or any amendment or replacement thereof;
- (iv) the provision of underground drainage and sewers;
- (v) construction of temporary accesses to facilitate the carrying out of the Development;
- (vi) construction of boundary fencing or hoardings;
- (vii) ecological or archaeological surveys, investigations or assessments;
- (viii) any temporary survey works; and:

works and operations to enable any of the foregoing to take place and the terms "Implement", "Implemented", "Implementation" and "Implement the Development" shall be construed accordingly;

**"Index Linked"**

The relevant sum shall be (as appropriate) increased or decreased to reflect the net movement in the Index of Retail Prices or, where any sums relate to construction costs, the Baxter Indices covering the relevant period, calculated from the date 15 months following the grant of planning permission the amount of such increase or decrease to be calculated as follows:

$$\frac{A \times B}{C}$$

When:

A = the relevant sum as specified in this Deed

B = the Index of Retail Prices or the Baxter Indices as appropriate at the date the relevant sum is payable

C = the Index figure as at grant of planning permission;

**"Index of Retail Prices"**

The index of retail prices published by the Office of National Statistics or by any other Department, Ministry or other body upon which the duties in connection with the index exists the index which replaces the same or if the nearest equivalent thereto, as the Council shall reasonably nominate which shall be used for the following Site and Development Contributions, namely, Archaeology Contribution, Borough Market Food School Contribution, Education Contribution, Health and Community Facilities Contribution, Local Wardens Scheme Contribution, Mitigation Sum, Southwark Model Contribution, Tall Buildings Model Contribution, Training Contribution, Public Transport Contribution, Security Contribution and Elephant & Castle Festival Contribution;

**"Kiosk"**

A unit within the ground floor of the Development of at least 19 m<sup>2</sup> to be provided by the Developer at a subsidised rent in accordance with Schedule 3 to allow the relocation of a local business from the Elephant & Castle Shopping Centre as agreed between the Developer and the Council;

**"Local Wardens Scheme Contribution"**

The sum of £10,000 Index Linked to be paid by the Developer to the Council and expended by the Council towards the CAZ Local Wardens Scheme;

**"London Plan"**

The Mayor of London's Spatial Development Strategy dated February 2004;

**"Market Housing"**

The residential accommodation within the Development which is for sale on the open market and the term "Market Housing Unit" shall be construed accordingly;

**"Mitigation Sum"**

The sum of £5,000 Index Linked as the Developer may be required to make available as hereinafter provided to pay for or contribute towards the Mitigation Measures;

**"Mitigation Measures"**

Such technological measures as the Council considers reasonably appropriate to restore the quality of terrestrial television to an affected residential property within the Survey Area to the level it was at the time of the First Interference Survey;

**"Mortgagee"**

The party of the third part hereto which shall include its successors and assigns from time to time;

**"MUSCO Network"**

A services infrastructure network proposed to be provided by the Council within the core area of the Elephant and Castle Regeneration Area in due course (as described in the Development Framework), including:

(a) a district heating and power network;

(b) a non-potable "green" water supply;

(c) optical fibre based data and communications network supporting an Internet protocol compatible system for monitoring, security and maintenance purposes (including fire alarm, security camera, intruder alert and energy monitoring functionality); and

(d) other services as may be identified in due course in the design of the MUSCO Network (including cooling and waste management);

**"Occupation Date"**

The date of actual, physical, beneficial occupation of any part of the residential accommodation in the Development which (for the avoidance of doubt) shall not include occupation by persons who are bona fide only involved in the construction or fitting out (including installation of telecommunications equipment) of the Development, nor occupation for marketing of show suites and letting purposes, nor occupation in relation to site and building security and running operations and the terms "Occupy" and "Occupation" shall be construed accordingly;

**"Plan 1"**

The plan of the Site attached hereto at Schedule 4;

**"Plan 2"**

The plan showing the Survey Area attached hereto at Schedule 4;

**"Plan 3"**

The plan showing the zone in which the Environmental Improvements Works may be undertaken in accordance with paragraph 4 of Schedule 1 attached hereto at Schedule 4;

**"Plan 4"**

The plan showing the location of the Elephant & Castle Shopping Centre for illustrative purposes only attached hereto at Schedule 4;

**"Plan 5"**

The plan showing the location and extent of the Heygate Estate for illustrative purposes only attached hereto at Schedule 4;

<b>"Plan 6"</b>	The plan showing the location of the Wollaston Close basketball court and children's play area for illustrative purposes only attached hereto at Schedule 4;
<b>"Plan 7"</b>	The plan showing the Elephant and Castle Regeneration Area for illustrative purposes only edged blue attached hereto at Schedule 4;
<b>"Planning Permission"</b>	The planning permission for the Development in the form of the draft attached hereto as Schedule 5;
<b>"Public Art"</b>	A work of art to be installed within the entrance area of the Development predominantly of glass unless otherwise agreed;
<b>"Public Space Budget"</b>	The sum of £60,000 Index Linked to be expended by the Developer on undertaking the Public Space Works;
<b>"Public Space Specification"</b>	The detailed design and specification including drawings and plans for the Public Space Works;
<b>"Public Space Works"</b>	Improvement and enhancement works to the Wollaston Close basketball court and the children's play area (the location of which is shown on Plan 6 hereto) pursuant to paragraph 3 of Schedule 1 hereto;
<b>"Public Transport Contribution"</b>	The sum of £25,000 Index Linked to be paid by the Developer to the Council and expended by the Council towards the provision or improvement of bus stops along Walworth Road;
<b>"Reasonable Endeavours"</b>	Means such effort and/or expenditure of money and the engagement of such professional or other advisors as in all the circumstances are reasonable (such efforts not to extend to taking proceedings in any court public inquiry or other hearing);
<b>"Residential Units"</b>	The Affordable Housing Units and the Market Housing Units within the Development;
<b>"Retained Equity Units"</b>	Affordable Housing Units to be made available within the Development to Heygate Estate Leaseholders or failing that in accordance with paragraph 6.2 of Schedule 1 where a proportion of the equity (being a capital sum of £111,000 in respect of a one bedroom unit and £155,000 in respect of a two bedroom unit) is sold on a long lease of not less than 99 years' term to the purchaser and the remainder of the equity is retained by the Affordable Housing Provider without rent being charged in respect of the retained equity

and on terms that entitle the purchaser to acquire up to 100% of the equity through Staircasing;

**"Second Interference Survey"**

A survey to be carried out after practical completion as hereinafter provided to assess terrestrial television interference to properties within the Survey Area;

**"Security Contribution"**

The sum of £10,000 Index Linked to be paid by the Developer to the Council and expended by the Council on safety and security improvements within or immediately adjoining the land shown edged and hatched red on Plan 3 including the provision of CCTV and additional street lighting;

**"Shared Ownership Units"**

Affordable Housing Units to be made available within the Development where a proportion of the equity is sold on a long lease to the purchaser and the remainder of the equity is retained by the Affordable Housing Provider subject to rent being charged in respect of the retained equity and on terms that entitle the purchaser to acquire up to 95% of the equity through Staircasing (unless agreed otherwise by the Council and the Developer);

