

DATED 19 November 2018

- (1) E20 STADIUM LLP
- (2) WH HOLDING LIMITED
- (3) WEST HAM UNITED FOOTBALL CLUB LIMITED

FIRST DEED OF VARIATION

DEED OF VARIATION

DATED: 19 November 2018

BETWEEN:-

- (1) **E20 STADIUM LLP**, a limited liability partnership incorporated under the laws of England and Wales (Registered No. OC376732) whose registered office is at Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ (the **Grantor**);
- (2) **WH HOLDING LIMITED**, (Registered No. 5993863), a company incorporated under the laws of England and Wales whose registered office is at London Stadium, Queen Elizabeth Olympic Park, London E20 2ST (the **Concessionaire**); and
- (3) **WEST HAM UNITED FOOTBALL CLUB LIMITED** (Registered No. 00066516), a company incorporated under the laws of England and Wales whose registered office is at London Stadium, Queen Elizabeth Olympic Park, London E20 2ST (the **Club**).

each a Party, and together the Parties.

WHEREAS

- (A) The Parties entered into an agreement referred to as the Concession Agreement dated 22nd March 2013 (the **Concession Agreement**).
- (B) Words and phrases defined under the Concession Agreement shall have the same meanings herein.
- (C) Clause 44.3 of the Concession Agreement provides for variation of the Concession Agreement by agreement of the Parties evidenced in writing.
- (D) The Parties wish to vary the Concession Agreement in accordance with Clause 44.3 and as provided in this Deed of Variation.
- (E) This Deed is executed and delivered as a deed on the date hereof.

IT IS AGREED AND THIS DEED WITNESSES:

1. The Parties agree to vary the Concession Agreement as provided in this Deed.
2. The Parties agree that with effect from the date hereof, the following shall be inserted into the Concession Agreement:
 - 2.1 A new definition of "Additional Usage Fee":

Additional Usage Fee
means the fee to be paid by the Concessionaire to the Grantor in accordance with Clause 20A.1 (Usage Fee for Use of the Stadium and Other Payments) payable in accordance with Clause 20A.1(d) or (e) as the case may be;
 - 2.2 A new definition of "Agreed Capacity" to replace the existing definition of Agreed Capacity:

Agreed Capacity
means, subject to Clauses 15.5 to 15.8:

 - (i) *a minimum of 57,000 Spectator Seats when the Stadium is provided in Football Mode including a minimum of 3,400 Club Seats; or*
 - (ii) *a minimum of 49,500 Spectator Seats when the Stadium is provided in Athletics Mode including a minimum of 3,400 Club Seats;*
 - 2.3 A new definition of "Capacity Increase Costs":

Capacity Increase Costs
means all costs reasonably and properly incurred in the provision of, and seeking the provision of, an increased number of Spectator Seats (be that any increase in capacity above 57,000 Spectator Seats or any increase in the number of Spectator

Seats above 57,000 as may be the approved capacity at the relevant time) including, for the avoidance of doubt, but without limiting the generality of the foregoing):

(a) all costs of applying for Grantor Consents for such increased capacity, including all planning and licensing fees and costs, all and any s106 contributions and/or Community Infrastructure Levy payments, and all legitimate professional fees (including, by way of example, project management, design, structural engineering and architects fees); and

(b) all capital investment costs of and costs of a capital nature incurred in the undertaking of all Capacity Increase Works, but excluding:

(i) any management fees of the Grantor and/ or any Grantor Party, any other fees or charges due to the Operator, operational costs, or any fees payable by the Grantor to the Operator or any other contractor or agent of the Grantor for procuring any such capital works; and

(ii) the Grantor's operational costs of operating the Stadium at such increased capacity;

(iii) any costs in relation to the access and egress from the Stadium including but not limited to in relation to the Westfield shopping centre and/or Transport for London but for the avoidance of doubt such costs do not include any s106 contributions and/or Community Infrastructure Levy Payments which are included within the definition of Capital Increase Costs pursuant to (a) above;

and provided that

(I) the Grantor shall (i) use reasonable endeavours to minimise such costs; (ii) if any such cost is likely to exceed the approved budget therefor, promptly inform the Concessionaire in writing; and (iii) carry out all lawful directions issued by the Concessionaire for the purpose of minimising such costs insofar as such directions are not unreasonable and any dispute between the Parties as to unreasonableness of any such direction shall be a Matter for Expert Determination if it has not been resolved within 30 days of such dispute being escalated to the Chief Executive Officer of the Grantor and the Vice Chair of the Concessionaire;

(II) the Capacity Increase Costs are confined to reimbursing actual costs incurred at cost without any mark-up or margin being applied;

(III) the Grantor will not be entitled to reimbursement of any Capacity Increase Cost unless the contract under which such cost is incurred is in writing and all contractual documentation and associated correspondence including without evidence of relevant invoices have been disclosed to the Concessionaire in advance of reimbursement; and

(IV) the Concessionaire will not be liable to reimburse any cost for which the Grantor cannot provide proof of payment thereof.

