

Cabinet Member Report

Decision Maker	Cllr Robert Davis MBE DL, Cabinet Member for Built Environment; Cllr Tim Mitchell, Cabinet Member for Finance and Corporate Services
Date:	20th December 2016
Classification:	Public for general release (Appendices 3 & 4 are exempt)
Title:	Garden Bridge Trust Associated Agreements
Wards Affected:	St James's Ward
Key Decision:	Yes
Financial Summary:	Costs of these transactions and use of powers are to be met by Garden Bridge Trust. For legal costs, GBT's solicitors have provided an undertaking. The obligation to pay surveying costs (up to £20,000) is contained in the Overarching Land Agreement. For costs associated with the use of s.203 powers, GBT will provide an indemnity (see summary of the Indemnity Agreement in Nabarro's report). This will, in part, be backed by funds held in an escrow account by GBT's solicitors
Report of:	Ed Watson – Executive Director – Growth, Planning and Housing

1 Executive Summary

- 1.1 This report covers the matters set out in the recommendation to enable the City Council to proceed to initiate the property transactions in relation to the Garden Bridge that will make the provisions in s.203 of the Housing and Planning Act 2016 / s.241 of the Town and Country Planning Act (TCPA) operative in order to facilitate the construction of the Garden Bridge without third party interference.
- 1.2 A further report will be forthcoming which will deal with the disposal of the relevant properties to GBT to enable them to commence the construction of the Garden Bridge. The s106 Agreement between the Council and GBT will be completed after the disposal recommendations are approved and GBT have acquired their interest in the land.

1.3 All other implications relating the development of the Garden Bridge are covered in Appendix 1.

2 Recommendations

2.1 This report seeks Cabinet Members approval under the relevant Local Government, Housing and Planning, and Planning Act Provisions for the following:-

- Acquisition for planning purposes of the Airspace and the Compound under s.227 of the Town and Country Planning Act 1990 (the power to acquire an interest in land by agreement);
- Appropriation for planning purposes of the Steps and Ramp Site and the Forecourt in accordance with s122 of the Local Government Act 1972. In addition, if either the Steps and Ramp Site or any part of the Forecourt is open space (i.e. rather than just highway) then s.122(2A) also requires the Council to advertise the proposed appropriation for planning purposes in two consecutive weeks in a newspaper circulating in Westminster and consider any objections;
- s.203 of the Housing and Planning Act 2016 provides the powers that will enable the council or any successor in title to override any claim for an injunction in respect of the rights and covenants adversely interfered with as a result of the Garden Bridge (it is the new statutory provision for what was previously s.237 of the Town and Country Planning Act 1990);
- s.241 of the Town and Country Planning Act 1990 permits open space which has been acquired by a local authority for planning purposes to be used by any person in accordance with the planning permission; and
- Since the land which the Council will be acquiring for planning purposes is open space the Council has to advertise the proposed disposal thereof in accordance with s.233(4) of the Town and Country Planning Act 1990 for two consecutive weeks in a newspaper circulating in Westminster and consider any objections before such disposal decision can be taken

2.2 Following approval of the recommendations made in this report, the subsequent disposal Report recommending approval of the disposal to GBT under s233 of the Town and Country Planning Act 1990 of all the land held for planning purposes will be submitted once the abovementioned s233(4) procedure has satisfactorily been complied with

3 Reasons for Decision

3.1 By appropriating the Council owned land under s122 of the Local Government Act and acquiring land for planning purposes from LUL under s227 of the TCPA 1990, the development of the bridge will be facilitated pursuant to the planning permission conditions and s.106 legal agreement obligations. Furthermore, the construction of the bridge will likely contribute to the social well-being of the area by providing an additional physical link between the City Council to the north of the River Thames and Lambeth Council to the south. The Garden Bridge development will also contribute to the Council's environmental well-being objectives due to the pedestrian nature of this link and the stated environmental aims of the Garden Bridge project as a whole.

4. Background

- 4.1 The Garden Bridge Trust was set up on November 1st 2013 to secure private sector funding for both the construction and future maintenance of the Garden Bridge, which will span the River Thames from Temple London Underground station at Victoria Embankment on the Northbank, to a landing between Waterloo and Blackfriars Bridges on the Southbank. . Permission was granted by the London Borough of Lambeth on December 19 2014 and by the City of Westminster on December 22 2014, following a decision by the Deputy Mayor to allow Westminster and Lambeth to determine the Garden Bridge application themselves.
- 4.2 The planning application and associated legal agreement provisions requested by committee are not affected by this report.

5. Pre- commencement conditions

- 5.1 Westminster City Council and the London Borough of Lambeth are in the process of discharging pre-commencement planning conditions for the Garden Bridge. The relevant s.106 Agreement is in the final stages of drafting, and includes those matters agreed by Planning Committee.

6. Use of s237/241 Powers for planning purposes.

- 6.1 GBT has formally requested that the City Council (a) acquire for planning purposes leases of areas on the Temple Station Roof Terrace; and (b) appropriate for planning purposes land owned by the council. Such acquisition/ appropriation is required for the construction and operations of the Garden Bridge. Once so acquired and appropriated, the provisions contained in s.203 of the HPA 2016 and s.241 of the TCPA 1990 will enable the council to override any private rights or interests that will be adversely affected as a result of the construction and operation of the Garden Bridge

In order to avail of these powers Westminster City Council will need to:

- a. Acquire two 999 year headleases over the Temple Roof Terrace for planning purposes; and
 - b. Appropriate the Temple Steps and Ramps and the Station Forecourt for planning purposes.
- 6.2 The GBT confirmed they would meet all the City Council's costs for acquisition and appropriation as required in order to avail of the s.203 enabling provisions, including external legal advice etc.
- 6.3 Prior to using its powers to appropriate the open space at Temple Place, the forecourt area around Temple London Underground Station and the Victoria Embankment and roof space (maintained by the Council in accordance with s.9(3) of the London County Council (General Powers) Act 1919) the City Council is in the process of advertising its intention to do so as required by the relevant provisions in s122(2A) of the Local Government Act 1972.

7. Nabarro Report (Appendix 2)

- 7.1 The Garden Bridge Trust (GBT) intends to construct a bridge over the River Thames connecting Victoria Embankment at Temple Underground Station on the north bank of the Thames with Queen's Walk on the south bank. (Figure 1).
- 7.2 Westminster City Council is the freehold owner of land at Temple Place, the forecourt area around Temple London Underground Station and the Victoria Embankment and London Underground Limited are the freeholders of Temple London Underground station (including the roof terrace above it). (Figure 2).
- 7.3 The construction of the Garden Bridge will interfere with various rights benefitting adjoining owners. GBT has not been able to secure releases from each of the affected third parties. GBT has therefore requested that the Council uses s.203 of the Housing and Planning Act to override these rights.
- 7.4 Therefore London Underground Limited and Council have agreed with GBT to grant the various leases and underleases to enable the GBT to construct the bridge.
- 7.5 The Nabarro Report to the City Council (Appendix 2) summarises the various property documents required for this transaction.

The proposed transaction is required for 2 reasons;

- 1) So that the rights that will be affected by the Garden Bridge will be overridden by s.203; and
 - 2) So that GBT can obtain from the Council the property interests in the land required for by the Garden Bridge and in order to implement the planning permission.
- 7.6 For the purposes of using the powers contained in s.203 to the Housing and Planning Act 2016 and deciding to acquire/appropriate land for planning purposes, the Council are relying on the following:
- a) The Report in Title, provided by Bircham Dyson Bell for GBT, addressed to the Council.
 - b) The land referencing work carried out by Ardent for GBT, for which an agreed form duty of care letter has been provided to the Council, so you can rely on their work.
 - c) The right of lights review carried out by Savills for GBT, for which an agreed form duty of care letter has been provided to the Council, so you can rely on their work;
 - d) Opinion provided by Douglas Edwards QC and Stephanie Knowles dated 22 September 2014 (Appendix 3) ; and
 - e) Opinions provided by Andrew Tate QC dated 3 March 2016 and 17 March 2016 (Appendix 4).

7.7 In terms of assessing the level of consideration for each of the disposals, the Council have taken separate advice from BGVA the Council’s consultant surveyors for this project and will be referred to in the subsequent disposal report.

8. Indemnity Agreement

8.1 Before Cabinet Members make a decision to appropriate/acquire the relevant lands for planning purposes, an indemnity from GBT will be needed. Members requested that this was guaranteed by the GLA but the GLA would not agree to this. Instead, GBT has offered an escrow payment, by way of security for its obligations (Details are set out in Schedule 12 of the Nabarro Report, Appendix 2). In the circumstances officers consider this is as far as this matter can be taken.

9. Financial Implications

9.1 Whilst the Garden Bridget Trust (GBT) was set up to secure private sector funding for both the construction and future maintenance of the Garden Bridge, Westminster City Council and the London Borough of Lambeth are required to use their powers for planning purposes to acquire certain plots of land and airspace in order for the bridge to be constructed.

9.2 The Council intends to enter into a number of leases with London Underground Ltd (LUL) and GBT in order to provide the necessary rights to access and use these sites.

9.3 Two of these agreements see the Council paying a premium to LUL, however this is fully reimbursed to the Council by GBT as part of their leases. The other two leases are between WCC and GBT which include two one off premium payments totalling £31k which will be made to WCC. All leases include annual rent of a peppercorn between each party.

9.4 A summary of the costs associated is shown in the table below. All figures are based on the assumption that LUL has not opted to tax. If they did opt to tax before the GBT leases are granted the amounts would need to then include VAT at a rate of 20%, however to date it is not expected that they will opt to tax. WCC would be able to include and thus reclaim any VAT amounts if they were included.

Leased from	Property	Premium £	Lease to	Premium £	Impact to WCC £
LUL	Airspace	110,000	GBT	110,000	-
LUL	Compound	230,000	GBT	230,000	-
LUL	Steps/ramp		GBT	13,000	(13,000)
	Forecourt		GBT	18,000	(18,000)
		340,000		371,000	(31,000)

Costs associated with the negotiation of the documentation for the Garden Bridge:

9.5 In terms of the Overarching Land Agreement, GBT have agreed to pay up to £185,000 (plus VAT and disbursements) for legal and surveying fees in connection with the various property documents required for the Garden Bridge. This covers £165,000 for legal and £20,000 for surveying fees. Some of this has already been

paid by them. For the remainder, we have an undertaking from GBT's solicitors. This means even if the matter goes abortive, WCC fees will be covered

9.6 GBT will also pay any Stamp Duty Land Tax (SDLT) associated with the transaction.

9.7 The Council will receive for the entirety of lease of the Forecourt, 5% per annum of the Net Income from the Garden Bridge when it opens for use by members of the public. A detailed business plan will be attached to the s106 Agreements and is subject to the approval of Westminster City Council as Planning Authority. Initial projections within the business plan for the first five years, provided by Garden Bridge Trust, indicate a total net income of £879k. If this occurs then the Council will receive c£8.8k of rent per annum for the first five years. No projections have been made beyond the initial five years.

Costs associated with appropriating/acquiring land for planning purposes – JR & claims for interference with rights:

9.8 GBT will indemnify WCC for these costs. This indemnity is backed up by an initial sum of £250,000 being held in escrow.

