

DATED

14th September

1995

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF CAMDEN

- and -

WEALTHSTAR LIMITED

DEED OF AGREEMENT
UNDER SECTION 278 HIGHWAYS ACT 1980
SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990
AND SECTION 111 LOCAL GOVERNMENT ACT 1972
RELATING TO AFFORDABLE HOUSING AND HIGHWAY MATTERS
IN CONNECTION WITH THE DEVELOPMENT
OF MOUNT VERNON HAMPSTEAD NW3

THIS DEED of AGREEMENT is made the 14th day of September 1995

BETWEEN

- (1) THE MAYOR and BURGESSES of the London Borough of Camden of Camden Town Hall Judd Street London WC1H 9LP
- (2) WEALTHSTAR LIMITED whose registered office is situate at 100 New Bridge Street London NW8 5SU

RECITALS

A Interests in the Site

- A.1 The Owner is the registered proprietor with freehold absolute title under title numbers 168712 and 185503 of the Site and is interested in the Site within the meaning of Section 106 (9) (b) of the Town and Country Planning Act 1990

B Statutory Authority

- B.1 The London Borough of Camden is a local planning authority for the purposes of Section 1 Town and Country Planning Act 1990 for the area in which the Site is located and is the highway authority for the purposes of the Highways Act 1980 for Frognaal Frognaal Rise and Mount Vernon

C Planning

- C.1 On 19 December 1994 Marylebone Warwick Balfour Group plc submitted the Application on behalf of the Owner

D Planning Obligations

- D.1 Subject to the Conditions being satisfied this Agreement is intended to create Planning Obligations for the purposes of Section 106 Town and Country Planning Act 1990
- D.2 This Agreement relates to the provision of affordable housing on the Site and to off-site highway works to be executed by the Owner on behalf of the Council

E Highways

- E.1 The Owner and the Council (exercising its functions as highway authority) have agreed that it is expedient that the Works should be constructed
- E.2 The Owner has agreed with the Council that subject to the Conditions being satisfied it will pay the cost of and procure the construction of the Works
- E.3 The parties have agreed to enter into this Agreement in respect of the Works

F Affordable Housing

- F.1 Policy HG14 in the Council's Unitary Development Plan seeks the provision of an element of affordable housing as part of new housing developments
- F.2 The Owner has agreed to enter into the Contract to transfer the Affordable Housing Land to the Housing Association

1. **PLANNING OBLIGATIONS AND OPERATIVE POWERS**

1.1 This Agreement is entered into under Section 106 Town and Country Planning Act 1990 Section 278 Highways Act 1980 and Section 111 Local Government Act 1972

1.2 Subject to the satisfaction of the Conditions this Deed of Agreement creates Planning Obligations for the purposes of Section 106 Town and Country Planning Act 1990

2. **INTERPRETATION**

Definitions

2.1 In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings

"the Act"

the Town and Country Planning Act 1990 (as amended by the Planning and Compensation 1991)

"the Affordable Housing Land"

the land shown (for the purposes of identification only) edged blue on the Works Plan

"Agreement"

Deed of Agreement

"the Applications"

the application submitted on behalf of the Owner for

- (i) planning permission for the Development and given reference number PL9401944 (R2);

- (ii) conservation area consent for the Development and given reference HB/9460214 (R2);
- (iii) planning permission for Mount Vernon House and given reference PL9500161 (R2); and
- (iv) listed building consent for Mount Vernon House and given reference HB/9570029 (R2)

"Certificate of Completion"

certificate issued by the Council under Paragraph 7 of the Second Schedule certifying that the Works have been completed to the Council's satisfaction

"the Conditions"

the First Condition and the Second Condition

"the Contract"

the contract substantially in the terms set out in the Appendix to be entered into by the Owner and the Housing Association in respect of the Affordable Housing Land

"the Council"

the Mayor and Burgesses of the London Borough of Camden of Camden Town Hall Judd Street London WC1H 9LP