2.4 A new definition of "Capacity Increase Works":

Capacity Increase Works

means all and any unavoidable and necessary works and studies required, whether inside or outside the Stadium and/ or on the Stadium Island and/ or off the Stadium Island, of whatever nature, in order to successfully apply for the grant to the Grantor of all requisite Grantor Consents (excluding any works and studies which are commissioned by the Concessionaire directly such as but not limited to the capital work conditions and costs of applying for and obtaining planning

consents (excluding works required inside the Stadium) which are dealt with separately under Clause 10A.5 (a) for such increased capacity);

- 2.5 A new definition of "Increased Capacity Usage Fee":

Increased Capacity Usage Fee

means the fee to be paid by the Concessionaire to the Grantor in accordance with Clause 20A.2 (Usage Fee for Use of the Stadium and Other Payments) payable in accordance with Clause 20A.2(c);

- 2.6 A new definition of "Kill Seat":

Kill Seat

means any seat within the Concession Areas which is not available to be sold for use by a spectator due to Regulatory Body requirement and/ or on the grounds of health and safety and/ or so as to ensure segregation between those spectators who attend Events in support of the Concessionaire's Team and those spectators who attend Events in support of the opposing team;

- 2.7 A new definition of "Complete Capacity":

Complete Capacity

subject to any further variation agreed between the Parties to accommodate either a larger or expanded Stadium and/ or a different seating configuration within the Stadium, means 66,513 Spectator Seats when the Stadium is provided in Football Mode including a minimum of 3,400 Club Seats ;

- 2.8 A new definition of "Spectator Seat":

Spectator Seat

means a seat within the Agreed Capacity in relation to which the Concessionaire can sell a Ticket for an Event to be held at the Stadium, such seat not being a Kill Seat;

- 2.9 A new Clause 10A.1, under a new heading: **10A. REQUIRED CAPACITY** as follows:

10A.1 On or before 1st June 2019 and on or before 1 June in each subsequent year during the Term, the Concessionaire shall notify in writing the Grantor as to the Concessionaire's requirements as to the number of Spectator Seats required by the Concessionaire, up to, and not to exceed, the Complete Capacity minus the Kill Seats, for Events held at the Stadium during the next following Football Season (which shall be not less than 57,000).

If the Concessionaire makes a request under clause 10A.1 for a capacity of 57,001 or more Spectator Seats for any Football Season but less than 60,001 (for example 60,000), clause 10A.2 (in relation to the 2018-19 Football Season) and clause 10A.4 (in relation to subsequent Football Seasons) shall apply (but not clause 10A.3(b) and 10A.5).

If the Concessionaire makes a request under clause 10A.1 for a capacity of more than 60,000 Spectator Seats for any Football Season, clause 10A.3(b) shall apply and clause 10A.5 shall also apply (but not clause 10A.2, clause 10A.3(a) or clause 10A.4);

- 2.10 A new clause 10A.2 as follows:

10A.2 In relation to the 2018-19 Football Season if requested to do so in writing by the Concessionaire, the Grantor shall promptly use all reasonable endeavours and subject always to Clause 10A.7 at its own cost to obtain and retain all necessary Grantor Consents for 60,000 Spectator Seats at Events. After such Grantor Consents have been obtained for 60,000 Spectator Seats, on a Competitive Match by Competitive Match basis,

the Concessionaire shall notify the Grantor in writing at least 14 days in advance as to the Concessionaire's requirements as to the number of Spectator Seats required by the Concessionaire for each Competitive Matches held at the Stadium. For any Competitive Match during the 2018-19 Football Season at which the number of Spectator Seats matches the Concessionaire's requirements for that Competitive Match and is in excess of 57,000, the Concessionaire shall be liable to make payment under clause 20A.1(e).

2.11 A new clause 10A.3 as follows:

10A.3 If the Concessionaire makes a request under clause 10A.1 for a capacity of 57,001 or more Spectator Seats for any Football Season the Grantor shall, promptly thereafter acting at all times in good faith:

- (a) use all reasonable endeavours to apply for, obtain, retain and maintain all those Grantor Consents necessary in order to meet the Concessionaire's requested capacity in excess of 57,000 up to 60,000 Spectator Seats (to the extent not already obtained and retained) and the Grantor shall make any such application as may be necessary under this clause as soon as reasonably practicable after being notified by the Concessionaire under clause 10A.1, and in any event no later than one month after notification is received; and shall keep the Concessionaire updated at regular intervals as to the progress of the application and the steps taken by the Grantor in relation to it, and provide the Concessionaire promptly with copies of all documents submitted and received by it in relation to the application. If such Grantor Consents are obtained or have been obtained and are currently in force, the Concessionaire shall be liable to pay the Additional Usage Fee in accordance with and to the extent payable under Clause 20A.1 (in addition to Usage Fee at Clause 20.1(a)). Once obtained, the Grantor shall acting at all times in good faith use all reasonable endeavours to retain the Grantor Consents throughout the Term; and*
- (b) use its reasonable endeavours to apply for, obtain, retain and maintain all those Grantor Consents necessary in order to meet the Concessionaire's requested capacity over 60,000 Spectator Seats (to the extent not already obtained and retained) and in addition the Parties shall each comply with clause 10A.5 in this respect;*