9.9 This is not a blanket indemnity. For JR costs, GBT will not be responsible for paying such costs where:

- the parties both agree (acting reasonably) there is no realistic prospect of the Garden Bridge proceeding;
- the grounds for the judicial review relate to WCC's negligent act, default or omission of (save where such act, default or omission was previously approved or requested by the GBT or relate to GBT's interpretation of GBT's act, default or omission); and/or
- the parties both agree (acting reasonably) defending the claim would be purely in the interests of the WCC

9.10 For compensation claims, GBT has some control how the claim is to be dealt with.

9.11 In conclusion, all the Council's costs are covered in all circumstances, including potentially abortive work already or yet to be undertaken.

10. Ward Member Consultation

10.1 The St James's Ward Councillors have been briefed on the proposals in accordance with the Council's procedures.

Appendices List

Appendix 1 (Standard)

Appendix 2 (Nabarro Report)

Appendix 3 Douglas Edwards QC and Stephanie Knowles Opinion September 2014

Appendix 4 Andrew Tate QC opinions dated 3 March 2016 and 17 March 2016.

**If you have any queries about this Report or wish to inspect any of the
Background Papers please contact:
Graham King gking@westminster.gov.uk
Philip Owen powen@westminster.gov.uk**

This report consists of exempt and non-exempt information. The exempt information is contained in Appendices 3 to 4 and is exempt by virtue of para 3 of Schedule 12A of the Local Government Act 1972 (as amended) in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).

1. Resources Implications

City of Westminster Costs met by GBT

2. Business Plan Implications

None

3. Risk Management Implications

None see above

4. Health and Wellbeing Impact Assessment including Health and Safety Implications

Not relevant to this report

5. Crime and Disorder Implications

Issues dealt with through planning approval

6. Impact on the Environment

Issues dealt with through planning approval

7. Equalities Implications

See 1 above

8. Staffing Implications

See 5 and 6 above

9. Human Rights Implications

See 5 and 6 above

10. Energy Measure Implications

See 5 and 6 above

11. Communications Implication

Appendix 2

DATED _____

REPORT

relating to land at Temple Place, Westminster and the Garden
Bridge



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REPORT

Land at Temple Place, Westminster and the Garden Bridge

1. ADDRESSEE

The Lord Mayor and Citizens of the City of Westminster of Westminster City Hall, 64 Victoria Street, London, SW1E 6QP ("**you**").

2. BACKGROUND AND EXECUTIVE SUMMARY

2.1 Background

2.1.1 The Garden Bridge Trust ("**GBT**") wish to construct a bridge over the River Thames connecting the Victoria Embankment and Temple Underground Station on the north bank of the Thames with The Queen's Walk on the south bank.

2.1.2 Westminster City Council (the "**Council**") is the freehold owner of land at Temple Place, the forecourt area around Temple London Underground Station and the Victoria Embankment and London Underground Limited are freeholders of Temple London Underground station (including the roof terrace above it).

2.1.3 The construction of the Garden Bridge will interfere with various rights benefitting adjoining owners. GBT has not been able to secure releases from each of the affected third parties. GBT has therefore requested that the Council uses s203 of the Housing and Planning Act 2016 to override these rights.

2.1.4 Therefore London Underground Limited and the Council have agreed with GBT to grant various leases and underleases to enable the Trust to construct the bridge.

2.1.5 This report summarises the various property documents required for this transaction.

2.2 Executive Summary

2.2.1 The proposed transaction is required for two reasons:

- (a) So that the rights that will be affected by the Garden Bridge will be overridden by s203; and
- (b) So that GBT can obtain a property interest in the land to be occupied by the Garden Bridge.

2.2.2 For the purposes of using the powers contained in s203 and deciding to acquire/appropriate land for planning purposes, you are relying on the following:

- (a) The Report on Title, provided by Bircham Dyson Bell, addressed to the Council; Nabarro Note: form of report has been agreed, but this will be updated with up to date official copies and index map search results immediately prior to completion of the Overarching Land Agreement
- (b) The land referencing work carried out by Ardent for which a duty of care letter will be provided to the Council, so you can rely on their work;
- (c) The rights of light review carried out by Savills for which a duty of care letter will be provided to the Council, so you can rely on their work;

(d) Opinion provided by Douglas Edwards QC and Stephanie Knowles dated 22 September 2014; and

(e) Opinions provided by Andrew Tait QC dated 3 March 2016 and 17 March 2016.

2.2.3 In terms of assessing the level of consideration for each of the disposals, you have taken separate advice from BGVA. In order to secure best consideration, we had requested overage provisions. However, GBT have responded to this request by providing a letter explaining why overage would not be appropriate for this transaction. [Note: draft letter provided]

2.2.4 The following documents, required for the transaction, are summarised in this Report:

Document	Parties	Location summary	for Timing
Overarching Agreement	Land (1) LUL (2) the Council (3) GBT (4) GLA	Paragraph 4	As soon as possible after the resolution to acquire/appropriate land for planning purposes has been made.
WCC Airspace Lease	(1) LUL (2) the Council	Schedule 1Part 1	Same day as the Overarching Land Agreement
WCC Compound Lease	(1) LUL (2) the Council	Schedule 1Part 2	Same day as the Overarching Land Agreement
GBT Airspace Lease	(1) the Council (2) GBT	Schedule 2Part 1	Following the exercise of the Put Option
GBT Compound Lease	(1) the Council (2) GBT	Schedule 2Part 2	Following the exercise of the Put Option
GBT Forecourt Lease	(1) the Council (2) GBT	Schedule 4	Following the exercise of the Put Option
GBT Steps and Ramp Lease	(1) the Council (2) GBT	Schedule 3	Following the exercise of the Put Option
Headlease Transfer	(1) the Council (2) LUL	Schedule 7	Following the exercise of the Put Option
Steps and Ramp Transfer	(1) the Council (2) LUL	Schedule 6	Following the exercise of the Put Option
Call Option 1	(1) the Council (2) GLA	Schedule 5Part 2	Following the exercise of the Put Option

Document	Parties	Location summary	for Timing
Call Option 2	(1) the Council (2) GLA	Schedule 5Part 1	Following the exercise of the Put Option
Indemnity Agreement	(1) the Council (2) GBT	Schedule 12	On/before the date you resolve to acquire/appropriate land for planning purposes
Construction and Reliance/Duty of Care documents	Various	Schedule 11	Refer to Schedule 11

Please note that we have not reported on the following documents referred to in the Overarching Land Agreement:

- (a) The GBT Deed of Covenant: This is a document where GBT agrees to comply with certain requirements regarding the underground station. The Council is not a party and it does not affect the Council; and
- (b) The GBT Deeds of Variation: These deeds of variation vary the form of the GBT Airspace Lease, the GBT Compound Lease and the GBT Steps and Ramp Lease, following completion of the Headlease Transfer and the Steps and Ramp Transfer (i.e. when LUL is GBT's landlord). These will affect the Council because they will no longer have an interest in the relevant plots of land.

2.2.5 Each of the Transactions will be entered into, as detailed in the "Timing" column above.

2.2.6 The following properties are affected and are referred to in this Report:

Property	Plan	Comment	Where used
Airspace	Horizontal extent - edged red - 230838/GBT-LEGAL-NL-1111/Rev.A Vertical extent - edged red - 230838/GBT-LEGAL-NL-1121/Rev.A	This is land owned by LUL comprised in Title Number NGL948579.	WCC Airspace Lease – demised to the Council GBT Airspace Lease – demised to GBT Call Option 2 – option for overriding lease granted to GLA Headlease Transfer – WCC Airspace Lease assigned to LUL GBT Deed of Variation – varying the GBT Airspace Lease

Property	Plan	Comment	Where used
Compound	<p>Horizontal extent - edged blue (excluding those parts shown cross-hatched blue but including that part both edged and cross-hatched green) - 230838/GBT-LEGAL-NL-1111/Rev.A</p> <p>Vertical extent - edged blue (including that part both edged and cross-hatched green) - 230838/GBT-LEGAL-NL-1111/Rev.A</p>	<p>This is land owned by LUL comprised in Title Number NGL948579.</p> <p>Area will initially be used as a construction compound for the Development Works</p>	<p>WCC Compound Lease – demised to the Council</p> <p>GBT Compound Lease – demised to GBT</p> <p>Call Option 2 – option for overriding lease granted to GLA</p> <p>Headlease Transfer – WCC Compound Lease assigned to LUL</p> <p>GBT Deed of Variation – varying the GBT Compound Lease</p>
GBT Forecourt	<p>the horizontal and vertical extent - labelled "Prop / Piling Area" - 230838/GBT-LEGAL-NL-1144/Rev.A</p> <p>Horizontal extent - edged red and coloured green and pink - GBT-LEGAL-NL-1311.Rev.A</p>	<p>Three distinct parts, all falling within the Council's two freehold titles NGL929122 and/or NGL891327:</p> <p>(a) Subsoil This is the area where the piling will be located. The full extent of the area required is not yet known. Therefore, there is an ability for the Council to call for a surrender of the parts not required, once the Garden Bridge has been built</p> <p>(b) airspace forming part of the Station Forecourt; and</p>	<p>GBT Forecourt Lease – demised to GBT</p> <p>Call Option 1 - option for overriding lease granted to GLA</p>

Property	Plan	Comment	Where used
	<p>Cross-section profile at any given point between the red lines A – B and C - D on GBT-LEGAL-NL-1311.Rev.A with the dimensions height = Y and width = X</p> <p>where:</p> <p>Y is the vertical distance between the corresponding points on the red lines E - F and G - H on the GBT--LEGAL-NL-1331 Rev A; and</p> <p>X is the horizontal distance between the corresponding points on the red lines between A - B and C - D on GBT-LEGAL-NL-1311.Rev.A;</p> <p>(an example of such cross section - GBT-LEGAL-NL-1332 Rev.A)</p>	<p>(c) airspace forming part of Victoria Embankment the and the,</p>	
Steps and Ramp Site	<p>edged green (excluding the area both edged and cross hatched green) - 230838/GBT LEGAL-NL-1111/Rev.A</p>	<p>This is part of the pavement at Temple Place. It will form part of the steps and ramp leading from Temple Place to the Garden Bridge.</p> <p>This is the whole of the land, subsoil and airspace</p>	<p>Steps and Ramp Transfer – freehold transferred to LUL</p>

Property	Plan	Comment	Where used
GBT Steps and Ramp	horizontal extent (excluding the area both edged and cross-hatched green) - edged green - 230838/GBT-LEGAL-NL-1111/Rev.A vertical extent - edged red and in part coloured orange and cross-hatched red - 230838/GBT-LEGAL-NL-1221/Rev.A	Just part of the airspace and subsoil of the Steps and Ramp Site	GBT Steps and Ramp Lease – demised to GBT Call Option 2 - option for overriding lease granted to GLA

2.2.7 In the event that:

- (a) You receive a challenge to your decision to acquire/appropriate the affected land for planning purposes; you will not be required to exercise the Put Option. If you have not exercised the Put Option by the date which is 18 months after the date of the Overarching Land Agreement, any party can terminate Overarching Land Agreement;
- (b) The GBT Leases fail to complete by 31 December 2021, any party can terminate the Overarching Land Agreement;
- (c) The GBT Leases complete, but the Development Works do not commence by 31 December 2021 or do not complete by 31 December 2025.