"Defects Correction Certificate"

certificate issued by the Council under Paragraph 9 of the Second Schedule

"the Development"

the residential redevelopment of the site comprising

- (i) the conversion of the former medical research building to 26 flats the demolition of the former animal house annexe and bridge link and the erection of a new building to accommodate 17 flats the demolition of the other buildings on the main part of the site and the erection of a new pavilion building to accommodate 19 flats the excavation of a car park to provide 107 car spaces the conversion of Mount Vernon Cottage together with the erection of 5 new houses to provide affordable housing on the south-west corner of the site as shown on Drawing Nos. IKA/204/100A, 101C, 102D-108D 109B 110B 111B ENG.HERT./05 AX1B AX2C AX3C NB1C-NB6C MV11A-MV16A 26990/2/1-11 15394/D/5 26990/1/1-3 IKA/204/ 400A 601B 603A 604A 605A and 26990/3 as revised by letters dated 16/5/95 and 19/6/95
- (ii) demolition of the former animal house annexe and bridge link the partial demolition of the former medical research building in connection with its conversion to 26 flats and the demolition of the other buildings on the main part of the site as shown on drawing number IKA/204/400A as revised by letters dated 16 May 1995 and 19 June 1995
- (iii) alterations and extensions in connection with the conversion of Mount Vernon House to a single dwelling as shown on drawing numbers IKA/204/100A 26990/4/1-2 IKA/204/202C 203C as revised by letters dated 10 March 1995 and 16 May 1995
- (iv) alterations and extensions in connection with the conversion of Mount Vernon House to a single dwelling as shown on drawing numbers IKA/204/100A 26990/4/1-2 IKA/204/202C 203C as revised by letters dated 10 March 1995 and 16 May 1995

"the Director"

the Councils Director of Environment for the time being or any deputy duly authorised by him and notified in writing to the Owner

"the Drawings"

the Works Plan together with such other drawings and plans as may be submitted by the Owner and approved by the Director under the terms of this Agreement

"the First Condition"

the issue of the Permissions by the Council

"the Housing Association"

the Paddington Churches Housing Association Limited whose registered office is situate at Canterbury House Canterbury Road London NW6 5SU or any other housing association nominated by the Council and approved by the Owner as suitable to enter into the Contract

"the Maintenance Period"

the period of 12 months from the date of the issue of a Completion Certificate and referred to in Paragraph 8 of the Second Schedule

"the Owner"

Wealthstar Limited whose registered office is situate at 100 New Bridge Street London NW6 5SU

"the Permissions"

planning permissions conservation area consent and listed building consent for the Development granted in respect of all of the Applications

"the Second Condition"

the service of written notice upon the Council by the Owner that the Development is to be commenced under the Permissions or the earlier commencement of the Development under the Permissions on

the Site by the carrying out by the Owner of a material operation as defined by Section 56(4) Town and Country Planning Act 1990 and Clause 5.7

"the Site"

that land bounded by Frogmal Frogmal Rise and Mount Vernon shown (for the purposes of identification only) edged red on the Works Plan

"Substantially Completed"

completed save in minor respects so that the Works can be used for the purpose and operate in the manner for which they were designed

"Substantially to Complete"

to complete save in minor respects so that the Works can be used for the purpose and operate in the manner for which they were designed

"Undertaker(s)"

any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone or television communications electricity gas water or drainage to the public and whose apparatus is under such authorisation at the date of this Agreement already installed in under over or upon the land on which the Works are to be carried out and any authorised successor to any such undertaking

"working day(s)"

Mondays to Fridays (excluding days which in England and Wales are public holidays) inclusive

"the Working Group"

the group to be set up under Clause 3.7

"the Works"

the works described in the First Schedule or (where the context so admits) any relevant part or parts of them

"the Works Plan"

IKA Project Design and Management Drawing Number IKA/204/501
Revision C

Construction

- 2.2 Where in this Agreement reference is made to a Clause Paragraph Schedule or Recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital of this Agreement
- 2.3 Where in any Schedule or Part of a Schedule reference is made to a Paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that Schedule or (if relevant) Part of a Schedule
- 2.4 References in this Agreement to the Owner shall include reference to its successors in title to the Site or to any part of the Site and to persons claiming through or under them
- 2.5 References in this Agreement to the Council shall include its successors
- 2.5.1 (in so far as relevant to the Works) as local planning authority and/or (if relevant) highway authority and
- 2.5.2 (in the case of terms relevant to or consequent upon land owned by the Council) in title and persons claiming through or under it