2.12 A new clause 10A.4 as follows:

10A.4 If under clause 10A.1 for any Football Season the Concessionaire makes a request for a capacity of more than 57,000, but less than 60,001 (for example 60,000) Spectator Seats, the Grantor shall promptly thereafter acting at all times in good faith use all reasonable endeavours to apply for, obtain, retain and maintain all those Grantor Consents necessary in order to meet the Concessionaire's requested capacity (to the extent not previously obtained and retained). The Grantor shall make any such application as may be necessary under this clause as soon as reasonably practicable after being notified by the Concessionaire under clause 10A.1, and in any event no later than one month after notification is received; and shall keep the Concessionaire updated at regular intervals as to the progress of the application and the steps taken by the Grantor in relation to it, and provide the Concessionaire promptly with copies of all documents submitted and received by it in relation to the application. If such Grantor Consents are obtained, the Concessionaire shall be liable to pay the Additional Usage Fee in accordance with and to the extent payable under Clause 20A.1 (in addition to the Usage Fee at Clause 20.1(a)). Once obtained, the Grantor shall acting at all times in

good faith use all reasonable endeavours to retain the Grantor Consents throughout the Term.

2.13 A new clause 10A.5 as follows:

10A.5 *If under clause 10A.1 for any Football Season the Concessionaire makes a request for a capacity of more than 60,000 Spectator Seats, then the Parties agree that:*

- (a) *Excluding in relation to any Capacity Increase Works required inside the Stadium (which are dealt with separately under clauses 10A.5(b) to 10A.5(s) inclusive), subject to its nomination to do so and subject to the Concessionaire having locus standi to make such application, the Concessionaire shall, at its own cost, make an application for any planning consents necessary in order to meet the Concessionaire's requested capacity including but not limited to the capital work conditions and costs of doing so, and the costs of applying for and obtaining planning consents; it being noted and agreed that if the Concessionaire does not have locus standi to make any such application then it shall be made, obtained and implemented by the Grantor and dealt with in accordance with clauses 10A.5(b) to 10A.5(s) inclusive below;*
- (b) *at the earliest opportunity, the Grantor shall acting at all times in good faith apply for all those Grantor Consents (save for any Planning Conditions which the Concessionaire has agreed to make application for under clause 10A.5(a)) necessary in order to meet the Concessionaire's requested capacity and the Grantor will fully support any planning consent applications made by the Concessionaire in accordance with clause 10A.5(a) above) and will provide such information and assistance as may reasonably be required by the Concessionaire in this regard;*
- (c) *until such time as Grantor Consents are obtained for the capacity requested by the Concessionaire, the capacity shall remain at 60,000 Spectator Seats (or if lower at the capacity for which Grantor Consents have been obtained and are in force) and the Concessionaire shall be liable to pay the Additional Usage Fee in accordance with and to the extent payable under Clause 20A.1) (in addition to the Usage Fee at Clause 20.1(a)) pending the Grantor obtaining Grantor Consents necessary in order to meet the Concessionaire's requested capacity;*
- (d) *as soon as can be arranged, the Parties shall meet and in good faith agree both a budget for and the specification of the Capital Increase Works that (acting reasonably) they determine will be required in order to succeed with an application for the relevant Grantor Consents necessary in order to achieve the capacity requested by the Concessionaire in excess of 60,000 Spectator Seats and the Parties shall set (i) a budget; and (ii) a specification for the Capacity Increase Works;*
- (e) *the Concessionaire shall have the option to withdraw its request for a capacity over 60,000 Spectator Seats at any time prior to the Capacity Increase Works being tendered, in which case the Concessionaire's request for the Football Season in question shall be deemed to be a request for 60,000 and Clause 10A.3(a) shall apply and the Grantor shall not be obliged to proceed with the Concessionaire's request at that time; it being noted and agreed that the Concessionaire shall be at liberty to notify further requests for a capacity over 60,000 Spectator*

Seats subsequently in which case this clause 10A.5 shall apply to each such request;