**"Site"**

The land known as Castle House, 2-20 Walworth Road, London SE1 for the purpose of identification only shown edged red on Plan 1;

**"Site and Development Contributions"**

The various financial contributions referred to herein and to be made by the Developer under its obligations in Schedule 1, namely, the Affordable Housing and Related Infrastructure Contribution, the Archaeology Contribution, the Borough Market Food School Contribution, the Draper House Contribution, the Education Contribution, the Health and Community Facilities Contribution, the Local Wardens Scheme Contribution, the Mitigation Sum, the Public Transport Contribution, the Security Contribution, the Southwark Model Contribution, the Tall Buildings Model Contribution, the Training Contribution and the Elephant & Castle Festival Contribution;

**"Southwark Model Contribution"**

The sum of £5,000 Index Linked to be paid by the Developer to the Council and to be expended by the Council towards the production of the GMJ 3D computer generated model of Southwark;

**"Staircasing"**

The purchase by the owner of additional equity in a Shared Ownership Unit or Retained Equity Unit in accordance with arrangements (including the minimum amount of additional equity that can be purchased on any occasion and the maximum number of such purchases that can be made by an owner) to be agreed by the Developer and the Affordable

Housing Provider;

<b>"Survey Area"</b>	The area of land to the north of the Site as shown coloured green and purple on Plan 2;
<b>"Tall Buildings Model Contribution"</b>	The sum of £5,000 Index Linked to be paid by the Developer to the Council and to be expended by the Council towards the completion of its tall buildings strategy document;
<b>"Training Contribution"</b>	The sum of £50,000 Index Linked to be paid by the Developer to the Council and to be expended by the Council on the employment of a workplace co-ordinator and/or on an employment training project;
<b>"UDP"</b>	The Council's 1995 Unitary Development Plan.

- 1.2 Where in this Deed reference is made to a clause, paragraph, schedule or plan it is to a clause, paragraph, schedule or plan in this Deed.
- 1.3 Headings used in this Deed are an aid to interpretation only and do not form part of this Deed.
- 1.4 A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be amended, modified or re-enacted.
- 1.5 Obligations not to do any thing include obligation not to permit or suffer such thing to be done.

## 2 Statutory Provisions

- 2.1 This Deed is made pursuant to the Acts and both the positive and restrictive covenants and undertakings herein on the part of the Developer are entered into with the intent that the same shall be enforceable without limit of time not only against the Developer but also against its successors in title and assigns and any person corporate or otherwise claiming through or under the Developer an interest or estate created hereafter in the Site or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person.

## 3 Legal Effect

- 3.1 Clauses 1, 2, 3, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 20 shall come into effect on the date that Planning Permission is granted.

- 3.2 Clauses 4, 5, 6 and 13 will not have operative effect unless and until the Planning Permission is granted and the related and specified trigger has occurred.

#### 4 Developer's Covenants

- 4.1 The Developer hereby covenants with the Council to observe and perform or cause to be observed and performed the obligations contained in Schedule 1 to this Deed at the times and in the manner provided therein.
- 4.2 The Developer hereby further covenants that Occupation of the Development (or as the case may be, the relevant proportion of the Residential Units within the Development as stated in Schedule 1) shall not take place unless and until the obligations contained in Schedule 1, paragraphs 1.1, 3.4, 4.5, 6.1, 6.5, 7.2, 8.1, 11.1 12.1 and 13.1 have been complied with unless agreed otherwise with the Council.
- 4.3 The Developer covenants with the Council that it will pay to the Council the Site and Development Contributions by way of CHAPS transfer into National Westminster Bank plc Account Number 27540006 Sort Code 51-50-03 at London Bridge Branch PO Box 35, 10 Southwark Street, London SE1 1TT as specified in Schedule 1.

#### 5 Council's Covenants

- 5.1 The Council shall use Reasonable Endeavours to carry out the obligations in Schedule 2 to this Deed and to spend or commit or procure the expenditure or commitment of all contributions referred to in this Deed as expeditiously as practicable at the times and in the manner provided therein.
- 5.2 The Council shall, pursuant to the Local Government Act 2003, be at liberty to charge the Site and Development Contributions to a Council revenue account and, for the avoidance of doubt, it is agreed and declared that this shall be without prejudice to the Council's right to apply the Site and Development Contributions to revenue purposes or to capital purposes or partly to the one and partly to the other to the extent permitted by the provisions of Schedule 2 hereto.

#### 6 Mortgagee

So as to bind its interest in the Site, the Mortgagee covenants that it shall be bound by the covenants on the part of the Developer herein PROVIDED that it shall not be required to observe or perform those obligations unless it shall be in possession of the Site.

#### 7 Developer to Notify Council

- 7.1 The Developer undertakes to notify the Council in writing:
- 7.1.1 21 days before the Implementation Date of its intention to implement the Development;
  - 7.1.2 immediately of the occurrence of the Implementation Date;
  - 7.1.3 12 months prior to anticipated Completion Date;
  - 7.1.4 immediately of the occurrence of the Completion Date; and

7.1.5 immediately of the occurrence of the Occupation Date.

## **8 Registration**

- 8.1 Immediately after the execution of this Deed, the Developer shall make application to H.M. Land Registry for entries relating to this Deed to be made in the charges register of the Title Number referred to in recital (B) above so as to bind the Site as provided for in the Acts.
- 8.2 If the Developer fails to make application as aforesaid the Council shall (without prejudice to any other right) be entitled to register the Deed as aforesaid and thereafter recover the expenses incurred in doing so from the Developer and the Developer hereby covenants with the Council to do or concur in doing all things necessary or advantageous to enable the said entries to be made.
- 8.3 The covenants on behalf of the Developer under this Deed are capable of being registered as local land charges and shall be registered as such by the Council in the Local Land Charges Register for the purposes of the Local Land Charges Act 1975.

## **9 Site Not To Be Encumbered**

The Developer hereby covenants with the Council that it will not encumber nor deal with the Site in any manner whereby any party hereto may be prevented from carrying out or enforcing any covenant or obligation contained herein PROVIDED THAT for the avoidance of doubt this clause will not prevent any disposal or dealing that is subject to the terms of this Deed by the grant of lease or otherwise of the Developer's interest in any part of the Site.

## **10 Enforceability of Obligations**

No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed occurring after he has parted with his interest in the Site or the part in respect of which such breach occurs (but without prejudice to the liability of such person for any breach occurring prior to his parting with such interest).

## **11 Contracts (Rights of Third Parties) Act 1999**

A person who is not named in this Deed does not have any right to enforce any term of this Deed under The Contract (Rights of Third Parties) Act 1999.

## **12 Interest on Late Payment**

Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding seven days the Developer shall pay on demand to the Council interest thereon at the interest rate of three per centum per annum above the base lending rate of the National Westminster Bank plc from the date when the same became due until payment thereof.



### 13 Right of Access

The Developer shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times following implementation for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

### 14 Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Developer in performing or observing any of the covenants undertakings obligations or restrictions contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertakings obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Developer.

### 15 Notices

15.1 Any notice or other communication to be given under or in connection with this Deed shall be in writing which for this purpose shall not include e-mail and may be addressed as provided in clause 15.3 below.

