

DATED

19 July

2010

(1) THE HOLBORN PARTNERSHIP LIMITED

and

**(2) THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

A G R E E M E N T

relating to land known as

**Site at Gate Street, Holborn, London WC2A 3HP
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended) and
Sections 278 and 115E of the Highways Act 1980**

**Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP**

**Tel: 020 7974 5826
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CLS/DR/1685.176

THIS AGREEMENT is made the 19th day of July 2010

B E T W E E N:

1. **THE HOLBORN PARTNERSHIP LIMITED** (Co. Regn No. 04187380) of Lacon House, Theobalds Road, London WC1X 8RW (hereinafter called "the Developer") of the first part
2. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

WHEREAS

- 1.1 The Property to which this Agreement relates is public highway in the Council's area.
- 1.2 A Planning Application for the development of the Property was submitted to the Council and validated on 24 September 2008 and the Council resolved to grant permission conditionally under reference number 2008/4647/P subject to an Agreement under Section 106 of the Act Section 278 of the Highways Act 1980 and other appropriate powers.
- 1.3 The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.
- 1.4 The Council is the local planning authority for the purposes of the Act and the local highway authority for the purposes of the Highways Act 1980 for the area within which the Property is situated.
- 1.5 The Council considers it expedient in the interests of the proper planning and highway management in its area including, in particular environmental improvements and improvement to the well being of its area, that the Development should be restricted or regulated in accordance with this Agreement and the parties are willing

to enter into this Agreement pursuant to the provisions of Section 106 of the Act, Section 278 of the Highways Act 1980 and section 115E of the Highways Act 1980.

2. DEFINITIONS

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

- | | | |
|-----|--|---|
| 2.1 | "the Agreement" | this agreement made pursuant to sections 106 of the Act and 278 and 115E of the 1980 Act |
| 2.2 | "the Annual Maintenance Inspection Certificate" | certification by an appropriately qualified professional to be submitted annually following the issue of the Final Certificate and certifying that the Development has been maintained at the standard set out in clause 4.2.2 below |
| 2.3 | "the Bond" | a bond for the sum of two thousand pounds (£2,000.00) to act as security for the Council's interest in the Installation and Highway Works and any subsequent removal of the Development from the Property in accordance with clauses 4.2.4 or 4.2.6 below |
| 2.4 | "the Contributions" | the Feasibility Contribution and the Highways Works Contribution |
| 2.5 | "the Development" | the installation of new freestanding externally uplit sculpture on pavement at end of Gate Street, and associated relocation of cycle stands, removal of lamppost and installation of street lamps on nos. 8 and 17 Gate Street as shown on drawing numbers 001, 002, 010, 101, 111, 112, 201/B, 202/B, 211, 212, 221 |

- 2.6 "the Feasibility Contribution" the sum of five thousand pounds (£5,000.00) being the cost estimated by the Council of all works comprised in commissioning and carrying out a study to assess the feasibility of installing the Development on the public highway this to include inter alia the construction of trial holes but for the avoidance of doubt does include any works subsequently found to be necessary in connection with any statutory undertakers works and excludes any statutory undertakers costs ("the Feasibility Works")
- 2.7 "the 1980 Act" means the Highways Act 1980
- 2.8 "the Highway Works " works to improve the public realm environment in the vicinity of the Site as a consequence of the Development namely the relocation of 5 existing Sheffield bike stands, the removal of the existing lamp column, enabling works and the construction of proposed uplighting for the Development and location of 2 streetlamps on building adjoining the Site in accordance with the details submitted to the Council pursuant to Condition 3 of the Planning Permission subject to consent being obtained from Owners of such buildings in accordance with Clause 4.4.1 of this Agreement and for the avoidance of doubt this includes any responsibility in connection with any required statutory undertakers works and the payment of statutory undertakers costs
- 2.9 "the Highway Works Contribution" the sum of ten thousand pounds (£10,000.00) being the cost estimated by the Council of carrying out the Highway Works such sum to be applied in the event of receipt by the Council to the carrying out of the Highway Works