- (f) *if the Concessionaire approves in writing both the budget and the specification for the Capacity Increase Works, then the Grantor shall procure the provision of the Capacity Increase Works in compliance with the budget and specification as approved by the Concessionaire. If the Grantor cannot procure the provision of the Capacity Increase Works in compliance with the budget and specification as approved by the Concessionaire then the parties agree to re convene and seek to agree in good faith both a revised budget and specification of the Capital Increase Works. which revised budget and specification must be approved in writing by the Concessionaire and following such approval, the Grantor shall procure the provision of the Capacity Increase Works in compliance therewith. If approval is not provided, the Grantor shall not be obliged to proceed with the Concessionaire's request at that time it being noted and agreed that the Concessionaire shall be at liberty to notify further requests for a capacity over 60,000 Spectator Seats subsequently in which case this clause 10A.5 shall apply to each such request;*
- (g) *The Grantor is not obliged to procure the Capacity Increase Works until a budget and specification has been approved by the Concessionaire and a preferred bidder has been nominated and approved by the Concessionaire.*
- (h) *the Grantor shall not (and shall ensure that no Grantor Party shall) enter into a contract for the provision of the Capacity Increase Works unless and until the terms of such contract have been approved in writing by the Concessionaire. If approval is not provided, the Grantor shall not be obliged to proceed with the Concessionaire's request at that time; it being noted and agreed that the Concessionaire shall be at liberty to notify further requests for a capacity over 60,000 Spectator Seats subsequently in which case this clause 10A.5 shall apply to each such request;*
- (i) *once the contract has been entered into for the provision of the Capacity Increase Works then any costs incurred which have not been provided for in such budget or which exceed the costs established in such budget must be approved in writing by the Concessionaire and the Grantor will not incur such costs without first obtaining such approval. If approval is not provided, the Grantor shall not be obliged to proceed with the Concessionaire's request at that time (it being noted and agreed that the Concessionaire shall be at liberty to notify further requests for a capacity over 60,000 Spectator Seats subsequently in which case this clause 10A.5 shall apply to each such request). In not providing its approval, the Concessionaire acknowledges that the Grantor shall not be required to act in breach of the contract for the provision of the Capacity Increase Works and (so long as the terms of such contract have been approved in writing by the Concessionaire) the Capacity Increase Costs shall include payments due and payable under such contract including but not limited to payments by way of compensation if such contract is terminated by the Grantor at the request of the Concessionaire in writing;*
- (j) *any variation to the approved specification and/or the contract for the provision of the Capacity Increase Works must be*

approved in writing by the Concessionaire and the Grantor will not agree to vary the specification without first obtaining such approval. If approval is not provided, the Grantor shall not be obliged to proceed with the Concessionaire's request at that time (it being noted and agreed that the Concessionaire shall be at liberty to notify further requests for a capacity over 60,000 Spectator Seats subsequently in which case this clause 10A.5 shall apply to each such request);

- (k) the Grantor shall not (and shall ensure that no Grantor Party shall) vary a contract for the provision of the Capacity Increase Works unless and until the terms of such variation have been approved in writing by the Concessionaire; If approval is not provided, the Grantor shall not be obliged to proceed with the Concessionaire's request at that time (it being noted and agreed that the Concessionaire shall be at liberty to notify further requests for a capacity over 60,000 Spectator Seats subsequently in which case this clause 10A.5 shall apply to each such request);*
- (i) Subject to clauses 10A.5(a) to clause 10A.5(k) inclusive the Grantor shall commission and procure, and instruct and deliver:
 - (I) all such Capacity Increase Works as may be anticipated in advance as being necessary in order to obtain all those Grantor Consents necessary in order to meet the Concessionaire's requested capacity; and/ or*
 - (II) all such Capacity Increase Works as are specified as necessary within any Grantor Consent in order to confirm that Grantor Consent is satisfied and / or met,**

subject to:

- (III) any and all build work to be undertaken at the Stadium shall be scheduled to take place in a time window as agreed by the Parties (acting reasonably) taking account of the Agreed Event Calendar and the contractual entitlements of the Other Concessionaires, with a timetable for the undertaking of the Capacity Increase Works to be agreed between the Parties;*
- (l) subject to the provisions of this clause 10A.5, the Concessionaire shall reimburse to the Grantor all Capacity Increase Costs which are within the approved budget (as the budget has been varied with the approval of the Concessionaire from time to time.) Such reimbursement shall be made within 14 days of the Concessionaire approving (such approval not to be unreasonably withheld and provided within 14 days) a costs schedule and an accompanying invoice which records all of the Capacity Increase Costs in sufficient detail for the Concessionaire to determine that they have been properly and reasonably incurred within the approved budget (as varied) and that the Capacity Increase Works to which such costs refer have been completed in accordance with the terms of the relevant contract as previously approved by the Concessionaire so as to meet the specification therefor;*
- (m) The Grantor shall work in an open and transparent manner with the Concessionaire in the procurement and delivery of the Capital Increase Works and shall use its reasonable endeavours to achieve value for money; the Grantor shall retain for a period of 6 years from their date such contracts, accounts and records relating to the works, including the Capital Increase Works as any prudent business would retain; and the Grantor*

shall allow the Concessionaire to review on an open book basis those contracts, accounts and records upon reasonable notice so to do.