15.2 Any such notice or other communication, if so addressed, shall be deemed to have been received as follows:

15.2.1 if delivered by hand, upon delivery at the relevant address;

15.2.2 if sent by first class post, at 9.00 a.m. on the second working day after the date of posting; and

15.2.3 if sent by facsimile, when successfully transmitted;

except that where any such notice or other communication is or would otherwise be deemed to be received after 5.30 p.m., such notice or other communication shall be deemed to be received at 9.00 a.m. on the next following working day.

15.3 Subject to clause 15.4, the address, facsimile number, relevant addressee and reference for each party are:

For the Council:

Address: Chiltern House, Portland Street, London SE17 2ES;

Facsimile number: 0207 525 5432;

Relevant addressee: The Head of Planning;

Reference: S106/Castle House.

For the Developer:

Address: Top Floor, 14 Athol Street, Douglas, Isle of Man IM1 1JA;

Facsimile number: 01624 619989;

Relevant addressee: David Karran;

Reference: S106/Castle House.

**15.4** A party may give notice of a change to its name, address, facsimile number or relevant addressee for the purposes of this clause provided that such notification shall only be effective on:

**15.4.1** the date specified in the notification as the date on which the change is to take place; or

**15.4.2** if no date is specified or the date specified is less than five clear working days after the date on which notice is received or deemed to be received, the fifth working day after notice of any such change is given.

## **16 Council's Legal Fees**

The Developer shall on the date hereof pay to the Council, receipt of which is hereby acknowledged the Council's reasonable costs in the preparation and negotiation of this Deed.

## **17 VAT**

**17.1** All payments of money given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof.

**17.2** The Developer hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of any Site and Development Payments then to the extent that VAT had not been previously charged in respect of that Payment the Council shall have the right to issue a VAT invoice to the Developer and the VAT shall be paid accordingly.

## **18 Expenditure**

**18.1** To the extent that any of the facilities referred to in Schedule 1 have been provided or can be provided by the Council to the extent reasonably required for less than the corresponding sum identified for its provision or are no longer required the resulting surplus balance may be expended or applied by the Council as appropriate on any of the other facilities referred to in the said paragraphs as agreed between the Council and the Developer.

**18.2** To the extent that any of the money referred to in Schedule 1 which has been paid by the Developer to the Council has not been spent or Committed by the Council within 5 years of the date of payment the Council shall repay the sum or the unexpended portion thereof to the Developer with such interest as may have accrued to or been paid to the Council unless the Developer agrees otherwise.

## 19 Dispute Resolution

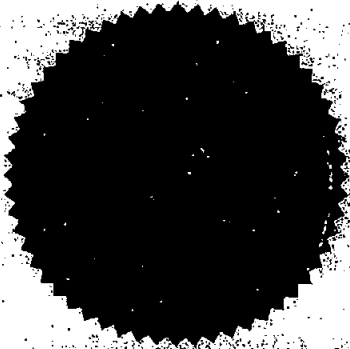
- 19.1 Without prejudice to the other provisions of this Clause 19, in the event of any dispute arising the parties shall endeavour to resolve it amicably but if the parties fail to resolve the dispute amicably, the dispute may be resolved in accordance with the provisions of this Clause 19 unless either party chooses to take proceedings in any court, public inquiry or other hearing.
- 19.2 If any dispute arises in connection with this Deed, directors or other senior representatives of the parties hereto with authority to settle a dispute will within 28 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting or subsequent related meetings, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("the ADR Notice") to the other Parties to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start no later than 14 days after the date of the ADR notice. No party may commence any proceedings/arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 19.3 In the event of a decision not being reached following the procedure in 19.1 and 19.2 above within 20 days, the parties hereto shall be referred to an Expert to be agreed upon between the Developer and the Council or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Law Society and the Expert shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties hereto and whose costs shall be at his discretion or failing such a determination borne by the parties in equal shares.
- 19.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty eight days from the date of this appointment to act.
- 19.5 The Expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten working days written submission and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further five working days in respect of any such submission and material and his decision shall be given in writing within twenty eight days of his appointment with reasons and in the absence of manifest error shall be binding on the said parties.
- 19.6 In the absence of any directions by an Expert as to costs his costs shall be borne equally between the parties and the parties shall bear their own costs.

## 20 Miscellaneous

- 20.1 Nothing herein contained shall fetter the statutory rights powers or duties on the Council as Planning, Housing or Highway Authority.

- 20.2 The construction validity and performance of this Deed shall be governed by English law.
- 20.3 Each clause, sub-clause or schedule shall be separate distinct and severable from each other to the extent only that if any clause, sub-clause or schedule becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause or schedule shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause or schedule contained herein.
- 20.4 In the event of the planning obligations contained in this Deed being modified a note or memorandum thereof shall be endorsed upon this Deed.
- 20.5 Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council under private or public statutes bye-laws orders and regulations and the same may be as fully effectively exercised as if it were not a party to this Deed.
- 20.6 Subject to Clause 20.1 above the Council shall issue the Planning Permission as soon as practicable following the date hereof. If the Planning Permission shall expire before the Development has begun within the meaning of Sections 91, 92 or 93 of the Town and Country Planning Act 1990, is revoked, is quashed as a result of any legal proceedings or is otherwise withdrawn without the consent of the Developer this Deed shall cease to have effect thereupon.
- 20.7 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop the Site or any part of it in accordance with a planning permission (other than the Planning Permission) granted by the Council or by the relevant Secretary of State on appeal or by reference to him after this date.
- 20.8 Where by this Deed any action, approval, consent, direction, authority or agreement is required to be taken, given or reached by any party, any such action, approval, consent, direction, authority or agreement shall not be unreasonably withheld or delayed PROVIDED that this shall not operate to fetter the discretion of the Council in the exercise of any of its statutory functions.

IN WITNESS WHEREOF the parties hereto have executed this Deed the day and year first before written



8875(a)

The Common Seal of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK was hereto affixed in the presence of:

Authorised Signatory

Executed as a Deed by CASTLE HOUSE DEVELOPMENTS LIMITED acting by:

Director

Director / Secretary

SIGNED as a Deed by

*N.B. DENTON and S. PENNY*

as Attorney for and on behalf of DEUTSCHE  
POSTBANK AG, London Branch

in the presence of:

*[Signature]*

*N.S. JA*

Name: SUZANNE WADSWORTH

Address:

Occupation: BANK OFFICER

*[Signature]*  
X X

in the presence of:

*[Signature]*

Name: SUZANNE WADSWORTH

Address:

Occupation: BANK OFFICER

Deutsche Postbank AG  
London Branch  
61 Queen Street, London EC4R 1AF  
Telephone: 020 7634 2300

## SCHEDULE 1

### The Developer's Covenants and Obligations

#### 1 Education

- 1.1 On or before the Occupation Date, the Developer will pay the Education Contribution to the Council.

#### 2 Employment and Training

- 2.1 On or before the Implementation Date, the Developer will pay the Training Contribution to the Council.

