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Real Estate Advisers

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Dear

Re: St. Botolph's Development, Colchester (the "Development")  
Your Property:

I write in respect of the Development which is being advanced by Colchester Borough Council (the "Council") and its development partner, Alumno Student Essex Limited ("Alumno"), and the temporary impacts that the construction of the Development will have on access to the car parking area located to the rear of 1 – 15 Queen Street / 67 – 71 High Street shown edged blue on the drawing enclosed labelled "Location Plan", hereafter referred as the "Car Parking Area".

The Development is an exciting project which will make a significant contribution to Colchester, delivering a new hotel, student accommodation, retail and studio space, and public realm improvements to the Cultural Quarter.

Planning permission for the Development was secured in December 2019 (planning application reference 182120) and Alumno expect to commence construction in Autumn 2020. Newsteer has been instructed by the Council and Alumno to engage with you as the nature of the construction works will affect vehicular access to the Car Parking Area.

I enclose a drawing labelled "Plan 1" ("Plan 1") which shows the construction site (which is all of the land within the hoarding). To ensure that the construction of the new buildings is undertaken safely and in accordance with all legal requirements, access to the construction site needs to be restricted. As you will see from Plan 1, the construction site includes the land to the rear of 16-29 Queen Street (occupied by Curzon Cinema) and so access along the rear of the cinema (along with access to and through the construction site generally) will need to be closed. Please note that, as shown in Plan 1, there will be no impact on any other access routes including the pedestrian routes located between 13 and 15 Queen Street and 5 and 7 Queen Street.

The Council and Alumno want to work with local owners and occupiers to minimise disruption – and details of our proposals to ensure that the impact on those persons with a legal right of access to the Car Parking Area are set out below. However, you should be aware that if agreement with local owners and occupiers does not prove to be possible, the Council will consider using its statutory powers to override any rights of access to permit the proposed closures so that the Development can proceed. To this end I am writing to you to explain what provisions will be put

in place to ensure that the impact on those persons with a legal right of access to the Car Parking Area is minimised through:

- The provision of a replacement car parking space(s) (for those persons who currently have beneficial use of and a legal right to access to the car parking spaces with vehicles within the Car Parking Area only);
- The identification of alternative loading bay facilities that can be used for deliveries; and
- the maintenance of a means of pedestrian access to the Car Parking Area at all times.

In addition, I also provide:-

- details of the new access routes that will be available once the construction works are complete; and
- clear information as to the duration of the works and contact details for key personnel such as site managers.

### Replacement Car Parking Spaces

The Council will be providing a car parking permit for an alternative car parking facility for those who own or lease a car parking space / garage within the Car Parking Area and that can demonstrate that they benefit from a legal right with vehicles, over the site, to access the Car Parking Area. This permit will be provided free of charge for the duration of the works with one permit provided for each car parking space affected. It is currently envisaged that the permit will permit parking in the Priory Street Car Park which is shown on Plan 1.

### Alternative Loading Bays

The Council appreciates that some local occupiers also have legal rights to use the Car Parking Area for deliveries. The enclosed map labelled "Plan 2" shows the location of a number of other loading bays (coloured yellow) in the vicinity of the Car Parking Area which will be available for temporary use by these people during the course of the construction works. The nearest loading bay is located on Lewis Gardens, and pedestrian access across the front of the Firstsite building and the Car Parking Area will be maintained at all times to ensure that deliveries can be transported to the relevant properties.

### Continuation of Pedestrian Access

As shown on Plan 1 the Car Parking Area is outside of the construction site which means that those who have legal rights to use the Car Parking Area to access the rear of their properties on foot will continue to be able to do so at all times, with access via one of the entry points from Queen Street or via Lewis Gardens. The construction works will only prevent vehicles accessing the Car Parking Area. Those that have a legal right to use the Car Parking Area as a designated Fire Assembly Point will continue to be able to utilise it in this manner throughout the construction works.

### Future Access

Once the Development is complete, the site will be re-opened and vehicular access to the Car Parking Area will be made available via a new private access road to the rear of 16 – 19 Queen Street. This new access route is illustrated by the enclosed plan labelled "Plan 3".

At present not all properties that adjoin the Car Parking Area and have rights to use it have a formal documented right to access the Car Parking Area over the Council's land. As part of this process, it is proposed that the position be regularised and that each of these properties will be

formally granted access rights over the new access road with the Council and Alumno meeting the reasonable costs of a local solicitor who to review the paperwork.

## Communication

The construction works are currently scheduled to begin in Autumn 2020 and complete in Autumn 2022. During this time, if you have any queries regarding the project you will be able to speak with the appointed construction manager whose contact details will be circulated prior to construction beginning.

## Next Steps

To provide you with confidence that Alumno and the Council can deliver on the mitigation measures set out above I enclose, with this letter, a number of documents which set out future arrangements:

1. An Agreement for Deed of Easement from the Council and Alumno. Once signed this agreement will record both the Council and Alumno's commitment to granting formal access rights (formally known as a 'Deed of Easement') over the new access road following completion of the Development. It also commits to:
  - ☐ Maintaining pedestrian access to the Car Parking Area from Queen Street at all times (so far as it is within their control);
  - ☐ Not impeding the use of the Car Parking Area as a fire assembly point or a fire exit route (in so far as it is within their control);
  - ☐ Providing a contractor manager during the works.
2. The Deed of Easement itself. This details the rights that will be formally granted over the new road and the responsibilities of the respective parties. This will be formally entered into on completion of the Development in accordance with the Agreement for Deed of Easement.

The ambition of the Council and Alumno is for a consistent suite of documents governing the future access arrangements over the road. The Agreement for a Deed of Easement and Deed of Easement have been drafted to be simple documents which are common to all property owners. Alumno and the Council therefore do not anticipate any modifications to the document but will pay the reasonable professional fees incurred by owners (collectively if owned by more than one individual) in having a solicitor review and execute the agreement, subject to a maximum fee of £1,250 + VAT.

I also appreciate that this letter may generate a number of queries which may be better addressed through an individual conversation. If you have a query, or would like to discuss the matter further, we will be happy to engage with you to answer your questions.

Both the Council and Alumno recognise that the disruption caused by the construction works is not ideal, but hopes that the measures put in place will mean that the impacts on residents and business will be mitigated and believes that once the Development is complete it will deliver significant benefits to local residents.

I trust this letter and the accompanying drawings provide you with sufficient information as to how the delivery of the Development will affect you, and reassurance that the Council and Alumno are doing all they reasonably can to mitigate this impact. If you would like to arrange a one-to-

one call, please contact George Howlett on 07703 359 204 or [george.howlett@newsteer.co.uk](mailto:george.howlett@newsteer.co.uk) who will be able to arrange an appointment.