- (n) Any dispute between the Parties as to the amount of the Capital Increase Costs shall be a Matter for Expert Determination if it has not been resolved within 30 days of such dispute being escalated to the Chief Executive Officer of the Grantor and the Vice Chair of the Concessionaire. Pending resolution of any dispute as to the amount of the Capital Increase Costs, the Concessionaire shall pay that proportion of the amount claimed by the Grantor which is not in dispute. To the extent that the determination of such dispute is in favour of the Grantor, the Grantor shall be entitled to interest on the unpaid amount of the Capital Increase Costs to be determined at 2% above the base rate of Barclays Bank PLC (or, if such rate is not available, the nearest equivalent rate of another clearing bank in the City of London nominated by the Party to whom the payment is due);
- (o) if any invoice issued by the Grantor for Capacity Increase Costs remains unpaid for a period in excess of 60 Business Days and which is not disputed by the Concessionaire then the Grantor shall be entitled to cease works (including the Capital Increase Works) and to cease to incur further Capital Increase Costs until the relevant invoice is paid.
- (p) Subject to the Concessionaire having paid all undisputed Capital Increase Costs and subject to any disputed Capital Increase Costs having been referred by any Party for resolution as a Matter for Expert Determination and after all anticipated Capacity Increase Works have been undertaken, installed and/ or completed (as the case be), the Grantor shall thereafter use all reasonable endeavours to apply for, obtain, confirm, retain, implement, and maintain all those Grantor Consents necessary in order to meet the Concessionaire's requested capacity. If such Grantor Consents are obtained, the Concessionaire shall be liable to pay the Increased Capacity Usage Fee as provided at Clause 20A.2 (in addition to the Usage Fees at Clause 20.1(a) and Clause 20A.1.
- (q) The Grantor undertakes to use reasonable endeavours to ensure minimum disruption to the Concessionaire's Events at the Stadium as a result of the Capacity Increase Works.
- (r) The Grantor shall inform the Concessionaire on the progress of the Capacity Increase Works.
- (s) The Grantor agrees that, in respect of the agreed specifications to be delivered as part of the Capacity Increase Works, it will:
 - (i) enter into the contracts to procure the Capacity Increase Works and exercise its rights under each contract for Capacity Increase Works so that the Stadium is developed in accordance with the specifications;
 - (ii) inform the Concessionaire on a monthly basis of the progress of the Capacity Increase Works and provide information on actual progress against scheduled progress;
 - (iii) invite the Concessionaire to attend site meetings at the Stadium with the relevant contractors for the Capacity Increase Works on at least a monthly basis;
 - (iv) consult with the Concessionaire and represent to the relevant contractor with responsibility for delivering the Capacity

Increase Works, any interest of the Concessionaire in how the works should be delivered;

- (v) use reasonable endeavours to ensure that the Capacity Increase Works are completed on schedule and if any element of such works is likely to be in delay, promptly inform the Concessionaire in writing; and (iii) carry out all lawful directions issued by the Concessionaire for the purpose of mitigating such delay insofar as such directions are not unreasonable and any dispute between the Parties as to unreasonableness of any such direction shall be a Matter for Expert Determination if it has not been resolved within 30 days of such dispute being escalated to the Chief Executive Officer of the Grantor and the Vice Chair of the Concessionaire;*
- (vi) give such other information as the Concessionaire reasonably requests regarding the Capacity Increase Works; and*
- (vii) on reasonable notice and at reasonable times give access to the Concessionaire and its professional advisers to visit the site;*

2.14 A new clause 10A.6 as follows:

10A.6 The Concessionaire agrees that any improvements made to the Stadium or to its structure and/ or any additional Facilities and Services built at or brought into the Stadium to assist in the obtaining of Grantor Consents for a capacity at the Stadium for Football Matches in excess of 57,000 Spectator Seats shall be owned by the Grantor, whether the Concessionaire has paid all or any part of the cost of acquiring or installing such item and the Grantor shall be fully responsible at its own cost for maintaining, repairing and/or replacing each such item.

2.15 A new clause 10A.7 as follows:

10A.7 In the event of the Grantor successfully applying for Grantor Consents for an increased capacity at the Stadium for Football Matches of 60,000 Spectator Seats (or any number of Spectator Seats between 57,001 and 60,000) pursuant to either Clause 10A.2 or 10A.3(a) above, the Concessionaire will pay to the Grantor an amount equal to the lower of 50% of the Capacity Increase Costs incurred legitimately in obtaining such Grantor Consents, or £900,000.