#### 3 Public Space

- 3.1 Within 12 months of the Implementation Date, the Developer will submit the Public Space Specification to the Council for approval (such approval not to be unreasonably withheld or delayed).
- 3.2 The Developer will submit to the Council at the time of submission of the Public Space Specification referred to above a cost plan detailing the estimated cost of undertaking and completing the Public Space Works as detailed in the Public Space Specification the total cost of which will not exceed the Public Space Budget.
- 3.3 The Council will not require any amendments to the Public Space Specification the result of which would be to inflate the estimated cost of the Public Space Works over and above the Public Space Budget unless the Council agrees in writing to meet those additional costs.
- 3.4 Following approval of the Public Space Specification and subject to paragraph 3.3 above, the Developer will undertake and complete at its own cost prior to Occupation of 50% of the Market Housing Units within the Development the Public Space Works as detailed in the approved Public Space Specification in a good and workmanlike manner to the Council's reasonable satisfaction PROVIDED THAT if the actual costs of doing so exceed the Public Space Budget the Developer will meet any such costs unless any such costs have arisen out of any delay or unreasonable action on the part of the Council.
- 3.5 Following commencement of the Public Space Works, the Developer will allow the Council or their agents or contractors access to the Public Space Works for the purpose of inspection at all reasonable times upon reasonable written notice.
- 3.6 Following Practical Completion of the Public Space Works pursuant to this paragraph 3 the Council will maintain the land upon which those works have been carried out PROVIDED THAT:

- 3.6.1 the Developer shall continue to be liable for any defects which become apparent during any defects liability period under the contract or contracts in respect of the Public Space Works; and
- 3.6.2 the Developer shall first have procured the grant or assignment to the Council of construction warranties in respect of the completed Public Space Works which are in the Council's reasonable opinion satisfactory in nature and extent.

#### 4 Environmental Improvements

- 4.1 Within 12 months of the Implementation Date, the Developer will submit the Brief to the Council for discussion and the Council and the Developer will as soon as practicable thereafter identify the preferred option.
- 4.2 Within 6 months of identifying the preferred option (pursuant to paragraph 4.1 above), the Developer will submit the Environmental Improvement Specification in respect of the preferred option to the Council for approval (such approval not to be unreasonably withheld or delayed).
- 4.3 The Developer will also submit to the Council at the time of submission of the Environmental Improvement Specification a cost plan detailing the estimated costs of undertaking and completing the Environmental Improvements Works as detailed in the Environmental Improvement Specification the total estimated costs of which shall not exceed the Environmental Improvements Budget.
- 4.4 The Council will not require any amendments to the Environmental Improvement Specification the result of which would be to inflate the estimated costs of the Environmental Improvement Works over and above the Environmental Improvements Budget unless the Council agree in writing to meet those additional costs.
- 4.5 Following approval of the Environmental Improvement Specification and subject to paragraph 4.4 above and 4.7 below the Developer will undertake and complete at its own cost prior to Occupation of 50% of the Market Housing Units within the Development the Environmental Improvement Works as detailed in the approved Environmental Improvements Specification in a good and workmanlike manner to the reasonable satisfaction of the Council (and in case of any works upon the public highway in accordance with any applicable agreement pursuant to section 278 of the Highways Act 1980) PROVIDED THAT if the actual costs of doing so exceed the Environmental Improvements Budget the Developer will meet any such costs unless any such costs have arisen out of any delay owing to unreasonable action or omission on the part of the Council.
- 4.6 Following commencement of the Environmental Improvement Works, the Developer will allow the Council or their agents or contractors access to the Environmental Improvement Works for the purpose of inspection at all reasonable times upon reasonable written notice.
- 4.7 Prior to commencing the Environmental Improvement Works the Developer will enter into an agreement pursuant to Section 278 of the Highways Act 1980 with the



Council and where appropriate Transport for London in order to regulate and control the construction and completion of the Environmental Improvement Works or part of them to the extent that they are to be carried out within the public highway.

4.8 Following Practical Completion of the Environmental Improvement Works pursuant to this paragraph 4 (other than on land which is part of the public highway, which shall be governed in accordance with any applicable agreement under section 278 of the Highways Act 1980) the Council will maintain the land upon which the Environmental Improvement Works have been carried out PROVIDED THAT:

4.8.1 the Developer shall continue to be liable for any defects which become apparent during any defects liability period under the contract or contracts in respect of the Environmental Improvement Works; and

4.8.2 the Developer shall first have procured the grant or assignment to the Council of construction warranties in respect of the completed Environmental Improvement Works which are in the Council's reasonable opinion satisfactory in nature and extent.

4.9 On or before the Implementation Date, the Developer will pay the Draper House Contribution to the Council. If the cleaning works to Draper House are completed without the full amount of the Draper House Contribution having been expended, the Council will return the balance to the Developer and the Environmental Improvement Budget shall be increased by an equivalent amount.

## 5 Health and Community Facilities

5.1 On or before the Implementation Date, the Developer will pay the Health and Community Facilities Contribution to the Council.

5.2 On or before the Implementation Date, the Developer will pay the Southwark Model Contribution to the Council.

5.3 On or before the Implementation Date, the Developer will pay the Tall Buildings Model Contribution to the Council.

5.4 On or before the Implementation Date, the Developer will pay the Borough Market Food School Contribution to the Council.

5.5 On or before the Implementation Date, the Developer will pay the Local Wardens Scheme Contribution to the Council.

## 6 Affordable Housing

6.1 On or before the Occupation of 50% of the Market Housing Units, the Developer will pay the Affordable Housing and Related Infrastructure Contribution to the Council.

6.2 Unless otherwise agreed by the Council, the Developer will provide 98 of the total number of Residential Units as Affordable Housing Units of which 78 shall be Shared Ownership Units and 20 shall be Retained Equity Units. For the avoidance of doubt, any Retained Equity Units which are unallocated at the Occupation Date may be made available on the same terms to other residents within the Elephant & Castle

Regeneration Area and if still unallocated nine months following the Occupation Date shall become Shared Ownership Units.

6.3 Unless otherwise agreed by the Council:

6.3.1 the Shared Ownership Units will comprise the following mix of units:

	Percentage of Shared Ownership Units	To be located on levels
41 x 1 bed units of between 46 and 53m <sup>2</sup> net floorspace	52.6%	2 - 10 of the Principal Building and 1 - 3 of the Pavilion Building
37 x 2 bed units of between 61 and 84m <sup>2</sup> net floorspace	47.4%	2 - 10 of the Principal Building and 1 - 3 of the Pavilion Building

6.3.2 and the Retained Equity Units will comprise the following mix of units:

	Percentage of Retained Equity Units	To be located on levels
10 x 1 bed units of between 46 and 53m <sup>2</sup> net floorspace	50%	2 - 10 of the Principal Building and 1 - 3 of the Pavilion Building
10 x 2 bed units of between 61 and 84m <sup>2</sup> net floorspace	50%	2 - 10 of the Principal Building and 1 - 3 of the Pavilion Building

6.4 The Shared Ownership Units and the Retained Equity Units shall be constructed and completed in accordance with the essential requirements of the Housing Corporation's Development Standards (April 2003) and Lifetime Homes Standards and made ready for occupation to the reasonable satisfaction of the Affordable Housing Provider.