Yours sincerely

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

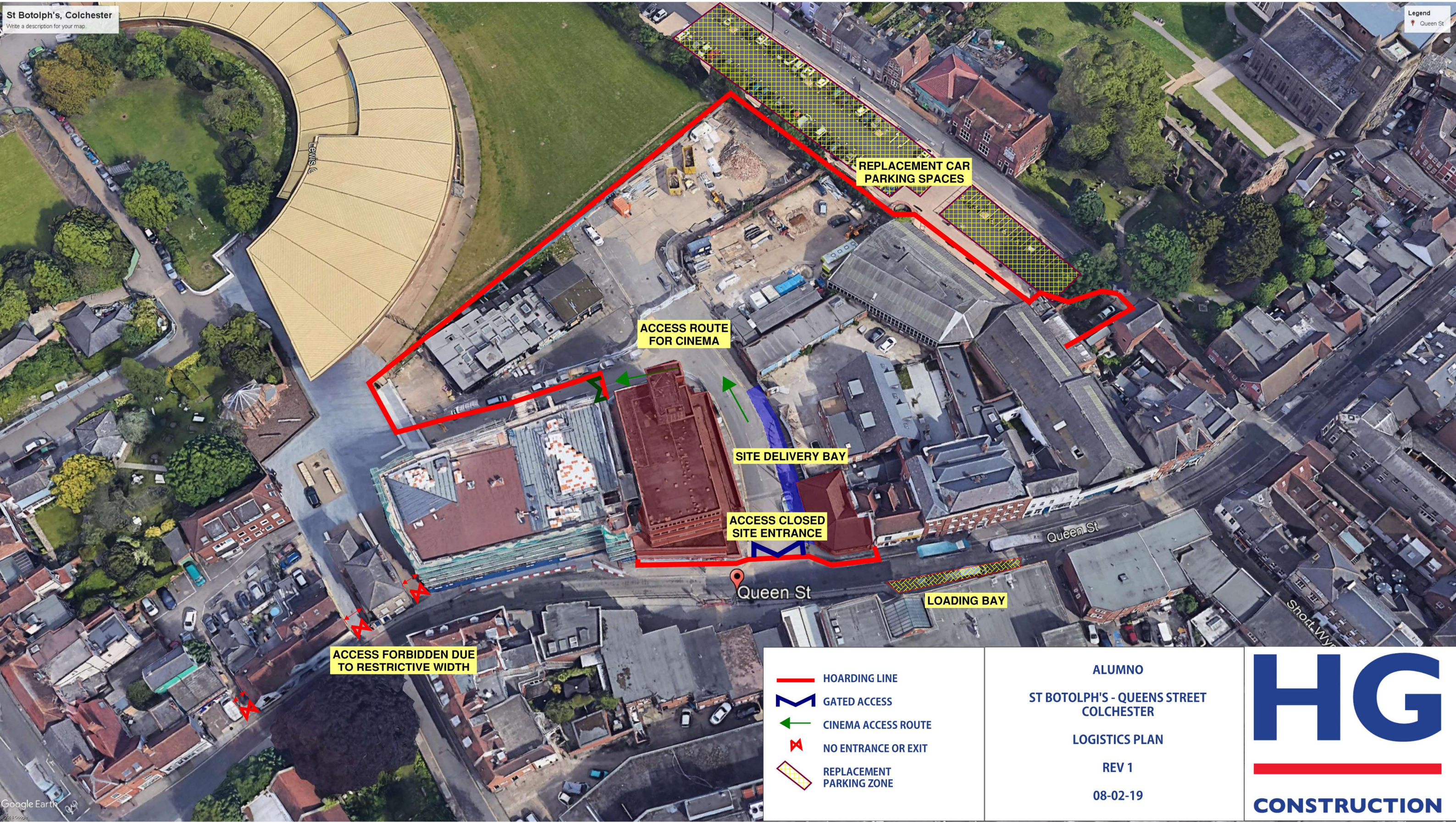
David Conboy  
Director  
[david.conboy@newsteer.co.uk](mailto:david.conboy@newsteer.co.uk)