2.2.8 GBT are paying all your costs in connection with the transaction (including SDLT payable on the grant of the WCC Airspace Lease and the WCC Compound Lease). We will need BGVA to confirm their fees, which are payable by GBT.

2.3 Use of the Report

2.3.1 This Report is exclusively for your use in connection with the Overarching Land Agreement and the Transactions provided for by it, and not for any other purpose and may not be used or relied on by any third party except where and to the extent that we have agreed in writing to the contrary with that third party.

2.3.2 The benefit of this Report (or any part of it) shall not be shared with or in any way transferred to any party other than you, except with our prior written consent. This Report may be protected from disclosure by legal advice privilege. You may lose the benefit of that privilege if you pass this Report (or any part of it) to a third party.

2.3.3 We do not accept any responsibility to any party other than you in respect of the existence and/or contents of this Report, or in respect of the Overarching Land Agreement and the Transactions provided for by it. We owe no liability to any party other than you for any losses, liabilities, claims and costs suffered by it as a result of this Report, any of its contents, or anything omitted from it, or from any use it makes of it, except to the extent that the law provides otherwise.

3. DEFINITIONS

We have used the following definitions in this Report. Please note these are the same definitions as appear in the Overarching Land Agreement:

"1954 Act"

means the Landlord and Tenant Act 1954 (i.e. the Act which provides security of tenure for business tenancies);

"s233(4)"

means section 233(4) of the Town and Country Planning Act 1990 (an extract of which is at **Schedule 8**);

"s233(4) Requirements"

means in relation to all of the s233(4) Transactions the requirements that:

- (a) the Council is to publish notice of its intention to enter into the s233(4) Transactions for at least two consecutive weeks in a newspaper circulating in Westminster; and
- (b) if the Council receives any objections to entering into any of the s233(4) Transactions, the Council will consider them; and
- (c) the Council has (in its absolute discretion and subject to exercising the Put Option in accordance with this Agreement) duly resolved to proceed with the s233(4) Transactions notwithstanding any objection received or in the absence of any such objection;

"s233(4) Transactions"

means the following disposals:

- (a) GBT Airspace Lease and GBT Compound Lease (and the options to renew contained in those leases);
- (b) GBT Steps and Ramp Lease (and the option to renew contained in that lease);
- (c) GBT Forecourt Lease (and the option to renew contained in that lease);
- (d) Call Option 1 and Call Option 2 (including the options to enter into further leases pursuant to the terms of the Overriding Leases);
- (e) the Steps and Ramp Transfer; and
- (f) the Headlease Transfer;

"s203"

s.203 of the Housing and Planning Act 2016 (this replaces s237 of the Town and Country Planning Act 1990) (an extract of which is at **Schedule 9**);

"Consultant"

means Ove Arup & Partners Limited (company registration number 01312453) whose registered office is at 13 Fitzroy Street, London W1T 4BQ as multi-disciplinary consultant engaged by GBT in relation to the specification and

certification of the Development Works or such other professional consultant as GBT shall engage to carry out such functions;

"Council"

means The Lord Mayor and Citizens of the City of Westminster whose principal office is at Westminster City Hall, 64 Victoria Street, London SW1E 6QP;

"Council Guarantee"

means a guarantee which may be given by the GLA to the Council in relation to the Council Planning Agreement in the agreed form annexed to the Overarching Land Agreement;

"Council Permission"

means the planning permission granted by the Council as Planning Authority with reference 14/05095/FULL dated 22 December 2014 together with all requisite approvals already issued in connection with such permission and any waivers, relaxations or variations of any of the terms as amended, supplemented or replaced from time to time;

"Council Planning Agreement"

means a Planning Agreement which may be entered into by GBT with the Council (in its capacity both as Planning Authority and landowner) and other parties in the agreed form annexed to the Overarching Land Agreement;

"Council Premises"

means the Airspace and the Compound;

"Council Resolution"

means the resolution of the Council to be made by the Council to enter into the Overarching Land Agreement;

"Development Works"

means works to undertake the Garden Bridge;

"Framework Contractor"

means such contractor as GBT engages to undertake the Development Works within Temple Underground Station;

"Garden Bridge"

means a bridge and associated infrastructure to be constructed and installed by or on behalf of GBT in accordance with the Planning Permissions which will span the River Thames between the roof of Temple Underground Station on the north bank of the River Thames and The Queen's Walk on the south bank of the River Thames

"GBT"

means Garden Bridge Trust a charitable company limited by guarantee registered in England and Wales (company number 08755461 and registered charity number 1155246) whose registered office is 50 Broadway, London SW1H 0BL;

"GLA"

means Greater London Authority whose principal office is at City Hall, PO Box 240, Victoria Street, London SW1E 6QP;

"LUL"

means London Underground Limited (registered number 01900907) whose registered office is at Windsor House, 42–50 Victoria Street, London SW1H 0TL;

"LBL Permission"

means the planning permission granted by the London Borough of Lambeth with reference 14/02792/FUL dated 19 December 2014 together with all requisite approvals already issued in connection with such permission and any waivers, relaxations or variations of any of the terms as amended, supplemented or replaced from time to time;

"Main Contractor"

means Bouygues Travaux Public S.A.S. (French company registration number 407 985 308) whose registered office is at 1 avenue Eugène Freyssinet, 78280 Guyancourt, France and Cimolai S.p.A. (Italian company registration number PN82246) whose registered office is at via Unganesca 38, 33170 Pordenone, Italy, who were together engaged by GBT as the main contractor to undertake Development Works (other than Development Works within Temple Underground Station);

"PLA"

means the Port of London Authority;

"PLA Guarantee"

means a guarantee to be given by the GLA to the PLA in relation to the river works licence comprised in the PLA Lease, which will be in an agreed form annexed to the Overarching Land Agreement;

"PLA Agreement for Lease"

means the agreement for lease for the grant of a combined lease and river works licence granted or to be granted (as the context admits) by the PLA to GBT, which will be in an agreed form annexed to the Overarching Land Agreement;

"PLA Lease"

means the lease to be granted pursuant to the PLA Agreement for Lease;

"Planning Agreement"

means an agreement to be entered into by GBT in relation to either or both of the Planning Permissions with the relevant Planning Authority pursuant to section 106 of the Planning Act 1990;

"Planning Permissions"

means the LBL Permission and the Council Permission;

"Railway Assets and Premises"

LUL's underground railway at Temple Underground Station, shown edged red on plan RC-TEMPLE-01;

"Transactions"

means the following disposal:

- (g) WCC Leases;
- (h) GBT Airspace Lease and the GBT Compound Lease (and the options to renew contained in those leases);
- (i) GBT Steps and Ramp Lease (and the option to renew contained in that lease);
- (j) GBT Forecourt Lease (and the option to renew contained in that lease);
- (k) Call Option 1 and Call Option 2 (including the options to enter into further leases pursuant to the terms of the Overriding Leases);
- (l) Steps and Ramp Transfer;
- (m) Headlease Transfer;
- (n) GBT Deeds of Variation; and
- (o) GBT Deed of Covenant.

4. SUMMARY OF TERMS OF OVERARCHING LAND AGREEMENT

The Overarching Land Agreement is to be entered into between (1) LUL (2) the Council (3) GBT and (4) the GLA.

4.1 WCC Leases and Initial Obligations

The Overarching Land Agreement provides:

- 4.1.1 for LUL and the Council to complete the WCC Leases:
 - completion of the WCC Leases is to take place simultaneously with exchange of the Overarching Land Agreement;
- 4.1.2 for the Council to notify the other parties if and when the s233(4) Requirements have been satisfied:
 - however, please note there is no obligation upon the Council to satisfy such requirements;

- 4.1.3 for GBT to notify the other parties as soon as reasonably practicable following the date upon which the parties to the PLA Agreement are ready willing and able to complete that agreement and when the PLA Lease has itself been completed;
- 4.1.4 for the Council to retain absolute discretion as to the control management and regulation of the Roof Terrace pursuant to section 9(3) of the London County Council (general powers) Act 1919 until the GBT Completion Date (see paragraph 4.2.2 of this Report).

4.2 Put Option

The Overarching Land Agreement provides:

- 4.2.1 for the grant of a put option in favour of the Council to require the other parties to the Agreement to enter into and complete the following documents:
- (a) GBT Roof Terrace Leases (including options to renew contained in them/it);
 - (b) GBT Steps and Ramp Lease (together with the options to renew contained in them/it);
 - (c) GBT Forecourt Lease;
 - (d) Call Options;
 - (e) Steps and Ramp Transfer;
 - (f) Headlease Transfer;
 - (g) GBT Deeds of Variation (these relate to the GBT Roof Terrace Leases); and
 - (h) GBT Deed of Covenant,

together the "Put Option Transactions".

Nabarro Note: the reason for the Put Option is to ensure that the Council is not forced to dispose of its land until it is sure it can do so. s233(4) contains additional statutory requirements for the disposal of open space and these have been replicated in the definition of s233(4) Requirements. The Council has absolute discretion as to whether or not to exercise the Put Option referred to above. If it has not done so by the date 18 months after the date of the agreement the agreement can be terminated. Please see paragraph 4.5. However, please note that you are required to notify the other parties if and when the s233(4) Requirements are satisfied.

- 4.2.2 if the Council exercise the Put Option referred to above the Put Option Transactions are to be completed by the parties in the order referred to in clause 4.2 on the latest of the following dates (i.e. the GBT Completion Date):
- (a) five working days after the date of the Overarching Land Agreement;
 - (b) five working days after the Council serves the Option Notice;
 - (c) the date on which either the PLA Lease completes or the parties to the PLA Agreement are already willing and able to complete that lease; and
 - (d) the date of completion of the WCC Leases.

4.3 Confidentiality/freedom of information

The Overarching Land Agreement contains provisions relating to confidentiality and freedom of information:

- 4.3.1 provisions which allow LUL, the GLA and the Council to comply with their respective obligations under the Freedom of Information Act 2000 (and associated regulations) and the Environmental Information Regulations 2004 the provisions allow for the parties to assist and co-operate with each other, requiring (where possible) for the parties to consult with and have due regard to each other in respect of any disclosure;
- 4.3.2 subject to the above, provisions which oblige all parties to the Overarching Land Agreement to keep confidential information received in respect of the other parties to the Overarching Land Agreement and any of their affiliates in strict confidence and secrecy and not to use it unless to allow a party to comply with its obligations under the Overarching Land Agreement and/or, in the case of GBT, for the purposes of the Garden Bridge. The parties may not disclose confidential information to a third party without the prior written consent of all the other parties;
- 4.3.3 GBT may disclose confidential information for the purposes of the Garden Bridge to its employees, contractors, consultants and professional advisers for the purpose of carrying out or advising upon the Garden Bridge.