6.5 Unless otherwise agreed by the Council, the Developer will not Occupy or allow Occupation of more than 50% of the Market Housing Units until the Developer has received written notice from the Council (not to be unreasonably withheld or delayed and to be deemed given by the Council if not expressly given or withheld within 15 days of the Developer's written submission) to the effect that in the reasonable opinion of the Council:

- (i) the Shared Ownership Units and the Retained Equity Units have been transferred or leased to an Affordable Housing Provider; and
- (ii) the works of construction and fitting out of the Shared Ownership Units and the Retained Equity Units have been completed in

accordance with the requirement of paragraph 6.4 hereof and those units have been made ready for occupation.

## **7 Energy Efficiency and Sustainability**

- 7.1 Prior to the Implementation Date, a provisional Eco Homes assessment (in accordance with the Housing Corporation and Building Research Establishment guidelines), in a form reasonably acceptable to the Council, will be submitted to the Council demonstrating that the Development has been designed to achieve a target rating of "very good".
- 7.2 Unless agreed otherwise with the Council, prior to Occupation the Developer shall ensure that the wind turbines and combined heat and power plant to be provided within the Development are in situ and are operational.

## **8 Public Art**

- 8.1 Prior to Occupation, the Developer will commission and install within the Development the Public Art. The value of the Public Art (including the cost of installation) shall be approximately £100,000.

## **9 TV reception interference monitoring and mitigation**

- 9.1 The Developer will, prior to Demolition, carry out the First Interference Survey, the results of which it will submit to the Council for its information.
- 9.2 The Developer will, as soon as reasonably practicable after Completion, carry out the Second Interference Survey, the results of which it will submit to the Council for its information.
- 9.3 In the event that the Second Interference Survey reveals a significant deterioration in terrestrial television reception to a particular residential property or properties since the date of the First Interference Survey which is directly attributable to the Development but not otherwise the Developer will as soon as reasonably practicable pay the Mitigation Sum into a designated interest bearing account (the "Account") and provide the Council written details of the Account.
- 9.4 If the Mitigation Sum or any part of it has not been expended in connection with the Mitigation Measures after a period of two years following the date the Mitigation Sum was paid into the Account then the unexpended part of such amount will be returned to the Developer.
- 9.5 The Developer will pay to the owner or occupier of any affected residential property such part of the Mitigation Sum as is appropriate to mitigate any significant deterioration in terrestrial television reception.
- 9.6 The Developer will notify the Council when any part of the Mitigation Sum is paid to the owner or occupier of an affected property as soon as reasonably practicable after any such payment.
- 9.7 The Developer's liability in respect of any television reception interference and associated mitigation is limited to the amount of the Mitigation Sum.

## **10 Archaeological Evaluation**

- 10.1** On or before Demolition, the Developer will pay the Archaeology Contribution to the Council.

## **11 Safety and Security**

- 11.1** Prior to Occupation, the Developer will pay the Security Contribution to the Council.

## **12 Kiosk**

- 12.1** Prior to Occupation of any of the retail units within the Development, the Developer will at its own expense construct and complete (but, for the avoidance of doubt, shall not be obliged to fit out) the Kiosk in a good and workmanlike manner using good quality materials to the reasonable satisfaction of the Council (as demonstrated by written notification to that effect not to be unreasonably withheld or delayed).

- 12.2** The Developer shall provide the Kiosk in shell form without shop fronts but with service heads provided, at a discount to open market rental value for an initial period, as set out below.

- 12.3** The Developer shall have the right to substitute the identified unit for an alternative unit in a similar location and of a similar size.

- 12.4** The Kiosk shall be offered for rent to persons who at the date of this Deed trade from premises within the Elephant & Castle Shopping Centre and who will be displaced by the redevelopment of those premises and who shall be identified in a process to be determined by the Council and the Developer. The Council shall take into account the Developer's comments when determining the final tenant. The identity of the final tenant is to be agreed between the Developer and the Council not later than 6 months prior to the Kiosk being available for occupation in shell form.

- 12.5** If the persons identified by the Council agree to take up the Kiosk, the rent applicable to the Kiosk will be provided as outlined in Schedule 3 hereto.

- 12.6** The Developer shall not be required to let the Kiosk to any person who following inquiry of previous landlords and bank references appears in the Developer's reasonable opinion (which opinion is to be notified to the Council) to be:

**12.6.1** a person who has been made bankrupt or forced to make arrangements with their creditors in the preceding five years;

**12.6.2** a person who has failed to pay their rent and service charges or been persistently late in the payment of rent and service charges over the preceding five years;

**12.6.3** a business or person who has less than a three year prior trading profile in the Elephant & Castle Shopping Centre; or

**12.6.4** a person who has been convicted of a criminal offence within the last 10 years.

- 12.7 If any of the circumstances set out in paragraph 12.6 apply to any person proposed by the Council or any persons fail to take up the offer of the Kiosk, the Kiosk shall be available to let in the open market on open market rental terms as the Developer shall decide.

### **13 Parking**

- 13.1 Prior to Occupation, the Developer will ensure that one car parking space is available for use solely by the Car Club.
- 13.2 The Developer will monitor the use of the Car Club car parking space for a period of 12 months such period commencing from the time when 80% of the Residential Units are Occupied.
- 13.3 As soon as practicable following the end of the 12 month period described above in paragraph 13.2, the Developer will submit the monitoring results to the Council.
- 13.4 On receipt of the monitoring results, the Council will consult with those bodies they deem appropriate and relevant including, the operator of the Car Club, users of the Car Club and occupiers of the Development, to consider whether the demand exists for one further Car Club car parking space.
- 13.5 If the monitoring results and the consultation exercise indicate that one car parking space is adequate for the level of demand generated by the Car Club, no additional car parking space will be required to be provided by the Developer.
- 13.6 If the monitoring results and the consultation exercise demonstrate the demand for use of the Car Club is such that an additional car parking space is required for its successful operation, a second car parking space will be made available to the Car Club within 6 months PROVIDED THAT the operator of the Car Club is willing to accept responsibility for the second car parking space which for the avoidance of doubt will not be subsidised.

### **14 Public Transport**

- 14.1 On or before the Implementation Date, the Developer will pay the Public Transport Contribution to the Council.