- 2.10 "the Implementation Date" the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly
- 2.11 "the Installation Notice" notice to the effect that the Council in its reasonable opinion considers that it is feasible to carry out the Installation Works following the carrying out of the Feasibility Works
- 2.12 "the Installation Requirements" the requirements to be complied with by the Developer in respect of the Installation Works as the same are set out in the First Schedule hereto
- 2.13 "the Installation Works" all works comprised in the construction and build out of the Development save for any works comprised within the Feasibility Works or the Highway Works
- 2.14 "the Parties" mean the Council and the Developer
- 2.15 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 24 September 2008 for which a resolution to grant permission has been passed conditionally under reference number 2008/4647/P subject to conclusion of this Agreement
- 2.16 "Planning Obligations Monitoring Officer" a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must

be sent in the manner prescribed at clause 6.1 hereof

2.17 "the Planning Permission"

a planning permission granted for the Development substantially in the draft form annexed hereto

2.18 "the Property"

the land known as Site at Gate Street, Holborn, London WC2A 3HP the same as shown edged in red on the plan annexed hereto

2.19 "the Public Liability Insurance"

insurance cover to apply as long as the Development is in place at the Property keeping the Council and its officers fully indemnified against

- (i) all damages actions claims demands proceedings costs accidents charges expenses acts liabilities and penalties whatsoever and howsoever arising directly or indirectly out of or in connection with the Development and the consent hereby granted for the carrying out of the Installation Works over the Highway; and
- (ii) any failure on the part of the Developer to comply with the terms covenants conditions and provisions herein contained

and this insurance will be to a minimum amount of ten million pounds (£10,000,000) (per claim) to meet the aforementioned liabilities

2.20 "Streetworks Accredited
Contractor"

a contractor accredited in accordance with the
Street Works (Qualifications of Supervisors and
Operatives) Regulations 1992

NOW THIS DEED WITNESSETH as follows:-

- 3.1 This Agreement is made in pursuance of and shall be enforceable by the Council against the Developer as provided herein and under Section 106 of the Act and Sections 278 and 115E of the 1980 Act and insofar as it is not an agreement under Sections 278 or 115E of the Highways Act 1980 its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes includes any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.5 It is hereby agreed between the Parties that this Agreement shall come into effect on the date hereof.
- 3.6 The Parties save where the context states otherwise shall include their successors in title.

4. OBLIGATIONS OF THE DEVELOPER

The Developer hereby covenants with the Council as follows:-

4.1 Contributions

- 4.1.1 On the date hereof to pay the Council the Feasibility Contribution.
- 4.1.2 On completion of the Feasibility Works the Council may provide to the Developer a certificate specifying the sum ("the Feasibility Certified Sum") expended by the Council in carrying out the Feasibility Works.
- 4.1.3 If the Feasibility Certified Sum is more than the Feasibility Contribution then the Developer shall within fourteen days of the issuing of the said certificate pay to the Council the full amount of the excess.
- 4.1.4 If the Feasibility Certified Sum is less than the Feasibility Contribution then the Council shall pay to the Developer the full amount of the under spend within fourteen days of a request from the Developer to so do.
- 4.1.5 In the event that the Council serves the Installation Notice within 14 days of the service of the Installation Notice to pay the Council the Highway Works Contribution.
- 4.1.6 On completion of the Highway Works the Council may provide to the Developer a certificate specifying the sum ("the Highways Works Certified Sum") expended by the Council in carrying out the Highways Works.
- 4.1.7 If the Highways Works Certified Sum is more than the Highway Works Contribution then the Developer shall within fourteen days of the issuing of the said certificate pay to the Council the full amount of the excess.
- 4.1.8 If the Certified Sum is less than the Highway Works Contribution then the Council shall pay to the Developer the full amount of the under spend within fourteen days of a request from the Developer to so do.
- 4.1.9 In the event that the Council serves the Installation Notice within 14 days of the service of the Installation Notice to enter into the Bond ALWAYS PROVIDED that the Developer shall not undertake any works comprised within the Installation Works until

the Council has served the Developer with written notice acknowledging receipt of the Bond.