4.4 General Provisions

The Overarching Land Agreement contains the following general provisions:

- 4.4.1 the Council capacity- the Agreement expressly states that the Council enters into the Agreement only in its capacity as landowner and future landowner and that any other statutory rights powers, discretions, obligations or duties of the Council are unaffected by the Overarching Land Agreement;
- 4.4.2 Interest - where any sum due from the party to the Overarching Land Agreement is not paid within 10 working days, interest is payable at 4% per annum above the base rate of Barclays Bank PLC.
- 4.4.3 Costs- GBT are responsible for and are to pay the Council's costs incurred in relation to the Overarching Land Agreement and the documents to be entered into pursuant to it, but this is subject to a maximum liability of £185,000 (covering legal and surveying costs). In addition GBT will pay any SDLT which the Council may be liable for the grant of the WCC Leases. With the combined purchase price being £340,000 SDLT will be:
 - (a) If LUL exercises an option to tax before the GBT Leases are granted, (i.e. (2% x £100,000) + (5% x £158,000)); and
 - (b) £6,500 - if LUL does not exercise an option to tax before the GBT Leases are granted (i.e. (2% x £100,000) + (5% x £90,000)).

Please note that Nabarro will prepare the SDLT return, but this will need to be signed off by the Council, before we can file it electronically with HMRC.

4.5 **Termination of the Overarching Land Agreement**

4.5.1 The Overarching Land Agreement can be determined in the following circumstances:

- (a) where an Event of Default occurs, any of the non-defaulting parties may serve written notice on the others terminating the Overarching Land Agreement. An Event of Default is either where:
 - (i) a party becomes insolvent; or
 - (ii) a party fails to comply with a written notice regarding a breach of the Overarching Land Agreement, within 10 working days of such notice;
- (b) where the Put Option has not been exercised by the Council by the date which is 18 months after the date of the Overarching Land Agreement, any party can terminate;
- (c) any time after 31 December 2021 if the GBT Leases have not completed, any party can terminate.

4.5.2 Following such termination the parties are not released from liability from any antecedent breach nor can any party require that a Transaction that has been completed be reversed.

4.6 **Construction documents**

GBT agrees to deliver deeds of warranty in favour of the Council from the Main Contractor, the Framework Contractor and the Consultant (including any replacement contractor, framework contractor and consultant, if applicable).

5. **SUMMARY OF THE WCC LEASES**

Details of the terms of the WCC Leases are set out in **Schedule 1**.

6. **SUMMARY OF THE PUT OPTION TRANSACTIONS**

Details of the terms of the Put Option Transactions are set out in the following schedules:

- 6.1 **Schedule 2** – the GBT Roof Terrace Leases (and options to renew);
- 6.2 **Schedule 3** – the GBT Steps and Ramp Lease (and option to renew);
- 6.3 **Schedule 4** – the GBT Forecourt Lease;
- 6.4 **Schedule 5** – the Call Options;
- 6.5 **Schedule 6** – the Steps and Ramp Transfer; and
- 6.6 **Schedule 7** – the Headlease Transfer.

7. RELEVANT STATUTORY PROVISIONS

The relevant Local Government and Planning Act provisions relating to the Transactions are as follows:

- 7.1 s. 227 (read with s.226) of the Town and Country Planning Act 1990 – the Council will be acquiring the Airspace and the Compound for planning purposes;
- 7.2 s.122 of the Local Government Act 1972 – the Council will be appropriating the Steps and Ramp Site and the Forecourt for planning purposes. In addition, if either the Steps and Ramp Site or any part of the Forecourt is open space (i.e. rather than just highway), then s.122(2A) also requires you to:
 - 7.2.1 advertise the proposed appropriation for planning purposes in two consecutive weeks in a newspaper circulating in Westminster; and
 - 7.2.2 consider any objections;
- 7.3 s.233 of the Town and Country Planning Act 1990 – the Council may dispose of land which is held for planning purposes either for a consideration which is not less than the best that can reasonably be retained or with the consent of the Secretary of State;
- 7.4 s.233 (4) – the Council will be disposing of land which is an open space;
- 7.5 s.203 – of the Housing and Planning Act (2016) this provides the powers to override any claim for an injunction in respect of the rights and covenants adversely interfered with as a result of the Garden Bridge;
- 7.6 s.241 of the Town and Country Planning Act 1990 – open space which has been acquired by a local authority for planning purposes may be used by any person in accordance with the planning permission; and
- 7.7 s. 9(3) of the London County Council (General Powers) Act 1919 – this is the Act under which the Council currently maintains the roof terrace (i.e. the surface of the land comprised in the Airspace and Compound).

8. SUMMARY OF PLANNING AGREEMENT TERMS

Nabarro has not advised you on these terms. However, to the extent the provisions relate to the Transactions we have summarised these at **Schedule 10**.

9. SUMMARY OF CONSTRUCTION DOCUMENTS

We have not negotiated GBT's construction documents. However, a very brief summary is included at **Schedule 11**.

10. RELIANCE ON REPORTS

The Reliance/Duty of Care documents are summarised in **Schedule 11**.

11. INDEMNITY AGREEMENT

Before you make the decision to appropriate/acquire the relevant lands for planning purposes, you need an indemnity from GBT. You requested that this was guaranteed by the GLA but the GLA would not agree to this. Instead, GBT has offered an escrow payment, by way of security for its obligations. See **Schedule 12** for further details.

Schedule 1

WCC Leases

Part 1

Property: **Airspace**

Document: **the WCC Airspace Lease**

Parties: **(1) LUL and (2) the Council**

1. PREMISES

The Airspace.

This demise is identical to the demise of the GBT Airspace Lease.

The Council is acquiring an interest in this land for planning purposes, so that s203 can operate to override a claim for rights, restrictions and covenants which would otherwise be adversely affected by the construction of the Garden Bridge. Once the GBT Airspace Lease has been granted, the WCC Airspace Lease will be assigned to LUL (by the Headlease Transfer). The Council will therefore only be the owner of this WCC Airspace Lease for the period from completion of the WCC Airspace Lease (which will be entered into on the same day as the Overarching Land Agreement) until the date of completion of the GBT Airspace Lease (when immediately following the Headlease Transfer will complete).

2. LANDLORD

LUL.

3. TENANT

The Council.

4. TERM

999 years commencing on the date of the WCC Airspace Lease.

The WCC Airspace Lease is to be contracted-out of the security of tenure provisions of the 1954 Act.

5. BREAK CLAUSES

- 5.1 If the Overarching Land Agreement is terminated prior to the grant of the GBT Airspace Lease then either party may determine the WCC Airspace Lease by serving written notice on the other.

- 5.2 On the Break Date (five Business Days after the notice is served) both parties shall be released from all liability under the WCC Airspace Lease.

6. RENT AND PREMIUM

6.1 Annual rent

A peppercorn (if demanded).

6.2 Payable

Annually on each anniversary of the date of the WCC Airspace Lease.

6.3 Interest

Two per cent above National Westminster Bank base rate payable from the due date if not paid within 21 days of the due date.

6.4 Premium

A premium of one hundred and ten thousand pounds (£110,000) is payable as deferred consideration for the grant of the WCC Airspace Lease. This is to be paid on the date of completion of the GBT Airspace Lease subject to receiving payment of this sum from GBT. VAT is payable on the premium if LUL makes an option to tax prior to the grant of the GBT Airspace Lease.

7. RIGHTS GRANTED

- 7.1 The right at all times to pass and re-pass over or through the Steps and Ramp Site to and from the public highway in common with all others similarly entitled with or without workmen and materials, plant, machinery and equipment.
- 7.2 The right at all times to drain surface water into the existing drainage system within Temple Underground Station.

8. RIGHTS RESERVED

- 8.1 The right to enter the Premises as often as may be reasonably necessary with or without workmen and others and all necessary plant, equipment, tools, materials and appliances for such period as shall be reasonably necessary:
- 8.1.1 where the Tenant agrees in the WCC Airspace Lease to permit entry upon the Premises;
 - 8.1.2 to ascertain whether the Tenant is complying or has complied with the Tenant's obligations, covenants and conditions in the WCC Airspace Lease;
 - 8.1.3 to enforce or exercise any of the Landlord's rights or remedies in the WCC Airspace Lease;
 - 8.1.4 to comply with the Landlord's obligations in the WCC Airspace Lease; and
 - 8.1.5 to comply with any requirement of the Landlord under any statute,

the person exercising such right shall:

- 8.1.6 (in cases of emergency):
- (a) as soon as practicable notify the Tenant and any other responsible person from the emergency services that is co-ordinating or participating in the emergency response; and
 - (b) where the emergency is covered by a plan agreed by the Landlord and the Tenant or for the emergency evacuation of the Garden Bridge and/or the Railway Assets and Premises take reasonable steps to ensure that such plan is followed to the extent reasonably practicable; and
- 8.1.7 (except in emergency):
- (a) before commencing the relevant works net any scaffolding with material which is capable of containing any debris or other material used or generated in the course of such works;
 - (b) cause as little damage and inconvenience as reasonably practicable to the Tenant in its use of the Premises;
 - (c) comply with such reasonable conditions as the Tenant may impose in order to mitigate any interference with the use and operation of the Garden Bridge;
 - (d) make good all damage caused to the Premises to the reasonable satisfaction of the Tenant (at the Landlord's cost); and
 - (e) ensure that access (reasonably equivalent to the access rights granted by the WCC Airspace Lease) is preserved to the Premises.
- 8.2 The right to pass and repass on foot at reasonable times on reasonable notice over and along the Premises to access or egress the Compound in common with all others similarly entitled complying with all the above requirements of **paragraph** 8.1.7 above prior to exercise of such right.
- 8.3 The right to use conducting media that may be affixed to that part of the external surface of the Premises directly abutting Temple Place and Temple Underground Station forecourt existing at the date of grant of the WCC Airspace Lease.

9. SERVICE CHARGE AND CONTRIBUTION TOWARDS COMMON COSTS

From and including the date on which the GBT Airspace Lease is granted, the Tenant is to pay to the Landlord on demand a fair and reasonable proportion of any costs of maintenance repair and renewal of any pipe wire cable or other conduit or other structure or thing which is situated at the Premises but which serves the Premises in common with any other land.

Note that during the Council's ownership of the Airspace, there is no service charge or contribution towards common costs to pay.

10. REPAIRS – LANDLORD'S OBLIGATIONS

To repair and keep the Premises and all conduits and pipes in or exclusively serving the same in good and substantial repair and condition.

The Council, as Tenant has no repairing obligations, but note that the Council may still carry out maintenance pursuant to s.9(3) of the London County Council (General Powers) Act 1919.

11. USE

11.1 Until the date the GBT Airspace Lease is granted, not to use the Premises except for the use it is being use as at the date the WCC Airspace Lease is granted (i.e. as open space).

11.2 From and including the date the GBT Airspace Lease is granted until the expiry/determination of the GBT Airspace Lease (including any renewal), not to use the Premises except as part of the Garden Bridge which will be for use by members of the public including for passage, recreation, education and ancillary activities such as fund raising events and activities, maintenance, repair and which will be landscaped and for any service apparatus including such service apparatus as is required to service the Garden Bridge in accordance with the Planning Permissions.