### **15 MUSCO Network**

- 15.1 The Developer and the Council shall use Reasonable Endeavours to liaise with each other, each acting reasonably and in good faith at all times, during the detailed design phase of the Development to ensure that the requirements of this paragraph 15 are met.
- 15.2 The Developer shall ensure that:
- 15.2.1 the service interface within the Development can accommodate all reasonable service entry routes including sleeves, pipe work, reasonable access and space necessary for these purposes;
  - 15.2.2 provision is made in the design of the Development for a connection to the MUSCO high voltage electricity service;

- 15.2.3 individual low voltage supplies to Residential Units and commercial units are metered using internet protocol addressable meters;
  - 15.2.4 provision is made in the design of the Development for a connection to the district heating element of the MUSCO Network, and a localised heating flow and return pipework system is installed within the Development which connects to the heating and hot water system in each Residential Unit;
  - 15.2.5 the pipework to each Residential Unit is fitted with isolation valves and an internet protocol addressable heat meter so that consumption of thermal energy can be monitored;
  - 15.2.6 an allowance is made within the Development for hot water generation by way of secondary hot water cylinders or heat exchangers connected to localised heating mains;
  - 15.2.7 provision is made in the design of the Development for the connection to the area-wide fibre optic network provided by the MUSCO Network;
  - 15.2.8 there is provided within the Development a fibre optic connection to each Residential Unit and commercial unit;
  - 15.2.9 the internal fibre optic network is a passive optical network utilising single mode fibre to ITU G652 or G655 standard for horizontals and risers where appropriate, and that the interface between risers and horizontals is via a passive splitter with a maximum of 1:4 split;
  - 15.2.10 the internal fibre optic network terminates within each unit via a consumer unit presenting RJ45, RJ11 and standard CATV/RF coaxial and optical formats;
  - 15.2.11 the internal fibre optic network is designed and installed so that building management, monitoring and safety systems are internet protocol addressable and otherwise compatible with those used in the MUSCO Network; and
  - 15.2.12 that these elements of the design of the Development otherwise take into account such other reasonable measures and further detail to facilitate connection to the MUSCO Network as the Council may reasonably require during the detailed design phase of the Development PROVIDED THAT for the avoidance of doubt the Developer shall not once the detailed design is substantially completed be obliged to change the detailed design of the Development and PROVIDED FURTHER for the avoidance of doubt that if the Council's proposals for or the design of the MUSCO Network change rendering the existing equipment provided pursuant to this paragraph 15.2 obsolete or in any way incompatible with the Development the Developer will not be required to incur any further costs in seeking to connect the Development to the MUSCO Network.
- 15.3 Subject to paragraphs 15.4 and 15.5, in the event that the Council procures the installation of the MUSCO Network with sufficient capacity to serve the Elephant & Castle Regeneration Area and provided that the MUSCO Network is capable of connection to the Development as provided for in paragraph 15.2, the Developer shall use Reasonable Endeavours to enable the connection of the Development to

the MUSCO Network to allow the heating, power and hot water requirements of the Development to be supplied through the MUSCO Network and to enable a data connection between the MUSCO Network and the Development to be established PROVIDED THAT;

- 15.3.1 prior to the making of any connection to the Development, the reliability of the MUSCO Network as a source in terms of continuity of provision is proven by its operation through the provision of heating, power, hot water and data services 24 hours a day 7 days a week without interruption for a period of six months; and
- 15.3.2 with regard to heating and hot water only, following the making of any such connection, the cost in sourcing heating and hot water services by the Residential Units and commercial units will not materially increase.
- 15.4 The Developer shall not be obliged to source their power or data services from the MUSCO Network but, subject to paragraph 15.3, the Developer shall inform occupiers and potential occupiers of the existence and purpose of the MUSCO Network.
- 15.5 The Developer will not be responsible for making the physical connection of the Development to the MUSCO Network or any costs relating thereto (other than in complying with this paragraph 15).

## 16 Non-Potable "Green" Water

- 16.1 The Developer and Council shall use Reasonable Endeavours to liaise with each other, each acting reasonably and in good faith at all times, during the detailed design phase of the Development to ensure that the requirements of this paragraph 16 are met.
- 16.2 Subject to the provisions of paragraph 16.3 and 16.4 below and unless otherwise agreed with the Council, the Developer shall ensure that:
  - 16.2.1 a valved and capped branch connection is made available for a connection to the MUSCO Network non-potable "green" water supply;
  - 16.2.2 non-potable water connections are installed to each Residential Unit and commercial unit up to and including the 10th floor level of the Principal Building within the Development, to each Residential Unit and commercial unit of the Pavilion Building within the Development and that points of supply for facilities management and irrigation are valved and fitted with an internet protocol addressable water meter; and
  - 16.2.3 non-potable water distribution pipework within the Development is pre-insulated proprietary pipe-quality pipework, suitable for non-potable water distribution and is clearly marked so as to distinguish it from the potable water system.
- 16.3 The obligations on the part of the Developer in paragraphs 16.2 shall be subject to a financial cap of £250,000 Index Linked and the Developer shall share with the Council on an open book basis all financial and other information relevant in

assessing the costs of complying with those paragraphs. If the total costs of complying with those paragraphs shall exceed £250,000 the specification for the non-potable water supply shall be amended by, inter alia, reducing the number of Affordable Housing Units within the Development to which non-potable water is to be supplied until the costs of complying with paragraph 16.2 equals or does not exceed £250,000.

**16.4** The total cost incurred by the Developer in complying with the obligations under this paragraph 16 is to be met from the Affordable Housing and Related Infrastructure Contribution. For the avoidance of doubt when the Affordable Housing and Related Infrastructure Contribution becomes payable pursuant to paragraph 6 of this Schedule the Affordable Housing and Related Infrastructure Contribution will be reduced by the cost of complying with this paragraph 16.

**16.5** Subject to paragraph 16.6, the Developer shall use Reasonable Endeavours to ensure that in the event that the MUSCO Network with sufficient capacity to serve the Elephant & Castle Regeneration Area is installed and is capable of being connected to the Development that the Development is so connected to enable the non-potable "green" water requirements of the relevant parts of the Development to be supplied through the MUSCO Network PROVIDED THAT and for the avoidance of doubt if the Council's proposals for or the design of the MUSCO Network change rendering the existing equipment provided pursuant to paragraph 16.2 above obsolete or in any way incompatible with the Development the Developer will not be required to incur any further costs in seeking to connect the Development to the MUSCO Network.

**16.6** The Developer will not be responsible for making the physical connection of the Development to the MUSCO Network or any costs relating thereto (other than the cost involved in complying with this paragraph 16).

## **17 Elephant & Castle Festival Contribution**

**17.1** Within four months of the date hereof, the Developer will pay the Elephant & Castle Festival Contribution to the Council.



## SCHEDULE 2

### The Council's Obligations

#### 1 Site and Development Contributions

- 1.1 On receipt of any of the Site and Development Contributions (or part thereof) the Council will forthwith deposit such sums or amounts into an interest bearing account designated for the Site (the "Site Account") until such time as such sums or amounts are required for the purposes respectively for which the same were received.
- 1.2 The Council covenants and undertakes to apply the Site and Development Contributions (and interest accrued thereon) only for the purposes respectively for which the same were paid as specified and for no other purpose subject to paragraph 1.4 below.
- 1.3 The Council will provide the Developer on no less than a quarterly basis a written statement of expenditure from the Site Account specifying the nature of works or expenses carried out or issued and the amount expended.
- 1.4 If, having used Reasonable Endeavours, it becomes impossible or undesirable (in the Council's reasonable opinion) to apply the Site and Development Contributions listed in Schedule 1 for the purposes or facilities described and specified within this Deed, the Council may expend the said sums or amounts on infrastructure or environmental improvement projects in the vicinity of the Site provided that the Council first seeks the Developer's view on appropriate infrastructure or environmental improvements.