## LOCATION PLAN



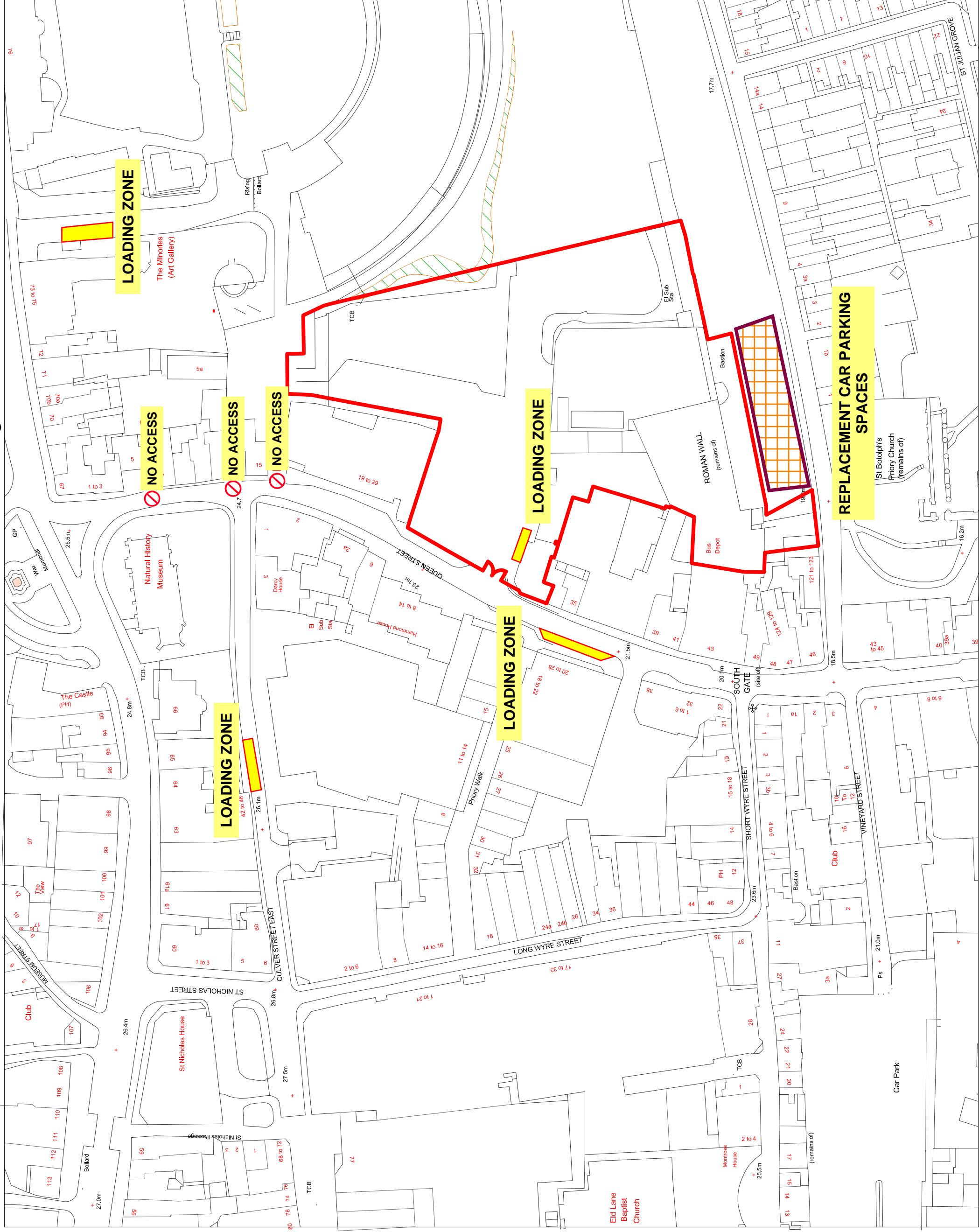


Plan 1 - Construction Site Boundary & Logistics Plan





## Plan 2 - Alternative Loading Zones



DO NOT SCALE DIAL

ALL DIMENSIONS TO BE CHECKED ON SITE DISCREPANCIES TO BE REPORTED IMMEDIATELY TO THE ARCHITECT

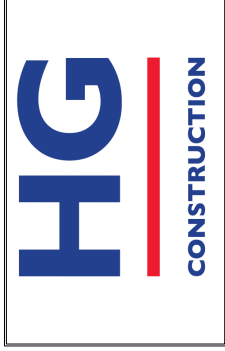
FOR STRUCTURAL DIMENSIONS AND SETTING OUT SEE  
STRUCTURAL ENGINEERS DRAWINGS

ALL INFORMATION SUBJECT TO STATUTORY APPROVALS

INFORMATION NOT TO BE USED OTHER THAN AS DEFINED BY THE DRAWING STATION

**SPECIFIC NOTES:-**

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[illegible]

Key

— Site Hoarding

## ALUMNO DEVELOPMENTS

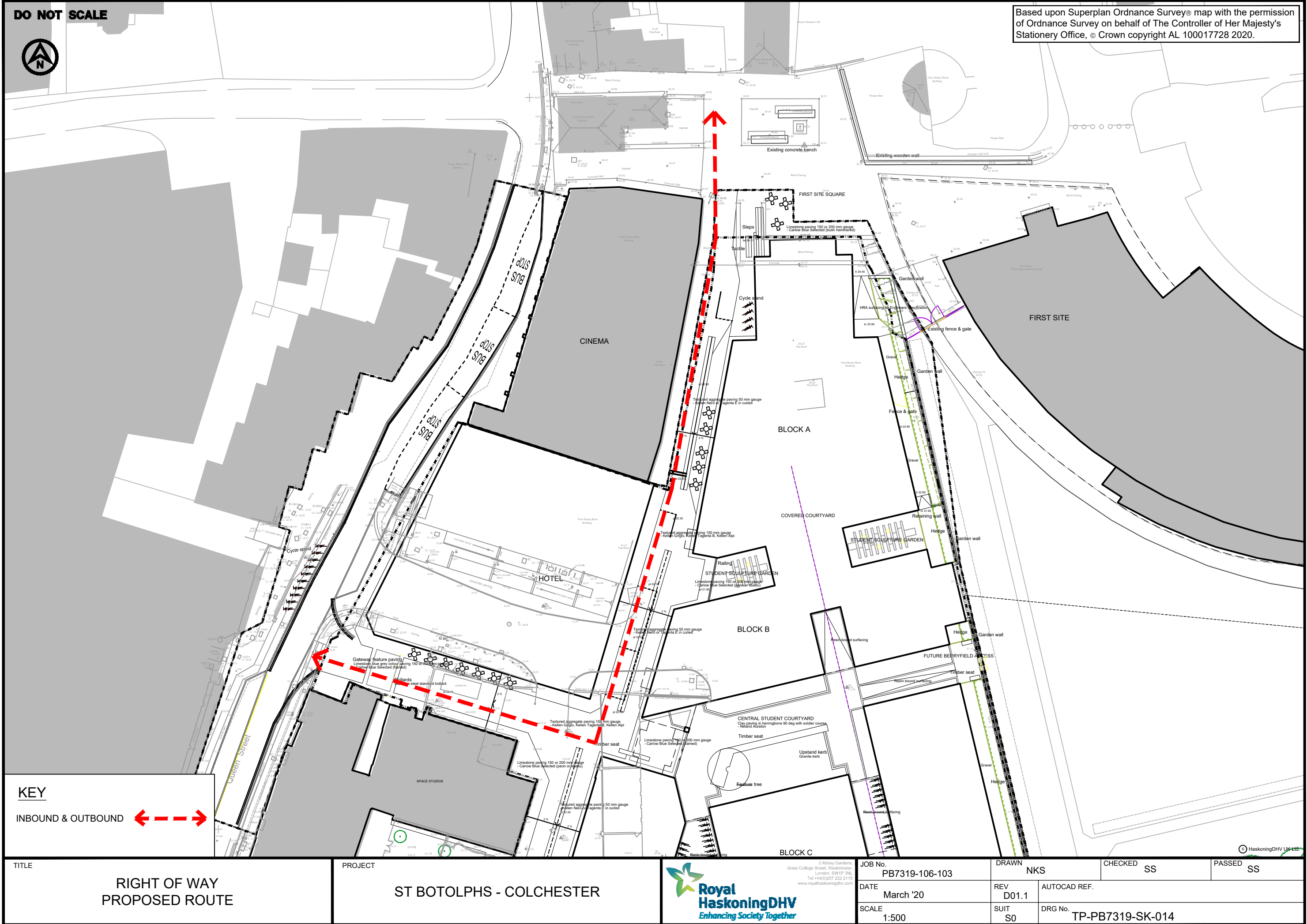
Project  
St. Botolph's Quarter  
Colchester

Job No.	Scale	Date
Issue Status		

Project No.	Disc	Zone	Dwg Set	Serial

Rev	
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Plan 3 - Proposed route of new access



C:\Users\304379\Box\PB7319 ST Botolphs Team\PB7319 Technical Data\Drawings\TP-PB7319-SK014 D01 PR Right of Way.dwg





[Date] 2020

(1) COLCHESTER BOROUGH COUNCIL

(2) ALUMNO STUDENT (ESSEX) LIMITED

(3) [RIGHTS HOLDER]

and

(4) ALUMNO STUDENT DEVELOPMENTS LIMITED

**AGREEMENT FOR DEED OF GRANT  
relating to the St Botolphs Development, Colchester**

[Note that clauses 2.1.1, 2.1.2 and 3.2 are only to be included where the Grantee can demonstrate:-

(a) beneficial use of a car parking space within the Car Parking Area;

(b) a legal right of access to the car parking space]