11.3 Change of use

Prohibited.

12. ALTERATIONS

12.1 No alterations are permitted before the GBT Airspace Lease is granted. This will not prevent the Landlord or the Tenant from controlling, managing or regulating the Premises pursuant to section 9(3) of the London County Council (General Powers) Act 1919 or carrying out maintenance and/or repair works to the Premises as the Tenant sees fit.

12.2 From and including the date the GBT Airspace Lease is granted, not to carry out any works, except works carried out under and in accordance with the GBT Airspace Lease.

13. ALIENATION

These alienation provisions (both Landlord and Tenant covenants) are largely intended to protect the application of s203, ensuring that GBT will derive its title from the Council and that the WCC Airspace Lease remains in place even after it has been assigned to LUL.

13.1 Tenant's covenants

13.1.1 While the GBT Airspace Lease (or a renewal of it) is in existence:

- (a) not to surrender the WCC Airspace Lease to the Landlord without the prior written consent of GBT (or its successors);
- (b) not to assign the WCC Airspace Lease to the Landlord without declaration of non-merger;
- (c) not without the prior written consent of GBT (or its successors) to:
 - (i) apply to the Land Registry to close the registered title to the WCC Airspace Lease/ give effect to a surrender / merger; or
 - (ii) take any steps to merge/surrender the WCC Airspace Lease.

- 13.1.2 Assignment, charging, holding on trust, underletting or otherwise parting with possession of the whole or part of the Premises is prohibited, save for an underlease of the whole of the Premises to GBT.
- 13.1.3 On an underletting of the whole, the Tenant is to procure that the undertenant enters into a deed of covenant with LUL (this contains protection provisions for the Railway Assets and Premises). Please note that GBT is providing this deed of covenant when the GBT Airspace Lease is granted.
- 13.1.4 The WCC Airspace Lease will be a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995. The original tenant will not have continuing liability under the WCC Airspace Lease for the remainder of the term after it has assigned its interest in the Premises. Therefore, once the Headlease Transfer has taken place, the Council will have no further liability under the WCC Airspace Lease

13.2 **Landlord's covenants**

While the GBT Airspace Lease (or a renewal of it) is in existence:-

- 13.2.1 not to accept a surrender of the WCC Airspace Lease from the Tenant without the prior written consent of GBT (or its successors);
- 13.2.2 not to accept an assignment of the WCC Airspace Lease from the Tenant without a declaration of non-merger;
- 13.2.3 not without the prior written consent of GBT (or its successors) to:-
- (a) apply to the Land Registry to close the registered title to the WCC Airspace Lease/ give effect to a surrender / merger; or
 - (b) take any steps to merge/surrender the WCC Airspace Lease.

14. **VAT**

We have been told that the landlord or a relevant associate within the meaning of Schedule 10 to the Value Added Tax Act 1994 has not properly opted to tax under Schedule 10 to the Value Added Tax Act 1994 having effect in relation to the Premises. [*Nabarro Note: we believe from previous discussions that LUL have not opted to tax, but we need them to confirm this.*]

15. **RIGHTS OF RE-ENTRY**

There is no right of re-entry in the WCC Airspace Lease.

Schedule 1

WCC Leases

Part 2

Property: Compound

Document: the WCC Compound Lease

Parties: (1) LUL and (2) the Council

1. INTRODUCTION

The WCC Compound Lease is on similar terms to the WCC Airspace Lease. We have set out below how the WCC Compound Lease differs from the WCC Airspace Lease.

2. PREMISES

The demise is the Compound

3. RIGHTS GRANTED

- 3.1 The right to pass and repass over the Steps and Ramp Site to and from the public highway includes a right over the Airspace.
- 3.2 There is an additional right of access to the areas edged and cross-hatched blue on plan 230838/GBT-LEGAL-NL-1111/Rev.A (i.e. the air vents) (the "**Excluded Areas**") to comply with the Tenant's obligations.

4. RIGHTS RESERVED

- 4.1 The right for the Landlord to pass on foot over the Premises to gain access to the Compound extends to gaining access to the Excluded Areas.
- 4.2 There is no right to use any conducting media affixed to that part of the external surface of the Premises.
- 4.3 There is an additional right for the Landlord to vent exhaust gas over the Premises through the vents from time to time installed in the Excluded Areas.
- 4.4 A premium of two hundred and thirty thousand pounds (£230,000) is payable as deferred consideration. This is to be paid on the date of completion of the GBT Compound Lease subject to receiving payment of this sum from GBT. VAT is payable on the premium if LUL makes an option to tax prior to the grant of the GBT Compound Leases.

5. USE

The permitted use also includes the use as the building compound area during the initial construction of the Garden Bridge.

Schedule 2

GBT Roof Terrace Leases

Part 1

Property: **Airspace**

Document: **GBT Airspace Lease**

Parties: **(1) the Council and (2) GBT**

1. **PREMISES**

Airspace.

2. **TERM**

200 years calculated from and including the date of the GBT Airspace Lease.

3. **EXCLUDED FROM THE 1954 ACT?**

Yes.

4. **RENT AND PREMIUM**

4.1 Peppercorn.

4.2 A premium of one hundred and ten thousand pounds (£110,000) is payable on completion of the GBT Airspace Lease.

5. **REPAIR**

5.1 **Tenant's covenants**

5.1.1 To repair and keep the Property and all conduits and pipes in or exclusively serving the Property in good and substantial repair and condition.

5.1.2 To keep the Property in such a condition as is necessary to:

- (a) ensure the structural integrity of the Garden Bridge;
- (b) comply with statute;
- (c) ensure the safe use of the Garden Bridge for the permitted use; and
- (d) prevent any damage to the land belonging to the LUL not forming part of the Property (the "**Adjoining Premises**") and/or the Railway Assets and Premises.

5.2 The Tenant must take reasonable precautions to ensure no materials, debris or plant brought onto the Property enters the Adjoining Premises and/or the Railway Assets and

Premises. If it does, the Tenant is to use reasonable endeavours to remove it as soon as reasonable practicable.

5.3 Landlord's covenants

- 5.3.1 Not to allow the Adjoining Premises or any buildings on or within them to fall into disrepair so as to interfere with the safe and efficient operation of the Garden Bridge.
- 5.3.2 Not to erect any structure on the Adjoining Premises which (in the reasonable opinion of the Tenant) would prejudice the health and natural growth of the garden and planting in place on the Garden Bridge.
- 5.3.3 To keep those parts of the Adjoining Premises over which the Tenant enjoys rights in a safe state of repair and condition as is required to enable the Tenant to safely exercise its rights.
- 5.3.4 Not to do anything which weakens the support or safety or stability of the Property and/or the Garden Bridge.
- 5.3.5 Not to claim against the Tenant for the natural run off of water from the Garden Bridge.

6. USER

- 6.1 Permitted use: use of the Property as part of the Garden Bridge to be used by members of the public including for passage, recreation, education and ancillary activities such as fund raising events and activities, maintenance, repair and which will be landscaped and for any service apparatus including such service apparatus as is required to service the Garden Bridge;
- 6.2 The Tenant must not:
 - 6.2.1 do anything nor use the Property in a manner which injures the Adjoining Premises; or
 - 6.2.2 use the Property in a manner which creates a nuisance or damage to the Landlord or occupiers of any Adjoining Premises.

7. RIGHTS GRANTED

The rights mirror those granted to the Council in the WCC Airspace Lease.

8. RIGHTS RESERVED

The rights reserved mirror those reserved to LUL in the WCC Airspace Lease.

9. ALTERATIONS

- 9.1 Unless required for safety reasons, the Tenant must not to carry out any structural alterations or additions to the Property without the written consent of the Landlord (such consent not to be unreasonably withheld or delayed).

- 9.2 Such alterations must be in accordance with drawings, specifications and plans previously submitted to and approved by the Landlord in writing (such approval not to be unreasonably withheld or delayed).
- 9.3 The Tenant shall:
- 9.3.1 comply with application statutes;
 - 9.3.2 give reasonable notice in writing to the Landlord prior to start of any works (except in circumstances where emergency works are required for the safety of the Garden Bridge); and
 - 9.3.3 use reasonable endeavours to ensure that any works are carried out with as little interference to the Landlord as is reasonably practicable; and
 - 9.3.4 use reasonable endeavours to ensure that any works are carried out without damage to the Adjoining Premises.

10. ALIENATION

10.1 Assignment

- 10.1.1 Assignment of whole permitted – Yes, with the Landlord's prior written consent (not to be unreasonably withheld). The following will be conditions of assignment:
- (a) the Tenant must assign its leases of the whole of the remainder of the Garden Bridge to the same assignee at the same time;
 - (b) in the Landlord's reasonable opinion the assignee must be of sufficient financial standing to enable it to comply with the tenant's covenants and conditions contained in the GBT Airspace Lease;
 - (c) the Tenant must enter into an authorised guarantee agreement, except that the original Tenant under the GBT Airspace Lease (i.e. GBT), will not have to enter into authorised guarantee agreement; and
 - (d) the assignee must enter into a deed of covenant directly with LUL (to protect the Railway Assets and Premises).
- 10.1.2 Assignment of part permitted – No.
- 10.1.3 The Tenant cannot assign its leases of any other part of the Garden Bridge unless it is to the same person who takes an assignment of the GBT Airspace Lease. The Tenant will register a restriction on the registered titles to the Garden Bridge to this effect. This means that the Garden Bridge can only be sold as a whole.

10.2 Underletting

- 10.2.1 Underletting of whole permitted – Yes, with the Landlord's written consent to the identity of the proposed undertenant and to the terms of the proposed underlease (such consent not to be unreasonably withheld).
- 10.2.2 The Landlord will not be required to give consent unless (in the case of an underletting for longer than 10 years):
- (a) the Tenant also underlets the whole of the remainder of the Garden Bridge to the same undertenant at the same time and only with the written approval of all the

landlords of the remainder of the Garden Bridge (where required under the terms of the Tenant's other leases); and

- (b) the undertenant has:
 - (i) entered into a covenant with the Landlord to comply with the terms of its underlease; and
 - (ii) if reasonably required by the Landlord, procured a guarantee of the performance of the undertenant's obligations under that covenant entered into by a guarantor for the undertenant reasonably acceptable to the Landlord.

10.2.3 Notwithstanding the above, the Tenant shall be able to grant a sub-underlease of part of the south landing building of the Garden Bridge (not comprising any part of the Property) to be made between (1) the Tenant and (2) Coin Street Community Builders Limited following practical completion of the Garden Bridge.

10.3 **Sharing**

The Tenant can share occupation with a permitted entity (being the list of government-related entities set out in the GBT Airspace Lease).

10.4 **Charging**

The Tenant can charge the GBT Airspace Lease provided that it also charges its leases of the remainder of the Garden Bridge at the same time.

11. **YIELDING UP**

11.1 The Tenant shall within 30 months of the end of the Term (or a longer period if the parties agree) remove the part of the Garden Bridge and all signs and tenant's fixtures and fittings and furniture making good any damage to the Property.