#### 2 Retained Equity Units

- 2.1 Nine months prior to the anticipated Completion Date, the Council will prepare a list nominating Heygate Estate Leaseholders in consultation with the Developer and Affordable Housing Provider (all parties acting reasonably).

## SCHEDULE 3

### Heads of Terms for the Lease of the Kiosk

#### Term

10 years

#### Rent Free Period

3 month rent free period.

#### Rent

Years 1 and 2 (subject to the rent free period) £15psf ITZA x NIA of Unit ITZA

Year 3  $(((\text{Market Rent ITZA} - \text{£15psf ITZA}) \times 25\%) + \text{£15psf ITZA}) \times \text{NIA of Unit ITZA}$

Year 4  $(((\text{Market Rent ITZA} - \text{£15psf ITZA}) \times 50\%) + \text{£15psf ITZA}) \times \text{NIA of Unit ITZA}$

Year 5  $(((\text{Market Rent ITZA} - \text{£15psf ITZA}) \times 75\%) + \text{£15psf ITZA}) \times \text{NIA of Unit ITZA}$

Year 6-10 Open Market Rent at the beginning of Year 6

#### Rent Review

There shall be a rent review to Open Market Rental Value at the end of the fifth year of the term.

#### Break Clause

The lease shall contain a tenant's option to break upon notice at the end of the fifth year of the term.

#### Alienation

Assignment of the whole (but not part) of the premises will be permitted with the consent of the landlord (such consent not to be unreasonably withheld or delayed). The landlord will be entitled to withhold its consent to an assignment if any of the following circumstances applies at the time of the application for consent or at the date of the assignment:

- (a) The proposed assignee is not a person who in the landlord's reasonable opinion is likely to be able to comply with the obligations of the tenant under the lease; or
- (b) Following inquiry of previous landlords and bank references, the proposed assignee appears in the landlord's reasonable opinion to fall within one or more of the criteria listed in paragraphs 12.6.1 to 12.6.4 of Schedule 1 hereto; or
- (c) There is a subsisting material breach of a tenant covenant.

The landlord will be entitled to grant its consent subject to the condition that the landlord can call for the rent to be reviewed to Open Market Rental Value at the time of the assignment and the lease will be varied so that the tenant will pay the revised rent.

The landlord may withhold its consent in other circumstances or grant it subject to either conditions if in either case it is reasonable to do so.

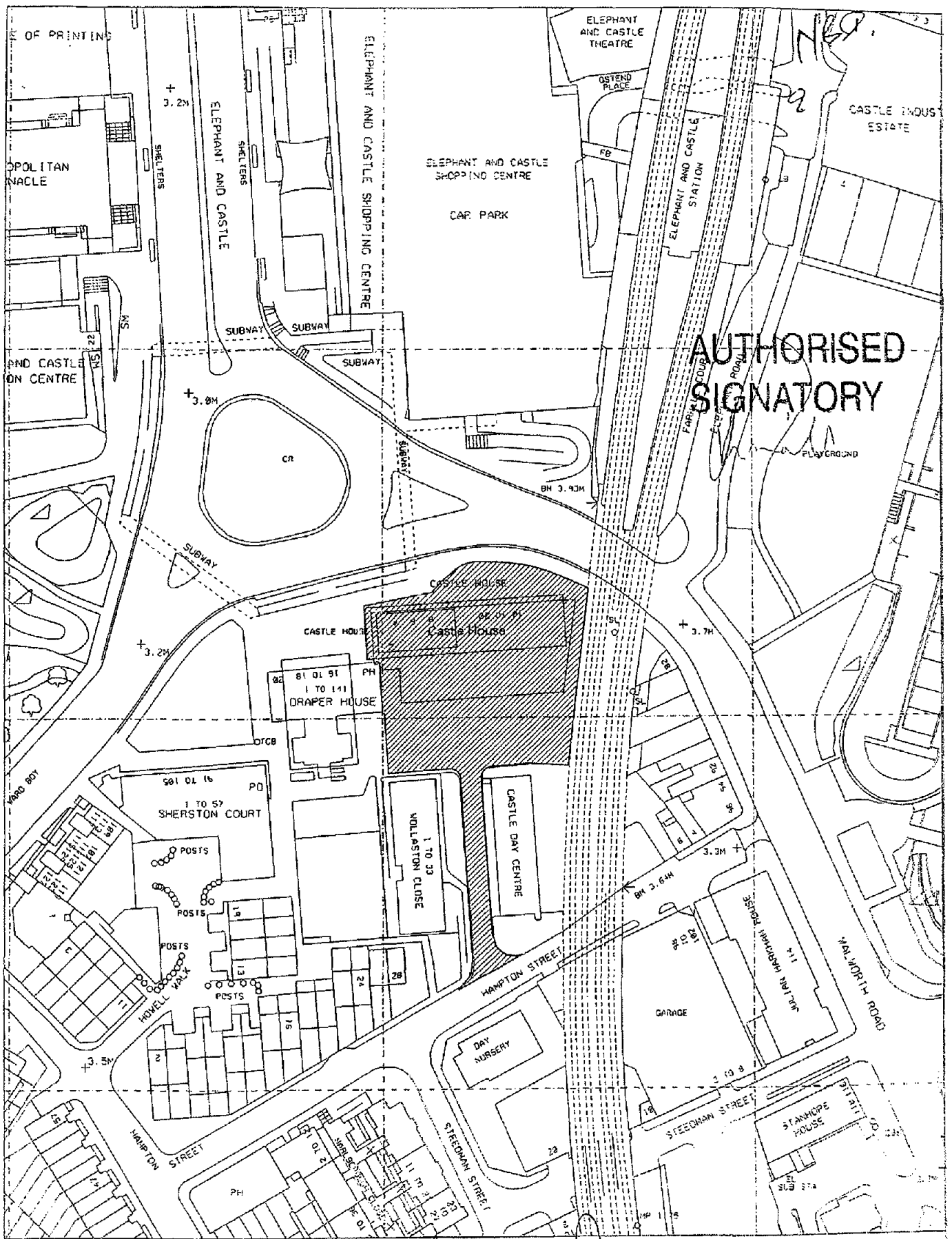
All other dealings with the premises are to be prohibited.

**Repairs**

Tenant to be responsible for all internal non-structural repairs.

**Service Charges**

To be fair and reasonable.