3. **OWNER'S COVENANTS**

Subject to the satisfaction of the Conditions and to the Council complying with its obligations under Clause 4 the Owner covenants with the Council:

3.1 **Construct Works**

subject to the Council complying with its obligations under Clause 4

3.1.1 to design in detail and to obtain all necessary licences and permissions and then to commence and thereafter diligently to proceed with the Works at no cost to the Council in accordance with the provisions of the First Schedule and

3.1.2 Substantially to Complete the Works prior to occupation of the Development for residential purposes

3.2 **Indemnities**

3.2.1 subject to Clause 3.2.2 to indemnify the Council from and against any legally sustainable costs claims demands and liabilities arising out of or in connection with the negligent and defective design or construction of the Works

3.2.2 such indemnity shall not apply in respect of any action cost claim demand or liability arising or which may arise out of or be incidental to any negligent act or default or omission on the part of the Council

3.3 **Public Liability Insurance**

to ensure that the person or persons carrying out the Works shall be insured against public liability risks for a sum of at least £2,000,000 in respect of any single claim

3.4 The Affordable Housing Land

subject to the provisions of the Housing Associations Act 1985 and to any re-enactment modification or substitution of that Act and any related or ancillary legislation not to permit the Affordable Housing Land to be developed for any purpose other than the construction of residential dwellings or used for any purpose other than for residential lettings by the Housing Association under secure tenancies or under shared ownership arrangements

Transfer of the Affordable Housing Land

3.5 following the grant of the Permission

3.5.1 within one month or as soon as possible thereafter to enter into the Contract with the Housing Association or

3.5.2 if the Housing Association shall decline to enter into the Contract then to use reasonable endeavours instead to enter into the Contract with some other housing association within such reasonable period as the Council and the Owner shall agree

3.6 Mount Vernon House

subject to the Council first approving all necessary details under the conditions attached to the Permissions to complete all the works of refurbishment to Mount Vernon House authorised by the Permissions before the Development on the remainder of the Site is occupied for residential purposes

Local Residents

3.7 to use its reasonable endeavours to establish an informal working group the objectives of which shall be to liaise discuss and where appropriate advise on any issue relating to good working practices to cover the environmental impact of construction activity arising

out of the construction of the Development until practical completion including (but without prejudice to the generality of the foregoing)

- 3.7.1 the demolition programme and the construction programme
- 3.7.2 the procedures for notifying local residents and business occupiers in advance of major operations
- 3.7.3 the details of material delivery schedules and any necessary road closures or other amendments to normal traffic arrangements
- 3.7.4 the identification of a Developer contact for local people to refer to and
- 3.7.5 details of measures to be taken to maintain tidiness during construction
- 3.8 to invite the following to become members of the Working Group
 - 3.8.1 two representatives of the Local Residents Association and
 - 3.8.2 a member of the Council's Environment Department
- 3.9 to procure that its project manager shall be a manager of the Working Group
- 3.10 until practical completion of the Development to procure that meetings of the Working Group shall be arranged at least once in every period of 3 months (commencing with the satisfaction of the Second Condition) and to provide at its own expense a suitable venue for each such meeting and shall give notice of not less than 7 days of each such meeting to each member

3.11 Payment of Legal Fees

to pay to the Council within 14 days of the completion of this Agreement its reasonable legal expenses in connection with the preparation of this Agreement in the sum of £2,400

3.12 Registration of the Agreement

to apply to the Chief Land Registrar to register this Agreement in the Charges Register of title numbers 168712 and 185503 and to furnish to the Council on written demand office copies of those titles to show the entry of this Agreement in the Charges Register of the title to the Site

3.13 Environmental Improvements

to pay to the Council within 14 days of the date of this Agreement the sum of £2,000.00 towards the carrying out by the Council of environmental improvements to highways in the immediate vicinity of the Site

3.14 Relocation of Parking Bays in Frogmal Rise

3.14.1 subject to Clause 3.14.2 to pay to the Council within 14 days of receipt of a written demand the reasonable cost to the Council of

3.14.1.1 marking out replacement on-street parking bays in the vicinity of the Site to replace any which are lost as a result of any widening of the access at Frogmal Rise into the Site carried out as part of the Development and

3.14.1.2 removal replacement and resiting of any associated equipment and signage