11.2 However, the Tenant will not be under any obligation to comply with **paragraph** 11.1 if:

11.2.1 the respective landlords across the entire Garden Bridge agree, at least six months before the end of the Term, to the Garden Bridge remaining in its entirety; or

11.2.2 the Landlord notifies the Tenant at least six months before the end of the Term that it does not require it to be removed.

11.3 If the Tenant is under an obligation under a lease of another part of the Garden Bridge to remove that part of the Garden Bridge, the Tenant will be permitted to remove the part of the Garden Bridge upon the Property.

12. **BREAK CLAUSES**

12.1 Either Landlord or Tenant can terminate the GBT Airspace Lease (by serving notice on the other) if:

12.1.1 the Development Works (excluding preliminary works):

- (a) do not commence by the 31 December 2021;
- (b) have not practically completed by 31 December 2025; or

- 12.1.2 the Tenant's leases of the rest of the Garden Bridge (or a large section of the remainder of the Garden Bridge) are surrendered, forfeited or otherwise terminated and the Tenant has not within 12 months of the end of such lease taken a new lease).
- 12.2 The Tenant can terminate the GBT Airspace Lease (by serving notice on the Landlord):
- 12.2.1 at any time before the start of the Development Works (excluding any preliminary works);
or
- 12.2.2 at any time following commencement of the Development Works (excluding any preliminary works) but before practical completion of the Development Works.
- 12.3 Different notice periods apply to these breaks:
- 12.3.1 The break date following service of a notice pursuant to **paragraphs** 12.1.1(a) and 12.2.1 is not more than six months after the service of the notice.
- 12.3.2 The break date following service of a notice pursuant to **paragraphs** 12.1.1(b), 12.1.2 and 12.2.2 is not more than 12 months after the service of the notice.

13. INSURANCE

- 13.1 The Tenant covenants to insure:
- 13.1.1 that part of the Garden Bridge within the Property for the full reinstatement cost and will note the Landlord's interest on the policy. However, whilst the Garden Bridge is being constructed the contractor is permitted to insure as long as the Tenant's and Landlord's interest is noted on its insurance;
- 13.1.2 against property owner's public liability with an annual level of liability of not less than fifty million pounds (£50,000,000).
- 13.1.3 if the Tenant is in breach of its obligations to insure, the Landlord is entitled to insure at the Tenant's cost.

13.2 Insured Risks

Fire, storm, tempest, flood, earthquake, subsidence, heave, landslip, lightning, explosion, impact, aircraft (other than hostile aircraft) and other aerial devices and articles dropped therefrom, riot, civil commotion, malicious damage or damage caused as a result of terrorist activity, bursting or overflowing of water tanks apparatus or conduits, theft, accidental damage and such other risks as the Tenant may from time to time reasonably determine.

13.3 Reinstatement

If all or part of the Garden Bridge is damaged or destroyed, to use reasonable endeavours to obtain all consents and approvals required to make those parts of Garden Bridge on the Property safe pending reinstatement or removal; diligently make Garden Bridge safe and stable and either reinstate or remove in accordance with the Tenant's yielding up provisions; and to keep the Landlord informed as to compliance with its reinstatement obligations and whether it intends to reinstate or remove those parts of Garden Bridge that are on the Property.

14. OPTION TO RENEW

- 14.1 If the remaining parts of the Garden Bridge are still subsisting, the Tenant exercises an option to renew the GBT Airspace Lease. The option must be exercised not more than six months and not less than 1 month prior to the expiry of the Term.
- 14.2 Any further lease will be:
- 14.2.1 for a term of 60 years or a shorter time as notified by the Tenant to the Landlord;
- 14.2.2 at the same level of rent as is payable at the expiry of the term of the GBT Airspace Lease (i.e. £nil);
- 14.2.3 on the same terms as the GBT Airspace Lease.
- 14.3 The Landlord will not be required to grant a further lease of the Property to the Tenant:
- 14.3.1 that extends beyond 1 January 3015 (i.e. this is the limit of the term of the WCC Airspace Lease);
- 14.3.2 if the Tenant has not supplied the Landlord with evidence that the Garden Bridge is capable of compliance with **paragraph 5.1.2**;
- 14.3.3 if the Tenant fails to provide contracting out documents for the security of tenure provisions of the 1954 Act.

Schedule 2

GBT Roof Terrace Leases

Part 2

Property: Compound

Document: GBT Compound Lease

Parties: (1) the Council and (2) GBT

1. INTRODUCTION

The GBT Compound Lease is on similar terms to the GBT Airspace Lease. We have set out below how the GBT Compound Lease differs from the GBT Airspace Lease.

2. PREMISES

Compound.

3. RENT AND PREMIUM

A premium of two hundred and thirty thousand pounds (£230,000) is payable by the Tenant on the grant of the GBT Compound Lease.

4. PERMITTED USE

The permitted use also includes the use as the building compound area during the initial construction of the Garden Bridge.

5. RIGHTS GRANTED

The rights granted mirror the rights granted in the WCC Compound Lease (rather than the WCC Airspace Lease).

6. RIGHTS RESERVED

The rights reserved mirror the rights reserved in the WCC Compound Lease (rather than the WCC Airspace Lease).

Schedule 3

GBT Steps and Ramp Lease

Property: GBT Steps and Ramp

Document: GBT Steps and Ramp Lease

Parties: (1) the Council and (2) GBT

1. INTRODUCTION

The GBT Steps and Ramp Lease is on similar terms to the GBT Airspace Lease. We have set out below how the GBT Steps and Ramp Lease differs from the GBT Airspace Lease.

2. PREMISES

2.1 GBT Steps and Ramp

2.2 The Property is demised with full title guarantee.

3. PREMIUM

3.1 A premium of thirteen thousand pounds (£13,000) is payable by the Tenant on the grant of the GBT Steps and Ramp Lease.

3.2 the Council will keep this Premium.

4. PERMITTED USE

4.1 To provide access to the Garden Bridge, which will be used by members of the public.

4.2 For the storage of refuse bins for garden waste arising from the operation and management of the Garden Bridge.

5. RIGHTS GRANTED

These are the same rights as granted in the Transfer of the Steps and Ramp.

6. RIGHTS RESERVED

6.1 The right of support from the Property.

6.2 Unlike the GBT Roof Terrace Lease, there are no rights reserved to:

6.2.1 pass on foot over and along the Property to access any adjoining terrace;

6.2.2 use conducting media affixed to the Property.

Schedule 4

GBT Forecourt Lease

Property: Forecourt

Document: GBT Forecourt Lease

Parties: (1) The Lord Mayor and Citizens of the City of Westminster and (2) Garden Bridge Trust

1. INTRODUCTION

The GBT Forecourt Lease is on similar terms to the GBT Airspace Lease. We have set out below how the GBT Forecourt Lease differs from the GBT Airspace Lease.

2. PREMISES

The Forecourt.

3. RENT AND PREMIUM

3.1 A rent is payable under the GBT Forecourt Lease, which is the same as the rent payable under the PLA Lease. This is as follows:

3.1.1 Until the Garden Bridge is open for use by members of the public (the "**Start Date**") the rent of a peppercorn.

3.1.2 From the Start Date 5% of the Net Income.

3.1.3 "**Net Income**" means the amount by which the total of the:

(a) Receipts from the Garden Bridge; and

(b) surplus (less any allowances for unforeseen expenditure) exceeds the total of:

(i) the expenditure incurred; and

(ii) any shortfall (where expenditure exceeds receipts (less any unspent surplus)).

3.2 A premium of eighteen thousand pounds (£18,000) is payable by the Tenant on the grant of the GBT Forecourt Lease.

4. ADDITIONAL DEFINITIONS

"Adjoining Premises"

means:

(p) the land comprising a 5 metre strip abutting the western, northern and eastern boundaries of the Property (to the extent they comprise land in the Retained Land); and

- (q) such parts of the Retained Land which are currently public highway, but which become non-highway land;

"Retained Land"

means the land comprised in title numbers NGL929122 and NGL891327 (i.e. the land at Temple Place and Temple Underground Station forecourt which is owned by the Council);

5. REPAIR

The Tenant's covenant to prevent any damage applies to the Retained Land. The Tenant is subject to an additional covenant to make good any damage caused to the Retained Land.

The Landlord's repairing covenant, it is to keep the Retained Land (rather than then Adjoining Premises) in a state of repair necessary for the Tenant to enjoy its rights over it.

6. RIGHTS GRANTED

- 6.1 To pass over the Adjoining Premises to and from the public highway.
- 6.2 Of support from the subsoil comprised in the Adjoining Premises.
- 6.3 To enter and remain upon such part of the Retained Land to ensure compliance with the GBT Forecourt Lease.
- 6.4 To display signage on the Retained Land in a location and of a size and nature to be agreed between the parties (acting reasonably).
- 6.5 To lay, repair, maintain and/or renew service media, on or under the Retained Land in a location to be agreed between the parties (acting reasonably) and the passage of services along and through such service media.

7. RIGHTS RESERVED

There is an additional right of support from the Property.

8. COMPLIANCE WITH STATUTE

The Tenant also covenants to comply with the planning agreements relating to works carried out, the Property and its use.

9. YIELDING UP

The Tenant does not have to remove the piled foundation and transfer beam, in connection with the Tenant's obligations to remove the Garden Bridge.

10. SURRENDER OF UNUSED SUBSOIL

- 10.1 Following issue of the certificate confirming the construction of Garden Bridge is complete the Landlord may give notice to the Tenant requiring the Tenant to surrender part of the GBT Forecourt Lease insofar as it relates to such part of the subsoil shown coloured purple on the plan GBT-LEGAL- NL-1144/Rev.A contained within the Property which are not occupied by the foundations, piled foundations or transfer beam as built (the "**surrendered property**"). The Tenant shall prepare plans showing the extent of the surrendered property and property and no later than three months following the date of the Landlord's notice the parties shall enter into a deed of surrender and variation of the GBT Forecourt Lease ("**Deed**").
- 10.2 The Deed gives a reciprocal release in respect of the surrendered property. No apportionments of rent is to be made and the GBT Forecourt Lease is to be varied to take account of the surrender

11. ALIENATION

As an additional requirement for underletting, the Tenant is permitted to underlet the whole of the Property with the Landlord's prior written consent (not to be unreasonably withheld) by way of an Approved Underlease (meaning a lease excluding the security of tenure provisions of the 1954 Act, at a yearly rent of not less than the rent payable under the GBT Forecourt Lease (and which prohibits further underletting).