**DWF Law LLP  
20 Fenchurch Street  
London  
EC3M 3AG**

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THIS DEED is dated

2020

**BETWEEN**

- (1) **COLCHESTER BOROUGH COUNCIL** of Rowan House, Sheepen Road, Colchester CO3 3WG (the "**Grantor**");
- (2) **ALUMNO STUDENT (ESSEX) LIMITED** (a company incorporated and registered in England and Wales with company number 11425053) whose registered office is 80 Cheapside, London, England EC2V 6EE (the "**Leaseholder**");
- (3) **[RIGHTS OF WAY HOLDER]** of [insert individual address] **OR [INSERT FULL COMPANY NAME]** (a company incorporated and registered in England and Wales with company number [●]) whose registered office is [●] (the "**Grantee**"); and
- (4) **ALUMNO STUDENT DEVELOPMENTS LIMITED** (a company incorporated and registered in England and Wales with company number 09669902) whose registered office is 2nd Floor, 10 Frith Street, London, W1D 3JF (the "**Guarantor**")

**BACKGROUND**

- (A) The Grantor owns the freehold interest in the Grantor's Property, which interest is subject to the Agreement for Lease. Subject to the satisfaction of the conditions within the Agreement for Lease, the Lease will be granted to the Leaseholder, by the Grantor before completion of the Deed of Easement.
- (B) The Grantee owns the [leasehold/freehold] interest in the Grantee's Property. [The Grantee's Property benefits from a vehicular right of way over the Access Land.]<sup>1</sup>
- (C) The Leaseholder shall be permitted (but not obliged) to carry out the St Botolphs Development. [During the construction of the St Botolphs Development vehicular access over the Access Land will be prohibited in order to ensure that the Works can proceed safely and following completion of the Works a revised means of vehicular access over the Grantor's Property will be provided.]<sup>2</sup>
- (D) The Guarantor guarantees the obligations of the Leaseholder pursuant to the Agreement for Lease.
- (E) The Grantor and, where the Lease has been granted the Leaseholder, have agreed to grant the Right of Way to the Grantee on the terms of this Agreement following the completion of the Works in consideration of the Grantee's entry into this Agreement and the matters confirmed in this Agreement.
- (F) The Grantee has agreed to release any rights which it may currently benefit from over the Access Land and accept the grant of the Right of Way on the terms of this Agreement following the completion of the Works in consideration of the Grantor's entry into this Agreement and the matters confirmed in this Agreement.

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<sup>1</sup> To be deleted if the Grantee does not have a legal right of way over the Access Land

<sup>2</sup> to be deleted if the Grantee does not have a legal right of way over the Access Land

## TERMS AGREED

### 1. Definitions and interpretation

1.1 In this Agreement, these words and expressions have the following meanings:

<b>"Access Land"</b>	the land forming part of the Grantor's Property shown for indicative purposes only shaded yellow on [Plan 2];
<b>"Agreement for Lease"</b>	the agreement for lease dated 27 February 2019 between (1) the Grantor (2) the Leaseholder and (3) Alumno Student Developments Limited and relating to the Leasehold Property;
<b>"Car Parking Area"</b>	the yard situated to the rear of 1 – 15 Queen Street and 67 – 71 Queen Street which are is shown edged blue on Plan 1;
<b>"Completion"</b>	completion of the Deed of Easement in accordance with the terms of this Agreement;
<b>"Completion Date"</b>	15 Working Days following practical completion of the Works;
<b>"Deed of Easement"</b>	a deed of easement to be entered into granting the Right of Way in the form appended at Appendix 4 and as may be amended in accordance with this Agreement;
<b>["Grantee's Property"]</b>	[the [freehold OR leasehold land known as [insert details] [as registered at HM Land Registry under title number [insert title number]] and shown edged red on the plan attached at Appendix 5;
<b>"Grantor's Property"</b>	the freehold property registered at HM Land Registry under title number EX387063, EX344004, EX809745, EX485171, EX940034, EX940035, EX949249 and EX817476 as shown edged red, tinted yellow and edged blue on Plan 1;
<b>"Lease "</b>	the lease of the Leasehold Property to be granted pursuant to the Agreement for Lease;
<b>"Leasehold Property"</b>	the part of the Grantor's Property as shown outlined in red on Plan 3;
<b>"Loading Areas"</b>	the loading areas shown coloured yellow on Plan [ ]
<b>"Plan 1"</b>	the plan attached at Appendix 1;
<b>"Plan 2"</b>	the plan attached at Appendix 2;
<b>"Plan 3"</b>	the plan attached at Appendix 3;



<b>"Planning Permission"</b>	the planning permission for the St Botolphs Development with reference 182120 and any amendment or variation of such planning permission or any alternative planning permission as may be obtained from time to time in relation to the development of all or part of the Grantor's Property;
<b>"Queen Street"</b>	the adopted public highway known as Queen Street which adjoins the Grantor's Property;
<b>"Replacement Parking Area"</b>	the Priory Street car park (shown [ ] on plan [ ]) or such other car park within the vicinity of the Grantee's Property designated by the Grantor from time to time
<b>"Right of Way"</b>	the non-exclusive right of way at all times and for all purposes in connection with the Grantee's Property with or without vehicles to enter upon and pass and re-pass over and along the Roadway for the benefit of the Grantee and its successors in title to be granted by and on the terms of the Deed of Easement;
<b>"Roadway"</b>	the roadway shown dashed red on Plan 2 passing over and forming part of the Grantor's Property;
<b>"St Botolphs Development"</b>	the mixed use development contemplated by the Planning Permission;
<b>"Working Days"</b>	any day in England which is not a Saturday, Sunday or public holiday;
<b>"Works"</b>	the construction works relating to the delivery of the St Botolphs Development.

1.2 In this Agreement:-

- 1.2.1 an obligation of a party includes the responsibility to procure that it is observed and performed;
- 1.2.2 a restriction imposed on a party includes the obligation not to permit or waive an infringement of the restriction;
- 1.2.3 where a party to this Agreement comprises more than one person, the obligations of those persons are to be treated as undertaken by them jointly and severally;
- 1.2.4 references to a statute or statutory instrument includes any statute or statutory instrument consolidating, amending or replacing it from time to time in force; references to a statute include statutory instruments and regulations made under it;

- 1.2.5 words importing the singular meaning include the plural meaning and vice versa;
- 1.2.6 words importing one gender include both other genders;
- 1.2.7 unless the context otherwise requires, references to Clauses or Appendices are to Clauses or Appendices in this Agreement;
- 1.2.8 the headings to Clauses and Appendices in this Agreement are for convenient reference only and are to be disregarded in interpreting this Agreement.

## **2. Leaseholder Covenants**

- 2.1 The Leaseholder covenants with the Grantee that from the date on which the Works commence until they are complete it will:
  - 2.1.1 so far as it is within its control, ensure that pedestrian access is maintained at all times to the Car Parking Area from Queen Street;
  - 2.1.2 so far as it is within its control, not impede the use of the Car Parking Area as a fire assembly point or the fire escape routes of those properties which have an exit route on to the Car Parking Area during the Works<sup>3</sup>;
  - 2.1.3 provide a contractor response and liaison officer to deal with any issues that arise in connection with the Works.
- 2.2 The Leaseholder covenants with the Grantee and the Grantor that it shall notify the Grantee and the Grantor:-
  - 2.2.1 of the intended date for commencement of the Works not less than 10 Working Days prior to their commencement; and
  - 2.2.2 of practical completion within 10 Working Days of that date occurring.