2.16 A new clause 10A.8 as follows:

10A.8 The Concessionaire agrees acting at all times in good faith to offer to sell Tickets for Spectator Seats over and above 57,000 Spectator Seats so as to avoid Spectator Seats being situated in isolation of each other and in order that the Grantor can manage the stewarding of Events efficiently; it being noted and agreed that Tickets are sold by the Concessionaire at different prices and Spectators hold different preferences as to where in the Stadium they wish to sit. The Concessionaire shall be free to sell Tickets to meet demand for Spectator Seats but will not actively sell Tickets for Spectator Seats randomly, the intention being to group Spectators who support each team participating in an Event together for ease of stewarding on a "nearer to Pitch before further back from Pitch" basis.

2.17 A new clause 10A.9 as follows:

10A.9 The Concessionaire shall not sell Tickets for any Event in excess of the capacity of the Stadium for Football matches as stated in the applicable Grantor Consents from time to time; the Concessionaire shall at all times acting in good faith, provide information as reasonably requested by the Grantor as to actual sales of Tickets for each Event for the purpose of

verifying the number of Spectator Seats for which Tickets are sold on an Event by Event basis.

2.18 A new clause 10A.10 as follows:

10A.10 *Without prejudice to any other clause the Grantor shall acting at all times in good faith use all reasonable endeavours at its own cost (save to the extent that the Concessionaire has agreed to meet such costs in accordance with the express terms of this Agreement) to obtain and throughout the Term continue to hold valid Grantor Consents (including without limitation a General Safety Certificate and Spectator Certificate) and any relevant Planning Conditions to meet the requirements of the Concessionaire in excess of 57,000 up to 60,000 Spectator Seats; it being noted and agreed that if the Concessionaire requires more than 60,000 Spectator Seats then clause 10A.5 shall apply.*

2.19 A new clause 15.9 as follows:

15.9 *The Capacity Increase Works shall not be treated by the Parties as an Improvement or Alteration and all requests made by the Concessionaire under clause 10A shall not be treated as requests for Improvements or Alterations.*

2.20 A new Clause 20A.1 as follows:

20A.1 *Additional Usage Fee:*

For any Football Season for which the Concessionaire has notified the Grantor in writing that:

(a) in accordance with Clause 10A.1 (subject to Clause 20A.1(e) for the 2018-19 Football Season) it wishes to enjoy a capacity of 60,000 Spectator Seats at every Event held at the Stadium in such Event Year, conditional upon all Grantor Consents having been obtained and thereafter retained for such capacity the Concessionaire shall pay to the Grantor for such Event Year the Additional Usage Fee of £250,000 (regardless of which division Relevant League Club Matches are played in) PROVIDED THAT the Additional Usage Fee of £250,000 shall be pro-rated in accordance with clause 20A.1(c) if the number of Spectator Seats at any Event during such Event Year is less than 60,000; or

(b) in accordance with Clause 10A.3 (subject to Clause 20A.1(e) for the 2018-19 Football Season) if it wishes to enjoy a capacity of more than 57,000, but less than 60,000 Spectator Seats, (regardless of which division Relevant League Club Matches are played in) the Concessionaire shall pay to the Grantor for such Event Year the Additional Usage Fee of £250,000 adjusted to the number of Spectator Seats requested over 57,000 by dividing the number of additional Spectator Seats requested, over 57,000 by 3,000 and multiplying by £250,000 PROVIDED THAT ALSO that the Additional Usage Fee shall be pro-rated in accordance with clause 20A.1(c)

(By way of illustration, if the number of Spectator Seats in any Event Year requested by the Concessionaire is 58,500, the Additional Usage Fee for such event Year shall be £125,000; being half of £250,000 corresponding to the difference between 58,500 and 57,000 being fifty per cent of the difference between 60,000 and 57,000 viz. 1,500 divided by 3,000 = 0.5 which multiplied by £250,000 equals £125,000.)

(c) It is noted and agreed that the Concessionaire may request a number of Spectator Seats under clause 10A.1 and the Regulatory Authorities might award Grantor Consents for a fewer number of Spectator Seats for a number of Events and thereafter award a Grantor Consents for a higher number for subsequent Events such that there is a ramping up of the capacity at the Stadium over a number of Events, in

which case the Concessionaire shall not be liable to pay fees for any Spectator Seats for which there is not in force valid Grantor Consents

In such circumstances, the Additional Usage Fee under Clauses 20A.1(a) and 20A.1(b) shall be adjusted on a pro rata basis to the actual number of additional Spectator Seats available to the Concessionaire at any Event in such Event Year if less than 60,000 as follows:

The difference between the mean average number of Spectator Seats available to the Concessionaire at all Events during the Football Season shall be calculated. The difference between this average and 57,000 shall be ascertained and divided by 3,000 and multiplied by £250,000.

(By way of illustration, if the average number of Spectator Seats in any Event Year for which Grantor Consents are obtained and retained is 58,500, the Additional Usage Fee shall be £125,000, being half of £250,000 corresponding to the difference between 58,500 and 57,000 being fifty per cent of the difference between 60,000 and 57,000 viz. $1,500 \div 3,000 = 0.5$ which multiplied by £250,000 equals £125,000.)