12. CONSTRUCTION AREA

The Tenant is permitted to occupy certain areas shown on plan GBT-LEGAL- NL-1412 during the construction period. *[Nabarro Note: The drafting for this has not yet been provided, so this will be updated when it is agreed.]*

Schedule 5

Call Options

Part 1

Property: The Airspace, Roof Terrace and steps and ramp (the "Property")

Document: Option Agreement 2

Parties: (1) the Council and (2) GLA

Please note that as soon as this Call Option is granted, the Council will transfer its interest in the Airspace, the Compound and the Steps and Ramp to LUL. Once it has transferred such interests, the Council's liability under Call Option 2 will cease. Therefore, the contents of this document are not so important for the Council

1. THE OPTION

- 1.1 the Council grants GLA the right at any time to require the Council to grant an overriding leases to either the GLA or a permitted nominee (the "**Option**") of the Airspace, the Compound and the GBT Steps and Ramp (the "**Option 2 Overriding Leases**").
- 1.2 The Option will cease to apply on the earlier of either:
- 1.2.1 the end of the term of the GBT Leases (which for purpose of the summary of the Call Option 2 will mean all the GBT Leases other than the GBT Forecourt Lease which is dealt with in the summary of the Call Option 1);
- 1.2.2 GBT being released from on-going liability under those guarantees listed in the Agreement whereby the GLA guarantee the GBT's obligations contained in various planning agreements (the "**Guarantees**")
- 1.3 The Option is conditional on either:
- 1.3.1 the GLA receiving notice from the counter-party under any of the Guarantees:
- (a) requiring performance of obligations contained in the Guarantees;
 - (b) putting the GLA on notice that the counter-party will take steps to procure performance of those obligations contained in the Guarantees if the GLA fail to do so;
- 1.3.2 the Council taking steps to forfeit any lease under which GBT is the tenant of part of the Garden Bridge.
- 1.3.3 If the Council grant to GBT a renewal of any of the GBT Leases it will, if required by GLA, enter into a further option agreement in relation to the renewed leases on the same terms as this Option Agreement.

2. EXERCISING THE OPTION

- 2.1 To exercise the Option the GLA is required to serve a notice on the Council (the "**Option Notice**").

- 2.2 The GLA is granted an irrevocable power of attorney by the Council for the sole purpose of signing the notice of exercise of the Option for the Council.
- 2.3 The GLA may require the Option 2 Overriding Leases are granted to a permitted nominee rather than to itself provided that:
 - 2.3.1 the proposed permitted nominee falls within the definition contained in the Agreement or the entity has been previously approved as a permitted nominee by the Council;
 - 2.3.2 the permitted nominee also takes the other overriding leases which are to be granted pursuant to the other option agreements entered into between the GLA and other landowners of other parts of the Garden Bridge (the "**Other Option Agreements**");
 - 2.3.3 certain steps are complied with to ensure that the Option 2 Overriding Leases are contracted out of the 1954 Act.
- 2.4 On a valid exercise of the Option, the Council will be bound to grant to the GLA (or a permitted nominee as the case may be) the Option 2 Overriding Leases.

3. COMPLETION OF THE OVERRIDING LEASES

- 3.1 The completion of the Option 2 Overriding Leases shall take place 20 working days after the exercise of the Option unless the overriding lease is to be granted to a permitted nominee, in which case it will be after the later of:
 - 3.1.1 the expiry of 20 working days after the exercise of the Option; or
 - 3.1.2 the date when the Council has approved the permitted nominee entity.
- 3.2 There are standard conditions of sale which will apply to the grant of the Option 2 Overriding Leases.
- 3.3 The Council will not be required to complete the Option 2 Overriding Leases if the GLA does not exercise its option under the Other Option Agreements.
- 3.4 The Option 2 Overriding Leases are to be granted for the remainder of each term under the corresponding GBT Leases plus three days.
- 3.5 Where any of the GBT Leases are varied before the grant of the Option 2 Overriding Leases, the Council agree to make such amendments as are necessary to the relevant overriding lease to reflect the changes made to the corresponding GBT Lease.

4. 1954 ACT

The Option 2 Overriding Leases are to be granted pursuant to this Option Agreement will be contracted out of the 1954 Act.

5. BREACHES

If the GBT breaches the GBT Lease then the Council agree to provide notice of such actual or alleged breach to both the GBT but also the GLA.

6. CONSENT TO CHARGE

The Council gives its consent to the GBT entering into a legal charge and debenture over the GBT Leases provided that GLA takes the benefit of a similar legal charge of each of GBT's Leases of the remaining parts of the Garden Bridge.

7. LIABILITY OF THE COUNCIL

The Council's liability under this Option Agreement will terminate in relation to each of the premises demised by the GBT Lease when the Council transfers the Steps and Ramp Lease and/or the Council Headleases (being the WCC Airspace Lease and the WCC Compound Lease).

8. OVERRIDING GBT LEASES

The Option 2 Overriding Leases are to take the same form as the Option 1 Overriding Lease, provided that the terms which are referred to as being the same as the GPE Forecourt Lease will be the same as the GBT Leases (as applicable).

Schedule 5

Call Options

Part 2

Property: Forecourt

Document: Option Agreement 1

Parties: (1) the Council and (2) GLA

1. THE OPTION

- 1.1 GLA may call for the Council to grant an overriding lease (the "**Option 1 Overriding Lease**") to either the GLA or a permitted nominee of GBT Forecourt (the "**Option**").
- 1.2 A permitted nominee will be any of the following (1) Transport for London (2) Department for Transport (3) any department or agency established under the Greater London Authority Act 1999 (4) any Secretary of State, Government Minister, Government Department or Crown Body (5) any local authority established under the Local Government Act 1963 (6) City Bridge Trust or (7) such other person as the GLS may nominate and the Council shall approve.
- 1.3 The Option will cease to apply on the earlier of either:
- 1.3.1 the end of the term of the GBT Forecourt Lease; or
- 1.3.2 GBT being released from on-going liability under those guarantees listed in the Agreement whereby the GLA guarantee GBT's obligations contained in various planning agreements (the "**Guarantees**").
- 1.4 The Option is conditional on either:
- 1.4.1 the GLA receiving notice from the counter-party under any of the Guarantees:
- (a) requiring performance of obligations contained in the Guarantees;
 - (b) putting the GLA on notice that the counter-party will take steps to procure performance of those obligations contained in the Guarantees if the GLA fail to do so, or
- 1.4.2 the Council taking steps to forfeit any lease under which GBT is the tenant of part of the Garden Bridge.
- 1.5 The GLA needs to give notice to the Council that the conditions set out in **paragraph 1.4** have been satisfied before the Option can be exercised.
- 1.6 The purpose of this document is to ensure that GLA, who is providing financial assistance to GBT and guaranteeing maintenance obligations under the s.106 Agreements will be able to call for leases of the Garden Bridge, identical to each of GBT's leases of the Garden Bridge in the event the Guarantees are called upon, without having to foreclose on its mortgage with GBT.

2. EXERCISING THE OPTION

- 2.1 To exercise the Option the GLA is required to serve a notice on the Council in the agreed form by recorded delivery (the "**Option Notice**").
- 2.2 The GLA may require the Option 1 Overriding Lease is granted to a permitted nominee rather than to itself provided that:
- 2.2.1 the proposed permitted nominee falls within the definition contained in the Agreement or the entity has been previously approved as a permitted nominee by the Council;
- 2.2.2 the permitted nominee also takes the other overriding leases which are to be granted pursuant to the other option agreements entered into between the GLA other landowners in relation to other parts of the Garden Bridge (the "**Other Option Agreements**");
- 2.2.3 certain steps are complied with to ensure that the Option 1 Overriding Lease is contracted out of the 1954 Act.
- 2.3 On a valid exercise of the Option, the Council will be bound to grant to the GLA (or a permitted nominee as the case may be) the Option 1 Overriding Lease.

3. COMPLETION OF THE OVERRIDING LEASE

- 3.1 The completion of the Option 1 Overriding Lease shall take place 20 working days after the exercise of the Option unless the overriding lease is to be granted to a permitted nominee, in which case it will be after the Council has approved the permitted nominee entity.
- 3.2 The Council will not be required to complete the Option 1 Overriding Lease:
- 3.2.1 if the GLA does not exercise its option under the Other Option Agreements;
- 3.2.2 unless the GLA is willing to enter into an agreement with the planning authority in relation to the Option 1 Overriding Lease (and any other such overriding lease granted by the other owners of the parts of the land and airspace on which the Garden Bridge is to be built) on similar terms as those planning agreements to which the Guarantees relate.
- 3.3 The Option 1 Overriding Lease is to be granted for the remainder of the term left under the GBT Forecourt Lease plus three days.

4. ENCUMBRANCES

- 4.1 The Council cannot create any encumbrances (such as, but not limited to, any easement, restrictive covenant or lease) over its land whilst the Option is valid without the consent of the GLA. However, the GLA will be not be required to give its consent if to do so would affect the Council's ability to grant the Option 1 Overriding Lease in accordance with the Option Agreement.
- 4.2 The Council shall notify the GLA as soon as reasonably practical after it enters into any dispositions of the Property. On a transfer or grant of reversionary lease, the Council must ensure:
- 4.2.1 the disponent enters into a deed of covenant in the agreed form with the GLA; and

- 4.2.2 notice is given to the GLA before any certificate is provided under any restriction in relation to the Council's titles.
- 4.3 The GLA is permitted to register a restriction on those the Council's titles set out in the Agreement preventing any disposition of the registered estate without a certificate being provided confirming that the provisions of the Option Agreement have been complied with. The form of the restriction differs depending if the disponsee is a local authority or other governmental body.
- 4.4 Any such restriction will be removed if the Option ceases to apply. If the GLA do not make an application to remove the restrictions within six months of the Option ceasing to apply, then the Council can make an application to the Land Registry to do so.
- 4.5 The restriction on creating any encumbrances limits how the Council can use the Property whilst the Option is in existence. Please note the Option may not be exercised for some time so the ability for the Council to use its land as it wishes will be curtailed until such time as the Option falls away or is exercised.

5. 1954 ACT

The Option 1 Overriding Lease is to be granted pursuant to this Option Agreement will be contracted out of the 1954 Act.

6. BREACHES

If the GBT breaches the GBT Forecourt Lease then the Council agree to provide notice of such actual or alleged breach to both the GBT but also the GLA.

7. CONSENT TO CHARGE

The Council gives its consent to the GBT entering into a legal charge and debenture over the GBT Forecourt Lease provided that particular clauses in the GBT Lease are complied with.

8. LIABILITY OF THE COUNCIL

If the Council comply with the provisions of the Option Agreement which apply on either a transfer or on a grant of a reversionary lease, the Council will cease to have liability under this Option Agreement in relation to the GBT Forecourt Lease once the Council transfers the reversion of the GBT Forecourt Lease to another person.

OVERRIDING LEASE

9. PARTIES

- 9.1 Landlord: the Council or the current landlord of the GBT Forecourt Lease at the time the Option is exercised.

9.2 Tenant: the GLA or a permitted nominee (see **paragraph 2.2** above).

10. CONTRACTUAL TERM

The same number of years remaining under the GBT Forecourt Lease with an additional three days.

11. RENT

The rent will be calculated on the same basis as the GBT Forecourt Lease.

12. RIGHTS AND RESERVATIONS

The rights and reservations will be the same as in the GBT Forecourt Lease.

13. TENANT COVENANTS

The tenant covenants are same as in the GBT Forecourt Lease.

14. LANDLORD COVENANTS

The Landlord covenants are same in as the GBT Forecourt Lease provided that:

- 14.1 the Landlord cannot take steps to enforce any rights or remedies under the GBT Forecourt Lease without giving the Tenant reasonable prior written notice of its intention to do so and allowing the Tenant reasonable time (being not less than six months) to remedy such breach; and
- 14.2 not to exercise any rights of forfeiture or take steps to enforce any breaches against the GBT under the GBT Forecourt Lease nor to enforce the GBT's obligations as tenant under the GBT Forecourt Lease provided that the Landlord may seek to recover an amount due from the GBT for any period before the date of this Option 1 Overriding Lease without taking any steps to forfeit the GBT Forecourt Lease.