- 3.14.2 any demand served by the Council under Clause 3.14.1 shall be accompanied by full details of all costs incurred by the Council in marking out the replacement parking bays referred to in that Clause including contractors' invoices and/or full details of all internal costs incurred by the Council and the means by which these have been calculated

4. COUNCIL'S COVENANTS

The Council covenants with the Owner

4.1 Cooperation with reference to Works

without prejudice to its statutory duties

- 4.1.1 to cooperate with the Owner to enable the Works to be carried out and completed as expeditiously and economically as possible

- 4.1.2 (without prejudice to generality) from time to time at the request and cost of the Owner to use its best endeavours to publish and to make or procure the publishing and making as expeditiously as possible or within such other timescale as the Owner may reasonably specify of such orders for the temporary or permanent stopping up or diversion or restricted use of public highways including highway drainage and any public service media as may in each case be reasonably necessary to facilitate the carrying out of the Works

4.2 Second Schedule

that in so far as the Second Schedule requires actions on the part of the Council or its officers the Council shall comply with those requirements

- 4.3 to apply the sum paid by the Owner under Clause 3.13 solely and directly in connection with the environmental works described in that Clause

5. **AGREEMENTS AND DECLARATIONS**

It is agreed and declared:

5.1 **Delegation of Duties**

- 5.1.1 that subject to Clauses 5.1.2 to 5.1.4 inclusive the performance of the obligations on the part of the Owner contained in Clause 3.1 may be delegated to a contractor or sub contractor or sub contractors first approved by the Council
- 5.1.2 the Owner shall remain liable to the Council for the due performance and observance of this Agreement and
- 5.1.3 the contract by which the obligations contained in this Agreement are delegated shall unless otherwise approved by the Director contain terms and conditions no less stringent than the terms and conditions contained in this Agreement and shall incorporate the Specification the description of the Works appearing in the First Schedule to this Agreement and the Drawings

5.2 **Lapse of Agreement**

- 5.2.1 that (unless otherwise proposed by the Owner) this Agreement shall be revoked and be of no further effect
- 5.2.1.1 if the Permission shall lapse without having been implemented shall be revoked or shall be modified other than at the request of the Owner or

5.2.1.2 if a planning permission is granted (prior to satisfaction of the Second Condition) in respect of the Site which is inconsistent with the terms of this Agreement

5.3 Notices

5.3.1 subject to Clause 5.3.2 that any notice or other written communication to be served or given by one party upon or to any other under the terms of this Agreement shall be deemed to have been validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by registered or recorded delivery post to the party upon whom it is to be served or to whom it is to be given at the address given for them in Clause 2.1 or as otherwise notified for the purpose by notice in writing

5.3.2 any notice served by the Owner on the Council under Clause 5.3.1 must be endorsed with the reference CLS/ENV/CHL/JAL

5.3.3 any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council or by an officer or duly authorised signatory

5.4 Land Outside Control

that nothing in this Agreement shall require the performance of any obligation whatsoever in upon or under land outside the ownership of the party to perform the obligation unless such land shall be within the public highway and/or made available for the performance of that obligation at no cost to the party to perform its obligations

5.5 Reasonableness

that unless otherwise specified where any agreement certificate consent permission expression of satisfaction or other approval is to be given by the Council or any person on its behalf under the terms of this Agreement the same shall not be unreasonably withheld or delayed

5.6 Post-adoption responsibility

that after the issue of the or (if relevant) each Defects Correction Certificate all obligations on the part of the Owner under the terms of this Agreement shall cease and the Owner shall have no further liability in respect of the part of the Works to which that certificate shall relate (other than in respect of maintenance arising under Paragraph 9.1 of the First Schedule and liability arising in connection with the construction of the Works as a result of a claim made and notified to the Owner prior to the issue of the (relevant) Defects Correction Certificate)

5.7 Material Operations

that irrespective of Section 56(4) Town and Country Planning Act 1990 none of the following operations shall constitute a material operation for the purposes of satisfying the Second Condition