(d) The Concessionaire shall pay the Additional Usage Fee under Clauses 20A.1(a) or 20A.1(b) to the Grantor, on or before the date falling 30 days after receipt of the Grantor's invoice for the same (which the Grantor agrees it will not submit to the Concessionaire unless and until the Grantor Consents have been obtained for the capacity as requested by the Concessionaire under Clause 10A.1).

(e) in relation to the 2018-19 Football Season only, if the number of Spectator Seats at any Competitive Match prior to the end of the 2018-19 Football Season is 60,000 with all Grantor Consents obtained and retained for such capacity, the Concessionaire shall pay to the Grantor, within 28 days after the staging of each such Competitive Match, £10,000 in relation to each such Competitive Match (provided that an invoice for such amount has been received by the Concessionaire from the Grantor) subject to:

(i) if the number of Spectator Seats at any Competitive Match prior to the end of the 2018-19 Football Season is between 57,001 and 60,000 due to Grantor Consents being granted only for such number, the Concessionaire shall pay to the Grantor, a sum calculated on the basis of £333 per one hundred additional Spectator Seats above 57,000 in relation to each such Competitive Match.

(ii) if Grantor Consents have been obtained for 60,000 Spectator Seats, the Concessionaire shall be entitled to notify the Grantor in writing at least 14 days in advance, on a Competitive Match by Competitive Match basis, if for any particular Competitive Match in that 2018-19 Football Season the Concessionaire requires a number of Spectator Seats below 60,000 (but not less than 57,000), and if so, for that Competitive Match, the Concessionaire shall pay to the Grantor, within 14 days of the staging of each such Competitive Match a sum calculated on the basis of £333 per one hundred additional Spectator Seats above 57,000 in relation to each such Competitive Match in place of £10,000 per Competitive Match.

2.21 A new Clause 20A.2 as follows:

20A.2 Increased Capacity Usage Fee:

In addition to the Usage Fee and the Additional Usage Fee, for any Event Year for which the Concessionaire has notified the Grantor in writing that:

(a) in accordance with Clause 10A.1 it wishes to enjoy a capacity of more than 60,000 Spectator Seats at every Event held at the Stadium in such Event Year, conditional upon all Grantor Consents being obtained and retained for such capacity the Concessionaire shall pay to the Grantor the Increased Capacity Usage Fee of £83,333 for such Event Year in consideration for each tranche of 2,500 Spectator Seats more than 60,000 Spectator Seats at every Event in such Event Year (regardless of which division Relevant League Club Matches are played in) and for the avoidance of doubt the payment of £83,333 relates to the fee for the Event Year and not a fee per Event PROVIDED THAT the Increased Capacity Usage Fee shall be pro-rated in accordance with clause 20A.2(b) if the number of Spectator Seats at any Event during such Event Year is less than the capacity requested by the Concessionaire under Clause 10A.1;

(By way of illustration, if the capacity requested by the Concessionaire under Clause 10A.1 is 65,000, the Increased Capacity Usage Fee would be £166,666 in consideration for 5,000 Spectator Seats more than 60,000 Spectator Seats per Event; being £83,333 multiplied by 2);

(b) It is noted and agreed that the Concessionaire may request a number of Spectator Seats under clause 10A.1 and the Regulatory Authorities might award Grantor Consents for a fewer number of Spectator Seats for a number of Events and thereafter award a Grantor Consents for a higher number for subsequent Events such that there is a ramping up of the capacity at the Stadium over a number of Events, in which case the Concessionaire shall not be liable to pay fees for any Spectator Seats for which there is not in force valid Grantor Consents

In such circumstances, the Increased Capacity Usage Fee under clause 20A.2(a) shall be adjusted on a pro rata basis to the actual number of additional Spectator Seats available to the Concessionaire at any Event if less than the capacity requested by the Concessionaire under Clause 10A.1 as follows:

The difference between the mean average number of Spectator Seats available to the Concessionaire at all Events during the relevant Event Year shall be calculated. The difference between this average and 60,000 shall be ascertained and divided by 2,500 and multiplied by £83,333.

(By way of illustration, were the average capacity of the Stadium for Football Matches to be 61,000 Spectator Seats in a given Event Year, the Increased Capacity Usage Fee would be £33,333 per annum; were the capacity of the Stadium for Football matches to be 63,000 Spectator Seats, the Increased Capacity Usage Fee would be £100,000)

(c) The Concessionaire shall pay the Increased Capacity Usage Fee under Clauses 20A.2(a) or 20A.2(b) to the Grantor, on or before the date falling 30 days after receipt of the Grantor's invoice for the same (which the Grantor agrees it will not submit to the Concessionaire unless and until the Grantor Consents have been obtained for the capacity as requested by the Concessionaire under Clause 10A.1);

2.22 A new Clause 20B.1 as follows:

20B.1 For the avoidance of doubt:

(a) in relation to each Event Year for which, by or on the 1 June mentioned in Clause 10A.1 (and conditional upon the Grantor's receipt of such written notice by such date), the Concessionaire requests a capacity of 57,000 (or less) Spectator Seats no Additional Usage Fee and no Increased Capacity Usage Fee shall be due or payable by the Concessionaire; and

(b) in relation to each Event Year for which, by or on the 1 June mentioned in Clause 10A.1, the Concessionaire requests a capacity of less than 57,000 Spectator Seats, the Usage Fee shall remain as payable at Clause 20.1.