Schedule 6

Steps and Ramp Transfer

Property: Steps and Ramp Site
Document: Transfer (including the option to transfer back)
Parties: (1) the Council and (2) LUL

1. PROPERTY

Steps and Ramp Site

2. PURCHASE PRICE

Nil.

3. RIGHTS AFFECTING THE PROPERTY

3.1 The following rights are granted for the benefit of the Property:

- 3.1.1 a right of way in common with others through the Adjoining Premises (i.e. any parts of Temple Place which fall within that part of title number NGL891327 which cease to be publicly adopted) between the public highway, the Property and the Garden Bridge. This is to ensure that the Property (and therefore the Garden Bridge) is always accessible from the highway along Temple Place;
- 3.1.2 a right of support from the subsoil within the Retained Land (i.e. that part of title number NGL891327 retained by the Transferor);
- 3.1.3 the right to drain surface water over the Adjoining Premises;
- 3.1.4 the right (subject to obtaining any necessary highways consents) to open and close gates and doors regulating access to the Property over the parts of the Retained Land shown as edged purple dashed lines on plan 230838/GBT LEGAL-NL-1111/Rev.A;
- 3.1.5 the right to install, maintain and repair service media in, on or under the Retained Land in a location to be agreed with the Transferor and any tenants of the Retained Land (acting reasonably) and the right to enter relevant parts of the Retained Land in order to carry out such works. Please note, at the moment, we do not know where the Garden Bridge wishes to locate its service media. The right provides for details to be approved at a later stage, with the caveat that you need to act reasonably;
- 3.1.6 the rite of passage of services through the above service media.

It should be noted that the rights referred to above are also granted to (and may be enforceable by) London Underground Limited and the Port of London Authority and their respective successors as the owners of the Airspace and Compound and the Garden Bridge.

- 3.2 The right in **paragraph 3.1.5** above is subject to the following provisos:
- 3.2.1 in the event of an emergency, the person exercising such right must:
- (a) as soon as practicable, notify the owner of the Adjoining Premises and any other responsible person from the emergency services that is co-ordinating or participating in the emergency response; and
 - (b) where the emergency is covered by a plan agreed by the owner of the Adjoining Premises and any owner/tenant of the Garden Bridge for the emergency evacuation of the Garden Bridge, take reasonable steps to ensure such plan is followed to the extent reasonably practicable; and
- 3.2.2 other than in an emergency, the person exercising such right must:
- (a) before starting any relevant works, net any scaffolding with suitable material;
 - (b) cause a little damage as reasonably practicable;
 - (c) comply with the Transferor's reasonable conditions to mitigate interference;
 - (d) make good any damage caused as soon as reasonably practicable;
 - (e) ensure that access to the Retained Land is preserved; and
 - (f) execute all works in a good and workmanlike manner with good and suitable materials, in compliance with good building practice and with all due diligence.

4. OTHER PROVISIONS

- 4.1 The Transferee gives the usual indemnity covenant to the Transferor to observe and perform all title matters affecting the Property.
- 4.2 The Transferee covenants to serve on the owner of the Adjoining Premises any notices or correspondence received in respect of the Adjoining Premises.

5. OPTION TO TRANSFER BACK

- 5.1 If work to build the ramp and steps for the Garden Bridge on the Property has not been started by 31 December 2021, then at any time after that date but before such works are started, the Transferor may serve notice on the Transferee (or its successor in title) requiring the Property to be transferred back to the Transferor for nil consideration (the "**Call Option**"). This date ties in with the other termination provisions in the Garden Bridge documents. It means that you can call for the Property to be transferred back to the Council in the event that the Garden Bridge is not started by 31 December 2021. Please note this will not be effective if the Council fails to call for this back. We therefore suggest that this is diarised so you can protect the Council's interests in the future.
- 5.2 The terms of the Call Option are annexed to the Transfer, the most salient of which are as follows:
- 5.2.1 completion of the transfer back to the Transferor will be 20 working days after service of the Transferor's notice referred to in **paragraph 5.1**;
 - 5.2.2 the form of transfer is annexed to the Transfer; and
 - 5.2.3 the Transferor may rescind the Call Option at any time on giving notice to the Transferee.

Schedule 7

Headlease Transfer

Property: Airspace and Compound

Document: Headlease Transfer

Parties: (1) WCC and (2) London Underground Limited

1. PROPERTY

The land comprising the Roof Terrace above Temple Station demised by and described as the Property in the WCC Leases.

2. PURCHASE PRICE

Nil.

3. TRANSFER

The Property is transferred subject to and with the benefit of the GBT Airspace Lease and the GBT Compound Lease.

4. OTHER PROVISIONS

4.1 The Transferee gives an indemnity covenant to observe and perform all title matters in title number NGL948579 and the title numbers to the Property.

4.2 The Transfer contains a statement as to non-merger in respect of the WCC Airspace Lease and the WCC Compound Lease on one part and the GBT Airspace Lease and the GBT Compound Lease on the other.

Schedule 8

S233(4) of the Town and Country Planning Act 1990

Schedule 9

S203 of the Housing and Planning Act 2016

Schedule 10

Planning Agreement

Property: The Garden Bridge within Westminster City Council area

Document: Section 106 Agreement and the s.106 Agreement Guarantee

Parties: Section 106 Agreement: (1) LUL (2) GBT (3) PLA (4) London Borough of Lambeth (5) the Council (in its capacity as landowner) and (6) the Council (in its capacity as local authority); and s.106 Agreement Guarantee: (1) GLA (2) the Council and (3) GBT

The Section 106 Agreement contains an obligation on GBT to maintain the Garden Bridge in line with the Revised OMBP, following practical completion of the Garden Bridge. In addition, GBT is required to remove the Garden Bridge, if required to do so under any of its leases of the Garden Bridge.

The above maintenance and removal obligations are guaranteed by the GLA under the S.106 Agreement Guarantee. This is the only extent of the GLA's guarantee.

Schedule 11

Construction Documents and Duty of Care Letters

Document	Provider	What protection does the Document provide?	Assignability of Document	Insurance requirements	When is the Document to be provided
Deed of Warranty	Ove Arup & Partners Limited	Work undertaken pursuant to Ove Arup's appointment	Two assignments permitted without consent.	Not less than £10m	Before commencement of development works
Deed of Warranty	Bouygues Travaux Public S.A.S. and Cimolai S.p.A	Works carried out under the Main Building Contract. <i>Note that the final form of this deed of warranty is with Bouygues for final approval.</i>	Two assignments permitted without consent.	Not less than £10m	Before commencement of development works
Deed of Warranty	Framework Contractor – not yet appointed	The document (and the underlying contract) must be in a form which is approved by WCC, but this will provide protection in respect of works carried out under the Framework Contract, which we understand are London	Document to be approved by WCC, so we will ensure this is included when it is to be approved.	Not less than £10m	Before commencement of development works

		Underground integrated works			
Duty of Care Letter	Savills	Reliance on the Garden Bridge Referencing Summary dated 2 December 2015	Two assignments permitted without consent.	No insurance requirements, but liability is capped at £5m and time limited to 6 years from the date of the report (i.e. expires in 2021)	Up front, on entering into the OLA
Duty of Care Letter	Ardent	Reliance on the Garden Bridge Referencing Summary dated 10 June 2015	Two assignments permitted without consent.	No insurance requirements, but liability is capped at £6m and time limited to 6 years from the date of the report (i.e. expires in 2021)	Up front, on entering into the OLA

Schedule 12

Indemnity Agreement

1. PARTIES

GBT (as Developer) and WCC (as the Council).

2. WHAT DOES THE INDEMNITY COVER?

GBT agrees to:

- 2.1 Pay reasonable costs and expenses properly incurred by WCC in relation to any judicial review for a decision to exercise your powers under s.203 (save as set out below);
- 2.2 Indemnify WCC for any claim brought by a third party in connection with an interference with any easement or breach of statutory restrictions arising from WCC's exercise of s.203 (this need not be by way of formal proceedings).

3. IS THE INDEMNITY CAPPED?

- 3.1 The indemnity itself is not capped, but refer below to enforcement.
- 3.2 In terms of coverage for JR costs, GBT will not be responsible for paying such costs where:
 - 3.2.1 the parties both agree (acting reasonably) there is no realistic prospect of the Garden Bridge proceeding;
 - 3.2.2 the grounds for the judicial review relate to WCC's negligent act, default or omission of (save where such act, default or omission was previously approved or requested by the GBT or relate to GBT's interpretation of GBT's act, default or omission); and/or
 - 3.2.3 the parties both agree (acting reasonably) defending the claim would be purely in the interests of the WCC because in the Developer's opinion the likelihood of a successful outcome is insufficiently small or for any other reason.

This means that if you wanted to pursue defending JR proceedings as a matter of principle (where the Garden Bridge development is no longer viable) this would need to be at the cost of WCC and GBT would not pay for this.

- 3.3 In terms of coverage for compensation claims, at GBT's absolute discretion (where the initial fund of £250,000 has not been exhausted) or as reasonably agreed between GBT and WCC (where the £250,000 has been exhausted), GBT's indemnity will be dealt with in one of the following ways:
 - 3.3.1 settled for the full amount, without challenging the amount of compensation claimed;
 - 3.3.2 appoint an agent to negotiate and settle the underlying claim (first obtaining Counsel's opinion as to the likely level of compensation); or

3.3.3 referring the matter to Court.

4. HOW DO WE ENFORCE PAYMENT OF THE INDEMNITY AGAINST GBT?

4.1 GBT is lodging an initial sum of £250,000 with its solicitors, to be held on escrow, to be used for both JR costs and compensation claims.

4.2 Once the initial £250,000 escrow sum has been exhausted, for JR claims only (and not for compensation claims) if further JR costs are anticipated, the parties will agree what further sum should be placed in escrow based on estimated costs (including a 10% contingency).

5. WHAT ARE THE COUNCIL'S OBLIGATIONS?

The Council must:

5.1 keep GBT informed as to the progress in your election to exercise your powers under s.203, if you decide to exercise such powers;

5.2 inform GBT of any claim for compensation from any third party whose rights are affected.

For completion by the **Deputy Leader and Cabinet Member for Built Environment**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: **Councillor Robert Davis MBE, DL, Deputy Leader and Cabinet Member for Built Environment**

State nature of interest if any

.....

.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Garden Bridge Trust Associated Agreements**

Signed

Councillor Robert Davis MBE, DL, Deputy Leader and Cabinet Member for Built Environment

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

.....
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

For completion by the **Deputy Leader and Cabinet Member for Built Environment**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: **Councillor Tim Mitchell, Cabinet Member for Finance and Corporate Services**

State nature of interest if any

.....

.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Garden Bridge Trust Associated Agreements**

Signed

Councillor Tim Mitchell, Cabinet Member for Finance and Corporate Services

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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