5.7.1 works of demolition

5.7.2 works of site clearance

5.7.3 ground investigations site survey works

5.7.4 laying of services and service media

5.7.5 construction of boundary fencing or hoardings

5.7.6 construction of temporary accesses and/or highway works

5.7.7 construction of foundations

5.7.8 landscaping works

5.7.9 archeological investigations

5.8 Notice of Working Group Meetings

that any member of the Working Group shall be entitled by giving notice of not less than seven days to the other members of the Working Group (except in an emergency in which case notice of 24 hours shall suffice) to call an additional meeting of the Working Group for the purpose of discussing any matter specified in the notice which it considers that the Working Group ought to discuss before the next meeting which will be due in accordance with Clause 3.10

5.9 Local Land Charge

5.9.1 That this Agreement shall be registered by the Council as a Local Land Charge on the Local Land Charges Register maintained by the Council

5.9.2 Upon the termination of this Agreement the Council shall on receipt of a written request from the Owner provide to the Owner a completed Notice of Withdrawal of the restriction or other entry at HM Land Registry and procure the cancellation of the entry referred to in Clause 5.9.1 in the Local Land Charges Register

5.10 Release

That the Owner shall upon parting with all interest in the Site be released from all obligations rights and duties under the terms of this Agreement except in respect of any prior or subsisting breach or obligation

5.11 Relevant Period

That for the purposes of Sections 106A(3) and 106A(4) (b) of the Act the relevant period for this agreement shall be

5.11.1 for Clauses 3.4 and 3.5 twenty five years and

5.11.2 for all other provisions five years

6. LICENCE

6.1 Subject to Clause 6.2 the Council without prejudice to its statutory powers and duties give to the Owner licence (in so far as reasonably necessary for the Owner to perform its obligations under the terms of this Agreement) to enter into and upon and remain upon with or without workmen plant and machinery land in the ownership or under the control of the Council and the public highway with or without workmen and machinery and (subject to later making good) to break open the surface and to carry out works in on or under land and/or highway

6.2 The licence given under Clause 6.1 shall not authorise the owner to store plant or machinery upon the public highway or upon any land in the ownership of the Council.

FIRST SCHEDULE

1. The Works are shown in outline on the Works Plan
2. The Works shall comprise
 - 2.1 the demolition of a section of wall fronting Frogna1 and the storage of the demolished materials on the Site and the provision of a temporary access to the Site from Frogna1 in a position to be agreed in writing with the Council and the closure of that temporary access and reinstatement of the wall to the satisfaction of the Council following the completion of the Development
 - 2.2 the removal if necessary (and if approved by the Council in writing) of the speedramp in Frogna1 opposite the site of the access described in Paragraph 2.1 and its replacement and reinstatement together with any necessary making good of the public highway in Frogna1 to the satisfaction of the Director and in accordance with the Council's highways engineering standards following the completion of the Development
 - 2.3 the carrying out of works to Mount Vernon as shown on the Works Plan namely
 - 2.3.1 the provision of York Stone Paving (to a standard in accordance with a sample first approved by the Council) to the footpath in the area hatched and marked as "zone 1"
 - 2.3.2 the provision of new planting (in accordance with a specification first agreed in writing with the Council) beside the wall running along the southern edge of the Site
 - 2.3.3 the provision of a new hand rail to the wall mentioned in Paragraph 2.3.2

- 2.3.4 the provision of York Stone Paving (or such other similar material as may be agreed in writing by the Council) to the footpath in the area hatched and marked as "zone 2" on the Plan
- 2.3.5 the repair of the retaining wall and steps as shown on the Works Plan and
- 2.3.6 the provision of York Stone Paving (to a standard in accordance with a sample first approved by the Council) on the area hatched on the Plan and denoted "zone 3"
- 2.4 the provision erection and connection of an authentic salvaged cast iron lighting column first approved in writing by the Council on the cul-de-sac footway to the west of Mount Vernon footpath at a site to be agreed in writing with the Council
- 2.5 the replacement of the hot rolled asphalt surface of the cul-de-sac carriageway to the west of Mount Vernon footpath with granite setts (to a standard in accordance with a sample first approved by the Council) in the area checker-boarded on the Works Plan and marked as "Zone 1"
- 2.6 the refurbishment of the three bollards and the rails on the eastern side of Frognal Rise at its junction with Windmill Hill
- 2.7 the repair of the retaining wall on the eastern side of Frognal Rise at its junction with Windmill Hill and the cutting back and removal of vegetation around the bollards
- 2.8 in the area marked "zone 4" on the eastern side of Hollybush Hill/ Mount Vernon as shown on the Plan
- 2.8.1 the repair of the retaining wall to the east of the railings