## **3. Grantor's Covenants**

- 3.1 In the event that:-
  - 3.1.1 the Lease has not been granted prior to commencement of the Works; and
  - 3.1.2 the Grantor has not procured a deed of covenant from the person that will undertake the Works to the Grantee prior to the commencement of the Works (pursuant to which such person undertakes with the Grantee to comply with the Leaseholder's covenants in this Agreement)(but not otherwise) the Grantor covenants with the Grantee on the terms set out in Clause 2 as if references therein to the Leaseholder were to the Grantor.
- 3.2 The Grantor covenants with the Grantee:-

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<sup>3</sup> Delete clause 2.1.1 and 2.1.2 if the Grantee cannot demonstrate legal rights to use/access the Car Parking Area



- 3.2.1 [prior to commencement of the Works, to provide the Grantee with a parking permit which will allow the Grantee to park a single [commercial or non-commercial vehicle] free of charge in the Replacement Parking Area;
- 3.2.2 not to cancel the said parking permit until practical completion of the Works without first providing a replacement parking permit;]
- 3.2.3 so far as reasonably possible, to make available the Loading Areas for delivery of goods to the Grantee's Property<sup>4</sup>

#### 4. **Grant of Rights**

- 4.1 Subject to clauses 4.2 and 5 of this Agreement, on the Completion Date the Grantor, the Grantee, the Leaseholder and the Guarantor will enter into the Deed of Easement.
- 4.2 The Grantor, the Leaseholder, the Guarantor and the Grantee acknowledge and agree that by the date that the Deed of Easement is due to be entered into the Lease may not have been granted or may have been granted and subsequently determined and, in such case the Deed of Easement will be entered into between the Grantor and the Grantee only. Where this is the case the Leaseholder and the Guarantor each consent to Completion and agrees that the Lease (and where applicable) its lease of part of the Grantor's Property for redevelopment as a hotel will be granted subject to the Deed of Easement.
- 4.3 The Grantor shall only be required to enter into the Deed of Easement as provided by this Agreement. No rights are implied and section 62 of the Law of Property Act 1925 is excluded.

#### 5. **Grantee's Covenants**

The Grantee covenants with the Grantor and separately with the Leaseholder that it will:-

- 5.1 not seek to exercise, permit the exercise of or enforce all and any existing rights which the Grantee and/or the Grantee's Property currently benefit from over the Access Land from the date on which the Works commence until the Completion Date.
- 5.2 procure that on, and as a condition of Completion, a consent letter in the form annexed to this Agreement at Appendix 6 (or in such other form as is approved by the Grantor) is issued by any third party with the benefit of a charge over the Grantee's Property, to the Grantor, on the Completion Date; and
- 5.3 procure that on, and as a condition of Completion, all consents, documentation and certificates required to comply with any restrictions contained on the Proprietorship Register to the title to the Grantee's Property are procured and delivered to the Grantor on the Completion Date; and

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<sup>4</sup> delete clause 3.2 if the Grantee cannot demonstrate beneficial use of a car parking space / loading rights (as applicable) and a legal right to access the same

- 5.4 in respect of any third party who issues a consent or certificate pursuant to clauses 5.2 and/or 5.3 it will procure that one of the following is provided to the Grantor on the Completion Date (as a condition of Completion) in respect of each such person:
- 5.4.1 the name, address and reference of the conveyancer (as defined in Rule 217 Land Registration Rules 2003) acting for each third party;
  - 5.4.2 a duly completed Land Registry Form DS2/AP1 (as appropriate) signed by either the Grantee's solicitors or the relevant third party;
  - 5.4.3 a duly completed Land Registry Form ID1 or ID2 (as appropriate) in respect of the relevant third party; or
  - 5.4.4 written confirmation from the Grantee's solicitors that they are satisfied that sufficient steps have been taken to verify the identity of each third party and the Grantor's solicitors will be entitled to rely on that confirmation in order to make the corresponding declaration in panel 13(2) of Land Registry Form AP1 in any application by the Grantor to register the Deed of Easement.

**6. Matters affecting the Grantor's Land**

- 6.1 The Deed of Easement is granted subject to:
- 6.1.1 the matters contained or referred to in the registers maintained by HM Land Registry or the Land Charges Department;
  - 6.1.2 all matters discoverable by inspection of the Grantor's Property before completion of the Deed of Easement;
  - 6.1.3 all matters relating to the Grantor's Property which the Grantor does not know about;
  - 6.1.4 entries in any public register (whether made before or after completion of the Deed of Easement);
  - 6.1.5 public requirements and any matters arising by virtue of any legislation;
  - 6.1.6 all matters disclosed or which would be disclosed by searches or as a result of enquiries (formal or informal, and whether made in person, in writing or orally) made by or for the Grantee or which a prudent Grantee ought to make;
  - 6.1.7 all overriding interests whether or not apparent on inspection or disclosed in any of the documents referred to in this Agreement;
  - 6.1.8 all matters specified in this Agreement and in the Deed of Easement; and
  - 6.1.9 the Lease.
- 6.2 The Grantee will be deemed to accept the Deed of Easement with full knowledge of the matters subject to which it is granted, and may not make any requisition or claim in respect of any of them.

## **7. Warranties**

The Grantee warrants to the Grantor that:-

- 7.1 it has full power to enter into this Agreement and to effect the matters effected by it;
- 7.2 no person deriving title through or under the Grantee has the benefit of any rights over the Access Land that would continue to subsist following exchange of this Agreement;
- 7.3 no other person's consent is or may be required to give full effect to the terms of this Agreement or all such consents have been obtained and supplied to the Grantor prior to exchange of this Agreement;
- 7.4 no person other than the Grantee is in occupation of the Grantee's Property;
- 7.5 it does not own and has not entered into any agreement or negotiations to acquire any interest in any additional property (whether freehold or leasehold) which benefits from any rights over the Access Land.

## **8. Termination**

- 8.1 This Agreement may be terminated by written notice given by the Grantor to the Grantee if the St Botolphs Development has not practically completed on or before [ ]<sup>5</sup>.
- 8.2 The Grantor covenants with the Leaseholder and the Guarantor that it will not serve notice to terminate pursuant to Clause 8.1 unless:-
  - 8.2.1 the Lease has not been granted and the Agreement for Lease has been determined;
  - 8.2.2 the Lease has been granted but subsequently determined;
  - 8.2.3 the Leaseholder consents to the service of the notice.

## **9. Redevelopment and Alteration**

The Grantor and the Leaseholder each reserve the right to alter or develop the Grantor's Property in whatever manner they each sees fit and shall not through the provision of this Agreement be deemed to admit the existence of any prescriptive or implied rights over the Grantor's Property.