**AUTHORISED  
SIGNATORY**

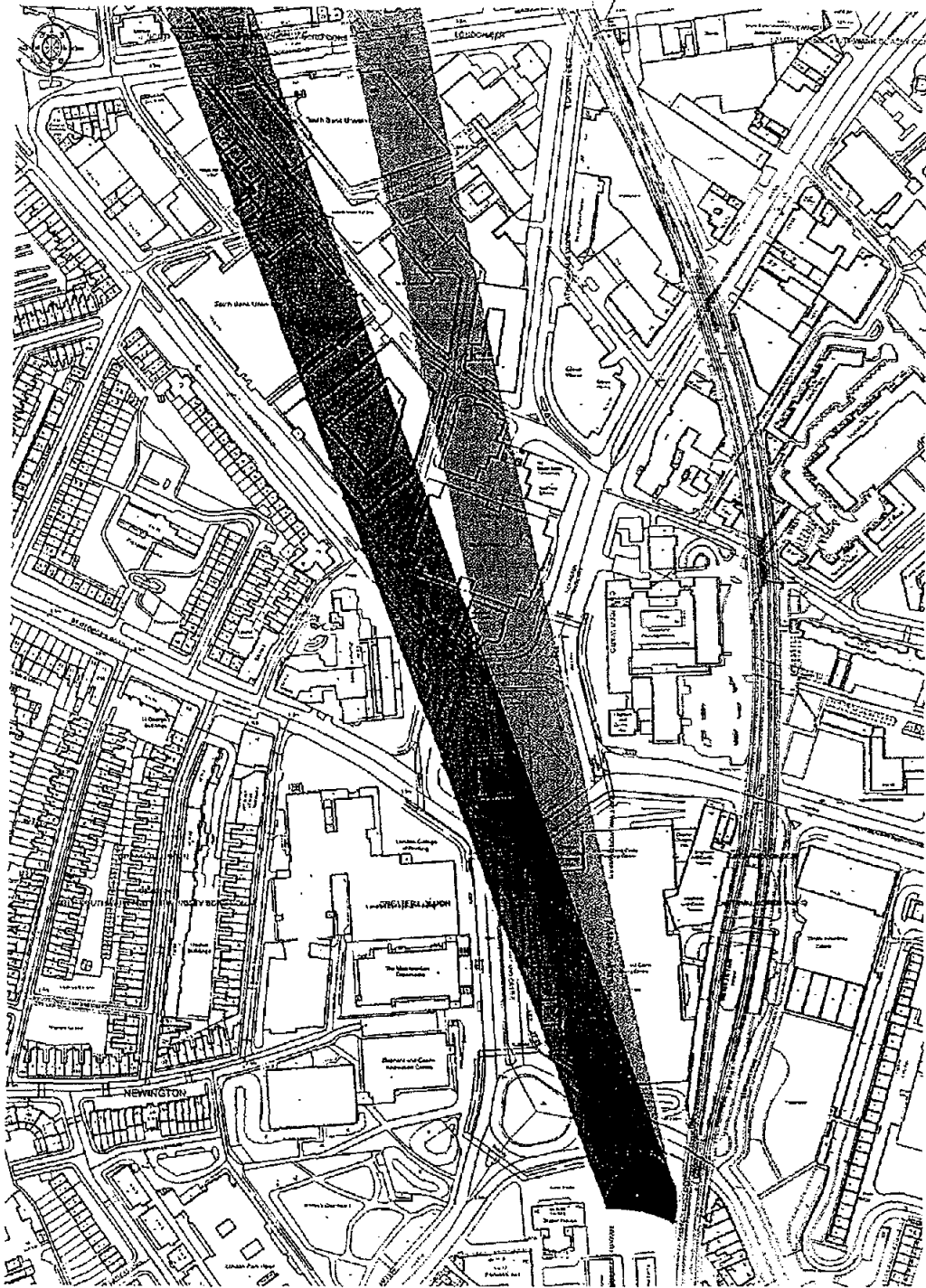
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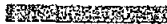

Plan 1: The Site



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SIGNATORY



*Handwritten initials/signature*

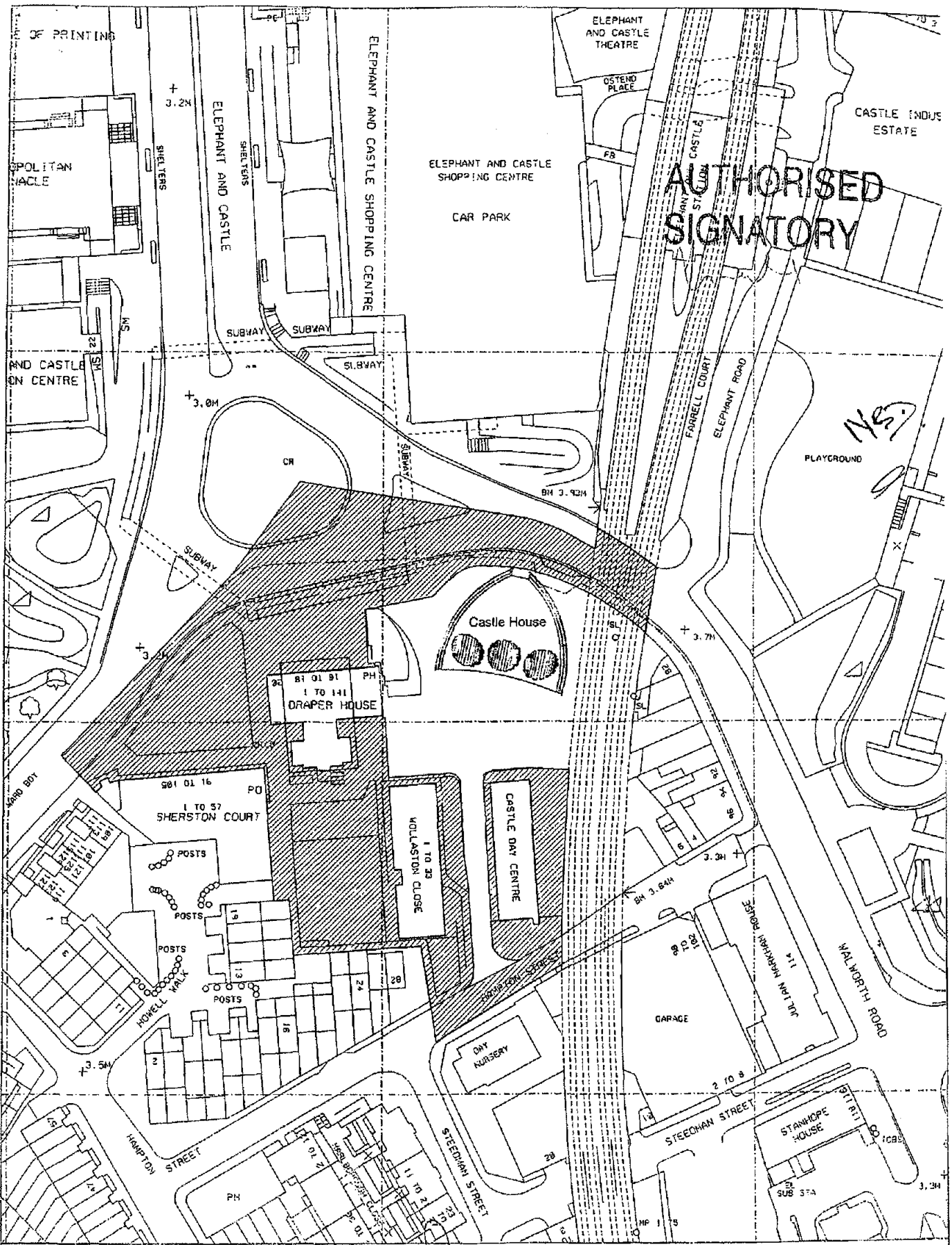
 = Crystal Palace Transmitter  
 = Croydon Transmitter

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Plan 2: The Survey Area





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SIGNATORY**

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Plan 3: The Environmental Improvement Works Area