2.23 A new Clause 20.1(b) to replace the existing Clause 20.1(b) as follows:

20.1(b) For any Additional Match:

- (i) £100,000 if, at the time of the hosting of the Additional Match, the capacity of the Stadium for Football matches is 57,000 Spectator Seats ;
- (ii) £110,000 (if, at the time of the hosting of the Additional Match, the capacity of the Stadium for Football matches is between 57,001 and 60,000 Spectator Seats; and
- (iii) if, at the time of the hosting of the Additional Match, the capacity of the Stadium for Football matches is over 60,000 Spectator Seats, the sum of £110,000 plus a pro-rata-ed uplift calculated on the basis of £333 per one hundred additional Spectator Seats above 60,000

(By way of illustration, the payment for an Additional Match with a capacity of 62,500 Spectator Seats is £118,325.)

2.24 A new Clause 21.3A as follows:

21.3A *Notwithstanding clause 21.2, the indexation adjustment for amounts set out in new clauses Clause 20A.1 and Clauses 20A.2 (Usage Fee for Use of the Stadium and Other Payments) relating to the Additional Usage Fee and the Increased Capacity Usage Fee (and all related monetary values), shall take place by adding the sum obtained by multiplying such amount by the percentage increase, represented as a decimal figure, between the figure shown in the row containing the April 2018 figure for RPI and the figure shown in the row containing the April figure for RPI for the year in which the increase by indexation of the relevant amount occurs or (if not available) the April figure for RPI in the immediately preceding year..*

3. Save as expressly varied in accordance with this Deed, the Concession Agreement shall continue in full force and effect.
4. The Grantor agrees to bear all costs and expenditure incurred in relation to all activities and works undertaken prior to the date of this Deed (including without limitation compliance with the conditions attached to any of the Grantor Consents and all relevant Planning Conditions) so as to provide the Stadium at the Agreed Capacity.
5. This Deed constitutes the entire understanding between the parties relating to the subject matter of this Deed and there is no other promise, representation, warranty, usage, custom or course of dealing affecting it. Except as may be expressly referred to in this Deed, this Deed supersedes any and all prior representations, writings, negotiations or understandings in relation to its subject matter. Nothing in this Clause 5 excludes liability for fraudulent misrepresentation made by any Party.
6. If any provision of this Deed is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Deed shall continue in full force and effect as if this Deed had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Deed, the Parties shall immediately commence negotiations to remedy such invalidity.
7. This Deed may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be an original and all the counterparts together shall constitute one and the same instrument which shall only be deemed executed when counterparts executed by all Parties are delivered.

8. This Deed shall be governed by and construed in accordance with English law. Any disputes arising under or in any way connected with the subject matter of this Deed (whether of a contractual or tortious nature or otherwise) shall be subject to English law and the exclusive jurisdiction of the English courts.
9. An agreed joint statement regarding the terms of this Deed will be made in neutral terms to the media and no other public statement shall be made regarding the settlement that materially differs from that statement by any of the Parties.

IN WITNESS of which the duly authorised representatives of the parties have executed this Deed which is delivered and takes effect on the date hereof.

SIGNED (but not delivered until the date hereof)
AS A DEED by
WH HOLDING LIMITED
 acting by


Signature of Director:

Name (BLOCK CAPITALS)


 BARONNESS BRADY

Signature of Director:

Name (BLOCK CAPITALS)


 ANDREW MOLLETT

SIGNED (but not delivered until the date hereof)
AS A DEED by
WEST HAM UNITED FOOTBALL CLUB LIMITED
 acting by

Signature of Director:

Name (BLOCK CAPITALS)


 BARONNESS BRADY

Signature of Director:

Name (BLOCK CAPITALS)


 ANDREW MOLLETT

SIGNED (but not delivered until the date hereof)
AS A DEED by
E20 STADIUM LLP
 acting by

LONDON LEGACY DEVELOPMENT CORPORATION (DESIGNATED MEMBER)

Signature of Director:

Name (BLOCK CAPITALS)

LYN GARNER.

STRATFORD EAST LONDON HOLDINGS LIMITED (DESIGNATED MEMBER)

Signature of Director:

Name (BLOCK CAPITALS)


 G.M.M. MURPHY