- 2.8.2 the refurbishment of the bollards and the erection of fencing along the eastern side of Frognal Rise at its junction with Windmill Hill
- 2.8.3 the refurbishment of the street lights along the length of Frognal to its junction with Frognal Rise the length of Frognal Rise the length of Windmill Hill and along the length of Holly Bush Hill
- 2.8.4 the repair/replacement of fencing along the upper edge of The Mount and the repair of the retaining wall
- 2.8.5 and the Owner hereby covenants with the Council that any contribution to be made by the Owner under this Agreement is to be index linked from the date hereof to the date that the Owner makes the relevant payment in accordance with the indices of cost of labour materials and transport in civil engineering constructions compiled by the Departments of Environment and Transport or such other cost Indexed superseding or replacing the same
- 2.9 the making of a photographic record prior to demolition of both sides of the section of the wall facing Frognal which is to be demolished and reinstated under Paragraph 2.1 of this Schedule

SECOND SCHEDULE

Terms and Conditions for the Execution of the Works

1. General

The Works shall be executed by the Owner in accordance with the Drawings

2. Access

- 2.1 The Owner shall during the progress of the Works upon reasonable request give or procure for the Council access to every part of the Works and permit him to inspect them as they proceed and all materials used or intended to be used in them and shall give effect to any reasonable and proper requirements of or reasonable and proper direction given by the Council to conform to the Drawings

3. Testing of materials

- 3.1 The Council shall have power in its reasonable discretion to test or require the testing of materials and/or workmanship used or proposed to be used in the Works and to reject any materials and/or workmanship so tested which he may reasonably and properly find to be not in accordance with the Specification and/or the Drawings
- 3.2 materials shall be tested in so far as practicable before works commence
- 3.3 testing of materials and workmanship shall in any event be carried out as expeditiously as possible
- 3.4 the Owner is to be notified of the results of any tests as soon as they become available

3.5 the Owner shall as soon as is reasonably practicable replace or repair any materials and/or workmanship which have been found not to be in accordance with the Specification and/or the Drawings with others which are in accordance

3.6 the Council shall for the purposes of this Paragraph be allowed reasonable access during normal working hours and admission to the Works or the places where materials or plant for the Works may be stored or are (in so far as such places are under the control of the Owner) in the course of preparation manufacture or use

3.7 the Owner shall as soon as is reasonably practicable remove such materials and/or workmanship as are rejected by the Council under Paragraph 4.1 which are not capable of repair or remedy from the site of the Works and if the Owner wishes to continue to store such rejected irreparable materials and/or workmanship on site they shall be stored separately from those materials and/or workmanship which have not been so rejected or which the Owner wishes in future to use in execution of the Works

4. Opening of the Works

4.1 the Council may issue an instruction to the Owner to open up or expose any part of the Works which has been covered up without having previously been inspected by the Council

5. Undertakers Apparatus

5.1 prior to the issue of the Certificate of Substantial completion the Owner shall on behalf of and at no cost to the Council comply with or (to the extent that the Owner cannot by law or in practice so act on behalf of the Council) provide the Council with necessary assistance to enable the Council to comply with any relevant requirements of Sections 83 and 84 New Roads and Street

Works Act 1991 as a result of the construction of the Works and to pay the reasonable costs incurred by the Council in complying with these requirements

5.2 the Council shall without prejudice to its statutory duties from time to time at the request and cost of the Owner in liaison with the Owner

5.2.1 serve necessary notices on Undertakers

5.2.2 cooperate with the Undertakers and the Owner concerning the extent and design of works to apparatus

5.2.3 pursue arbitration pursuant to Section 84(3) New Roads and Street Works Act 1991

5.2.4 ensure that where an Undertaker has obtained any financial benefit as a result of the operation of this Paragraph of this Schedule any credit due in accordance with the provisions of Section 85(5) New Roads and Street Works Act 1991 shall be transferred to the Owner

5.3 the Owner shall cause or procure any new highway or other drains or sewers gas and water mains pipes electric cables and telecommunication cables which are to be laid by the Owner under the Works together with all necessary connection from them to the boundary of the Works to be laid (where appropriate in ducting) in so far as is practicable under the Works before the foundations of the Works are laid and shall also in so far as is practicable cause the connections from the electric cables to any street lamps to be laid before the paving of any footways comprised in the works is carried out