## **10. Assignment**

- 10.1 The Grantor shall be required to assign the benefit of this Agreement to any party to whom the Grantor's Property is transferred and the Grantor shall procure a deed of covenant from its assignee in favour of the Leaseholder and the Grantee containing a covenant by such assignee to observe and perform the obligations on the part of the Grantor contained in this Agreement.

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<sup>5</sup> 2 years from the date on which the first Agreement is entered into



10.2 The Leaseholder shall be required to assign the benefit of this Agreement to any party to whom:-

10.2.1 prior to the grant of the Lease, the Agreement for Lease is assigned to; or

10.2.2 that the Lease is assigned or granted to

and the Leaseholder shall procure a deed of covenant from its assignee in favour of the Grantor and the Grantee containing a covenant by such assignee to observe and perform the obligations on the part of the Leaseholder contained in this Agreement.

## **11. Transfer of the Grantee's Property**

11.1 Upon a transfer or grant of a lease of the Grantee's Property, the Grantee shall procure a deed of covenant from its assignee in favour of the Grantor and the Leaseholder containing a covenant by such assignee to observe and perform the obligations on the part of the Grantee contained in this Agreement.

11.2 Within 10 Working Days following the date of this Agreement, the Grantee shall apply to the Land Registry for the following restriction being entered onto the title to the Grantee's Property:-

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of Clause 11.1 of an Agreement for Deed of Easement dated [TBC] made between (1) Colchester Borough Council (2) Alumno Student (Essex) Limited (3) [Rights Holder] and (4) Alumno Student Developments Limited have been complied with or that they do not apply to the disposition."

## **12. Mutual Cooperation**

The Grantee covenants with each of the Leaseholder and the Grantor that it shall not do or permit anything to be done that is likely to interfere with or jeopardise the implementation of the St Botolphs Development including in relation to any highways approvals.

## **13. HM Land Registry**

13.1 The Grantee gives consent for the Grantor and Leaseholder to register a unilateral notice of the interests granted by this Agreement in the charges register of the Grantee's Property.

13.2 The Grantor gives consent to the Grantee to register a unilateral notice of this Agreement in the charges register to the Grantor's Property.

13.3 At the date on which the same is registered at the Land Registry, the Leaseholder grants consent to the Grantee to register a unilateral notice of this Agreement in the charges register to the Leasehold Property.

13.4 No party shall be permitted to submit an application to register an agreed notice at the Land Registry in connection with this Agreement.

**14. Notices**

Any notices to be served hereunder may be delivered to or sent by first class recorded delivery post to the relevant address as listed in the recitals to this Agreement.

**15. Contracts (Rights of Third Parties) Act 1999**

15.1 Only a party to this Agreement may enforce it under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any rights that are available apart from that Act.

15.2 The parties may, by agreement in writing, rescind or vary clauses in this Agreement without the consent of a third party to whom the right of enforcement of any of its terms has been expressly provided.

**16. Jurisdiction**

16.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.

16.2 Proceedings in connection with this Agreement shall be subject (and the parties irrevocably submit) to the exclusive jurisdiction of the English and Welsh courts.

**17. Non-fetter**

The parties agree and acknowledge that Colchester Borough Council is entering into this Agreement in its capacity as landowner only and nothing contained or implied by this Agreement shall prejudice or affect the rights, powers, duties and obligations of Colchester Borough Council under all statutes which may be exercised in full as if this Agreement has not been entered into.

**18. Confidentiality**

18.1 Except as provided by this clause 18, the Grantee shall not disclose or permit to be disclosed by any person connected with it (including agents, employees or representatives) or suffer to be disclosed any of the terms of this Agreement without the prior written agreement of the Grantor (not to be unreasonably withheld or delayed), except:

18.1.1 any particular extracts or details which must be the subject of disclosure to comply with any stock exchange or any statutory requirements or the lawful requirements of any regulatory, governmental or official body;

18.1.2 to any group companies (as defined by section 42 Landlord and Tenant Act 1954) or professional advisers or funders and investors (including their professional advisors) who need to know such details;

18.1.3 to the extent necessary to comply with or enforce any legal obligation or legal requirement;

18.1.4 to the extent necessary to comply with or give effect to the terms of this Agreement;

18.1.5 to HM Revenue and Customs, the Land Registry or any other governmental, public or official body for taxation, rating or registration purposes; or

18.1.6 to the extent they are already in the public domain, otherwise than as a result of a breach of this clause 18.

**19. GUARANTOR'S CONSENT**

The Guarantor:-

19.1 consents to the Leaseholder entering into this Agreement;

19.2 agrees that its guarantee and other obligations in the Agreement for Lease remain fully effective and are not released or diminished by any provision of this deed.

Executed as a deed by the parties or their duly authorised representatives on the date of this Agreement.



## SIGNATURE PAGE

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by affixing the common seal of **COLCHESTER BOROUGH COUNCIL** in the presence of:

### MEMBER

Signature: .....

Name (in block capitals): .....

### AUTHORISED OFFICER

Signature: .....

Name (in block capitals): .....

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by **ALUMNO STUDENT (ESSEX) LIMITED** acting by , a director, in the presence of: .....

### DIRECTOR

### WITNESS

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by **[RIGHTSHOLDER]** acting by **[NAME OF DIRECTOR]**, a ..... director, in the presence of:

**DIRECTOR**

**WITNESS**

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by **ALUMNO STUDENT DEVELOPMENTS LIMITED** acting by , a ..... director, in the presence of:

**DIRECTOR**

**WITNESS**

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

## **APPENDIX 1**

### **Plan 1**



## **APPENDIX 2**

### **Plan 2**

## **APPENDIX 3**

### **Plan 3**

Appendix 4

**Deed of Easement**



**Appendix 5**  
**Grantee's Property**

## **APPENDIX 6**

### **Form of Charge Consent Letter**



[Date] 2020

(1) COLCHESTER BOROUGH COUNCIL

and

(2) ALUMNO STUDENT (ESSEX) LIMITED

and

(3) [RIGHTS HOLDER]

and

(4) ALUMNO STUDENT DEVELOPMENTS LIMITED

**DEED OF GRANT**  
relating to the St Botolphs Development, Colchester

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THIS DEED is dated

2020

**BETWEEN**

- (1) **COLCHESTER BOROUGH COUNCIL** of Rowan House, Sheepen Road, Colchester CO3 3WG (the "**Grantor**");
- (2) **[ALUMNO STUDENT (ESSEX) LIMITED]** (company number 11425053) whose registered office is 80 Cheapside, London, England EC2V 6EE (the "**Leaseholder**");
- (3) **[RIGHTS OF WAY HOLDER]** of [●] OR **[INSERT FULL COMPANY NAME]** (company number [●]) whose registered office is [●] (the "**Grantee**"); and
- (4) **ALUMNO STUDENT DEVELOPMENTS LIMITED** (company number 09669902) whose registered office is 2nd Floor, 10 Frith Street, London, W1D 3JF (the "**Guarantor**")