5.4 the Owner shall in so far as practicable cause any new highway or other drains or sewers gas and water mains pipes cables or other service media which are to be laid by the Owner under the Works

together with all necessary connections from them to the boundary of the Works to be laid in ducting under the Works before the foundation of the Works are laid (where appropriate in ducting) and the connections from electric cables to any street lamps to be laid before the paving of any footways included in the Works is carried out

6. Remedial Works

- 6.1 subject to Paragraphs 6.2 6.3 and 6.4 if the Works are not constructed to the satisfaction of the Council in accordance with the terms of this Agreement the Council may execute the relevant part or parts of the Works in accordance with the provisions of this Agreement by its own employees or contractors and recover its reasonable and proper costs
- 6.2 before starting any works under Paragraph 6.1 the Council shall first give the Owner twenty working days written notice or (in the event of there being a significant danger to users of the highway) such lesser period as may in the circumstances be reasonable of its intention to do so
- 6.3 any notice served under Paragraph 6.2 shall specify the period of the notice ("the notice period") the extent of the work which the Council proposes to carry out and full details of all matters in respect of which it is alleged the Works have not been carried out in accordance with the terms of this Agreement
- 6.4 if before the expiry of the notice period the Owner serves written notice upon the Council that the Owner intends diligently to execute the works specified in the notice in accordance with the terms of this Agreement the Council shall not be entitled to execute the relevant part or parts of the Works specified in the notice served under Paragraph 6.2 unless the Owner then fails to execute those works

- 6.5 the Council shall not be entitled to redesign the Works after the design of the Works has been approved by the Director

7. Inspection and Certification

- 7.1 The Council shall attend and (where appropriate) re-attend to inspect the Works for the purpose of issuing the Certificates of Completion or Defects Correction Certificates within 48 hours of being requested so to do by the Owner

- 7.2 unless the Works have not been Substantially Completed or (in the case of a Defects Correction Certificate) the Works have not been made good or the Maintenance Period shall not have expired or the provisions of Paragraph 8 have not been complied with within the Maintenance Period the Council shall within 5 working days of inspection issue the relevant Certificate

- 7.3 In the event (and on each occasion) that he is not able to issue the relevant certificate as a result of the existence of damage or defects such as are identified in Paragraph 9 the Director shall within five days of such inspection issue a schedule of remedial works required to be carried out before he may issue the relevant certificate

8 Twelve months Maintenance Period

- 8.1 The Owner shall at no cost to the Council for a period of 12 months from the date of the issue of the or (if relevant) each Certificate of Completion reinstate and make good any damage or defect in the Works so certified which in the reasonable and proper opinion of the Council shall have arisen out of any defect in the design of the Works or the use of defective workmanship or materials not in accordance with the Drawings and the Specification which shall become apparent during that or if relevant each period of 12 months

8.2 The Owner shall for a period of 12 months from the date of the issue of the Certificate of Completion maintain the Works save for street sweeping gritting lighting gully cleaning and making good accidental damage (from vehicular accident or otherwise) deriving from the use of the highway by the general public all of which matters shall be the responsibility of the Council as Highway Authority

9 The Defects Correction Certificate

9.1 subject to Paragraph 9.2 as from the date twelve months from the date that any part of the Works is the subject of a Defects Correction Certificate those works shall in all respects be maintained by and at the cost of the Council

9.2 in the case of highway gullies and connections which are not to be maintainable by or at the expense of the Council under Paragraph 9.1 the Defects Correction Certificate shall extend only so far as the point of entry of such road gullies and connections into the surface water sewers which are to be so maintainable

10 Defects outstanding at end of maintenance period

If upon the expiration of the Maintenance Period the Owner fails to reinstate and make good any damage or defect in the relevant certified works as referred to in Paragraph 8 to the satisfaction of the Director the Council after giving not less than 20 working days written notice of its intention to the Owner may subject to Paragraph 8 execute or complete the relevant work and recover its reasonable and proper costs from the Owner

11 Supervision Fees

To pay the Councils reasonable fees for inspecting the Works at the rate of £40.00 per hour up to a maximum of £1,500