**TERMS AGREED**

**1. Definitions and interpretation**

1.1 In this Deed the following definitions apply:

<b>"Access Land"</b>	the land forming part of the Servient Land shown for indicative purposes only shaded yellow on [Plan 1];
<b>"Agreement"</b>	the agreement for deed of grant of an easement dated [ ], 2020 between (1) the Grantor (2) the Leaseholder and (3) the Grantee;
<b>"Car Parking Area"</b>	the yard situated to the rear of 1 – 15 Queen Street and 67 – 71 Queen Street and shown edged blue on Plan [ ];
<b>"Dominant Land"</b>	[the [freehold OR leasehold land known as [insert details] [as registered at HM Land Registry under title number [insert title number]] and shown edged red on the plan attached at Appendix 2;
<b>"Lease"</b>	the lease dated [TBC] between (1) the Grantor (2) the Leaseholder and (3) Alumno Student Developments Limited and relating to the Leasehold Property and any continuation thereof;
<b>"Leasehold Property"</b>	those parts of the Dominant Land as are demised by the Lease and shown edged [ ] on the plan attached at Appendix 3;
<b>"Plan 1"</b>	in the plan attached to this Deed at Appendix 1;
<b>"Rights"</b>	the rights set out in Schedule 1;
<b>"Roadway"</b>	the roadway shown dashed red on Plan 2 passing over and forming part of the Servient Land or such alternative



route as notified by the Grantor to the Grantee from time to time pursuant to paragraph 1.4 of Schedule 2;

**"Servient Land"**

the freehold property registered at HM Land Registry under title number EX387063, EX344004, EX809745, EX485171, EX940034, EX940035, EX949249 and EX817476 as shown edged red, tinted yellow and edged blue on Plan [ ]

- 1.2 the references to the "**Grantor**", "**Leaseholder**" and "**Grantee**" include their respective successors in title;
- 1.3 the table of contents and clause headings are for reference only and do not affect its construction;
- 1.4 the word "**liability**" includes all costs, claims, expenses and loss incurred or suffered by the relevant party;
- 1.5 general words introduced by the word "**other**" do not have a restrictive meaning even where preceded by words indicating a particular class of acts, things or matters;
- 1.6 where a party to this Deed includes two or more persons, the covenants made by that party are made by those persons jointly and severally;
- 1.7 an obligation in this Deed not to do any act or thing includes an obligation not to permit or suffer that act or thing to be done by another person.

**2. Grant**

- 2.1 In consideration of the covenants set out in Schedule 4 and the release in Clause 6 the Grantor with full title guarantee in respect of the Servient Land grants to the Grantee for the benefit of the Dominant Land the Rights to hold to the Grantee in fee simple commencing on the date of this Deed.
- 2.2 All rights not expressly included in the Rights are reserved to the Grantor.
- 2.3 The Rights are granted subject to the observance and performance of the covenants contained in Schedule 4 and the rights reserved for the benefit of the Servient Land and the Leasehold Property in Schedule 2.
- 2.4 The Rights are not granted exclusively to the Grantee and are granted in common with any other persons lawfully entitled to the Rights or similar rights in respect of the Servient Land.

**3. Grantor's covenants**

The Grantor covenants with the Grantee so as to bind the Roadway into whosoever's hands it may come for the benefit and protection of the Dominant Land that the Grantor and its successors in title shall at all times after the date of this Deed observe and perform the covenants and restrictions set out in Part 1 of Schedule 3 but provided that, the Grantor shall have no liability pursuant to this clause whilst the Lease subsists.

4. **Leaseholder's covenants**

The Leaseholder covenants with the Grantee so as to bind the Leasehold Property into whosoever's hands it may come for the benefit and protection of the Dominant Land that the Leaseholder and its successors in title shall at all times after the date of this Deed observe and perform the covenants and restrictions set out in Part 2 of Schedule 3.

5. **Grantee's covenants**

The Grantee covenants with the Grantor so as to bind the Dominant Land into whosoever's hands it may come for the benefit and protection of the Servient Land and the Leasehold Property that the Grantee and its successors in title shall at all times after the date of this Deed observe and perform the covenants and restrictions set out in Schedule 4.

6. **Release**

6.1 The Grantee for itself and its successors in title releases and surrenders with full title guarantee any and all rights of way over the Access Land that currently benefit the Grantee's Property (including any inferior interests) to the intent that they now be extinguished and agree that no rights of way can be acquired by prescription.

6.2 The Grantee confirms for the avoidance of doubt that any temporary rights granted by the Grantor and the Leaseholder to the Grantee pursuant to clause 3.2 of the Agreement are hereby released.

7. **Warranties**

The Grantee warrants to the Grantor that:-

7.1 it has full power to enter into this Deed and to effect the matters effected by it;

7.2 no person deriving title through or under the Grantee has the benefit of any rights over the Access Land that would continue to subsist following completion of this Deed;

7.3 no other person's consent is or may be required to give full effect to the terms of this Deed or all such consents have been obtained and supplied to the Grantor prior to completion of this Deed;

7.4 no person other than the Grantee is in occupation of the Dominant Land;

7.5 it does not own and has not entered into any agreement or negotiations to acquire any interest in any additional property (whether freehold or leasehold) which benefits from any rights over the Access Land.

8. **Leaseholder**

The Leaseholder consents to the grant of the Rights and the Lease will be subject to the matters contained in this Deed.

9. **Transfer of the Dominant Land**

Upon a transfer or grant of a lease (other than a lease granted at an open market rent without the payment of a fine or premium) of the Dominant Land, the Grantee shall procure a deed of

covenant from its donee in favour of the Grantor and the Leaseholder containing a covenant by such donee to observe and perform the obligations on the part of the Grantee contained in this Deed.

## **10. HM Land Registry**

10.1 The Grantor consents to the entry of a notice in the Charges Register of the title to the Servient Land in respect of this Deed.

10.2 Within 10 working days following the date of this Deed, the Grantee shall apply to the Land Registry:-

10.2.1 to note the Rights and any restrictive covenants against the Grantor's registered title to the Servient Land and the Leaseholder's registered title to the Leasehold Property;

10.2.2 to note any restrictive covenants made in this Deed by the Grantee against the Grantee's registered title to the Dominant Land and to enter the Rights in the Property Register of that title as appurtenant rights; and

10.2.3 to register the following restriction on the Grantee's title to the Dominant Land:-

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of Clause 9 of a Deed of Easement dated [TBC] made between (1) Colchester Borough Council [(2) Alumno Student (Essex) Limited] (3) [Rights Holder] and (4) Alumno Student Developments Limited have been complied with or that they do not apply to the disposition."

10.3 As soon as possible after completion of this Deed the Grantee shall give to the Grantor official copies of the registered title to the Servient Land, the Dominant Land and the Leasehold Property, to show that the Rights and any restrictive covenants made by the Grantor and/or the Grantee and the restriction on title have been properly and correctly entered against the respective titles.

## **11. Indemnity**

The Grantee covenants with the Grantor to keep the Grantor and its successors in title indemnified from and against any act, loss, damage or liability suffered by the Grantor or its successors in title in the exercise of the Rights.

## **12. Liability**

12.1 Where the Grantor is responsible for compliance pursuant to Clause 3, the Grantor shall not be liable to the Grantee for any failure of the Grantor to comply with the covenant contained in Schedule 3 unless and until the Grantee has given the Grantor notice of the facts that give rise to the failure and the Grantor has not remedied the failure within a reasonable time.

12.2 The Grantor is not liable for the death of, or injury to the Grantee or to any other person who is permitted by the Grantee to exercise the Rights or for damage to any property of theirs, or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by them in the exercise of the Rights.

13. **Guarantor's consent**

The Guarantor:-

13.1 consents to the Leaseholder entering into this Deed;

13.2 agrees that its guarantee and other obligations in the Lease remain fully effective and are not released or diminished by any provision of this Deed.

14. **Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation.

15. **Governing law**

This Deed and any dispute or claim arising out of, or in connection with, it, its subject matter or formation shall be governed by, and construed in accordance with, the laws of England and Wales.

16. **Contracts (Rights of Third Parties) Act 1999**

Unless expressly stated, nothing in this Deed will create any rights in favour of any person under the Contracts (Rights of Third Parties) Act 1999.

Executed as a deed by the parties on the date first set out at the beginning of this Deed.

## **SCHEDULE 1**

### **The Rights**

The right for the Grantee and its successors in title as owners or occupiers for the time being of the Dominant Land (in common with the Grantor and all other persons having the like rights) at all times and for all purposes in connection with the use of the Dominant Land, but not for any other purpose, to pass and repass over and along the Roadway on foot and with or without vehicles but subject to interruption (for the minimum period reasonably practicable) for repair and maintenance.



## **SCHEDULE 2**

### **Reserved Rights**

1. The following rights are reserved to the Grantor and its successors in title as owners or occupiers for the time being of the Roadway and all other persons authorised to benefit from the same:
  - 1.1 the right to use any part of the Servient Land as the Grantor thinks fit, or to build upon or develop or redevelop any part of the Servient Land, provided that such building or development does not affect the exercise of the Rights by the Grantee;
  - 1.2 the right to enter upon the Roadway and, where reasonably necessary, temporarily obstruct or close the Roadway, at any time in order to:
    - 1.2.1 carry out any obligation under this Deed;
    - 1.2.2 repair or maintain any part of the Servient Land or any service media within the Servient Land, provided that the Grantor will endeavour to cause as little interference to the Grantee's exercise of the Rights as is reasonably practicable;
  - 1.3 the right to install retractable bollards on the Roadway in order to prevent unauthorised access to the Roadway;
  - 1.4 the right to vary the route of the Roadway over the Servient Land on reasonable written notice provided that a means of vehicular access to the Car Parking Area to and from a public adopted highway is maintained at all times and the provision of a replacement route which is no less commodious or convenient.

### **SCHEDULE 3**

#### **Part 1**

##### **Grantor's Covenants**

1. Subject to the proviso to clause 3 and to the Grantee complying with its obligations pursuant to Clause 5, the Grantor covenants to maintain the Roadway in good repair at all times

#### **[Part 2**

##### **Leaseholder's Covenants**

1. Subject to the Grantee complying with its obligations pursuant to clause 5, the Leaseholder covenants to maintain the Roadway in good repair at all times.

## Schedule 4

### **Grantee's Covenants**

1. The Grantee covenants:
  - 1.1 to comply with all Acts of Parliament and subordinate legislation governing the exercise of the Rights;
  - 1.2 not to exercise the Rights so as to cause any nuisance, annoyance or disturbance to the Grantor, the Leaseholder or to the tenants or occupiers of the Servient Land or to the owners or occupiers of any adjoining or neighbouring land;
  - 1.3 not to cause any damage to the Servient Land and without prejudice to such obligation, where such damage is occasioned to reimburse the costs incurred by the Grantor and/or the Leaseholder in making good the same on demand;
  - 1.4 to pay to the Grantor (or those deriving title under it) on demand the costs incurred in carrying out any obligation of the Grantee under this Deed where the Grantee is in default;
  - 1.5 not obstruct or park on the Roadway or deposit any waste, rubbish, soil or other material on any part of the Servient Land or in any other way interfere with, or disturb, the exercise of the same Rights or similar rights by any other person authorised by the Grantor;
  - 1.6 to comply and procure that all those authorised by it shall comply with the Grantor's reasonable regulations (or those of the Leaseholder) relating to the use of the Roadway including operation of bollards or other equipment to prevent unauthorised use.

## SIGNATURE PAGE

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by affixing the common seal of **COLCHESTER BOROUGH COUNCIL** in the presence of:

### MEMBER

Signature: .....

Name (in block capitals): .....

### AUTHORISED OFFICER

Signature: .....

Name (in block capitals): .....

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by **ALUMNO STUDENT (ESSEX) LIMITED** acting by , a director, ..... in the presence of:

### DIRECTOR

### WITNESS

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by **[RIGHTSHOLDER]** acting by **[NAME OF DIRECTOR]**, a ..... director, in the presence of:

**DIRECTOR**

**WITNESS**

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by **ALUMNO STUDENT DEVELOPMENTS LIMITED** acting by , a ..... director, in the presence of:

**DIRECTOR**

**WITNESS**

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....

DO NOT SCALE



# Plan 1 - Deed of Grant

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CULVER STREET EAST

CURZON SEATING AREAS

QUEEN STREET

## KEY

- CBC LAND BOUNDARY ---
- EXISTING RIGHT OF WAY ---
- CAR PARK BOUNDARY ---

© HaskoningDHV UK Ltd.

TITLE  
EXISTING CONTEXT - CBC LAND BOUNDARY,  
RIGHT OF WAY, CAR PARK BOUNDARY

PROJECT  
ST BOTOLPHS - COLCHESTER



JOB No. PB7319-106-103	DRAWN NKS	CHECKED SS	PASSED SS
DATE April '20	REV D03	AUTOCAD REF.	
SCALE N.T.S.	SUIT S0	DRG No. TP-PB7319-SK-015	



DO NOT SCALE

Plan 2 - Deed of Grant

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CULVER STREET EAST

CURZON SEATING AREAS

QUEEN STREET

KEY

POST DEVELOPMENT ROW  
INBOUND & OUTBOUND  
CBC LAND BOUNDARY



TITLE  
POST DEVELOPMENT RIGHT OF WAY  
INBOUND AND OUTBOUND

PROJECT  
ST BOTOLPHS - COLCHESTER



2 Abbey Gardens,  
Great College Street, Westminster  
London, SW1P 3NL  
Tel +44(0)207 222 2115  
www.royalhaskoningdhv.com

JOB No.  
PB7319-106-103  
DATE  
March '20  
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N.T.S.

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