- 4.1.10 The Council covenants with the Developer to apply each of the Contributions solely for the purpose for which such Contribution has been paid and for no other purpose and will when reasonably requested by the Developer in writing provide the Developer with a breakdown of expenditure in respect of any of the Contributions.

4.2 INSTALLATION AND MAINTENANCE

- 4.2.1 In the event that the Council serves the Installation Notice within 56 days of Implementation to carry out and complete the Installation Works in accordance with the Installation Requirements to the Council's reasonable satisfaction (as demonstrated by written notice to that effect).

- 4.2.2 Following the issue of the Final Certificate (as issued under Clause 5 of the Schedule to this Agreement) the Council grants permission for the Development to remain in place on the public highway subject to the provisions of this Agreement AND subject to the following requirements:-

- 4.2.2.1 to maintain the Development at the same standard as at the issue of the Final Certificate for as long as the Development is in place and to undertake the following measures:-

- (a) rectifying any damage caused to the Development by reason of fair wear and tear or by traffic accident or vandalism;
- (b) ensuring that the Development does not cause any detriment to the safety of users of the public highway or interference with the use of the public highway by members of the public or by statutory undertakers; and
- (c) ensuring that the Development can be inspected maintained and cleaned without undue interference with the safe and normal flow of pedestrian and vehicular traffic on the public highway.

- 4.2.3 Following the expiration of 12 months from the issue of the Final Certificate to submit to the Council for approval in writing the Annual Maintenance Inspection Certificate and to submit an Annual Maintenance Inspection Certificate every 12 months following the submission of each previous Certificate for as long as the Development

remains at the Property AND FOR THE AVOIDANCE OF DOUBT ownership of the structure comprising the Development lies with the Developer.

- 4.2.4 To remove the Development from the Property within 42 days of a request from the Council to remove the Development from the Property if it reasonably considers such removal to be appropriate or the Developer defaults in any of the provisions of this Agreement such removal to accord with the terms of this Agreement (in particular clauses 4.3, 4.4 and 4.5 and as appropriate the First Schedule hereto) as these are works on the Public Highway AND FOR THE AVOIDANCE OF DOUBT this does not limit the right of the Council to seek any other remedy available to it.
- 4.2.5 If a request under clause 4.2.4 is not complied with within 42 days of that request being made the Council shall remove the Development from the Property and place it in appropriate storage the cost of such removal and storage to be at the expense of the Developer insofar as the cost is not covered by the Bond.
- 4.2.6 In the event that The Holborn Partnership Limited is dissolved the Developer shall advise the Council of that dissolution within a reasonable timeframe of such dissolution becoming apparent and shall remove the Development from the Property such removal to accord with the terms of this Agreement (in particular clauses 4.3, 4.4 and 4.5 and as appropriate the First Schedule hereto) as these are works on the Public Highway UNLESS where appropriate measures are put in place for responsibility for and maintenance of the Development on substantially the same terms as this clause 4.2 and as determined and approved by the Council to their sole satisfaction it is agreed by the Council in writing that the Development shall remain in place.
- 4.2.7 If the Development is not removed in accordance with clause 4.2.6 above within a reasonable time following the dissolution of The Holborn Partnership the Council shall remove the Development from the Property and place it in appropriate storage the cost of such removal and storage to be at the expense of the Developer insofar as the cost is not covered by the Bond.

4.3 Public Liability Insurance

- 4.3.1 Prior to the Implementation of the Development to obtain the Public Liability Insurance.
- 4.3.2 Not to Implement the Development until the Developer has produced for the Council

the Public Liability Insurance policy and the Council has approved the same in writing.

- 4.3.3 The relevant policy for the Public Liability Insurance shall be kept available by the Developer at all times and to allow the Council to inspect such policy forthwith on written request.

4.4 Landowner and Statutory Undertakers' Permission

- 4.4.1 Prior to the Implementation of the Development to secure the written consent of the landowners and leaseholders of the adjacent buildings for the installation of street lamps onto such buildings as shown on drawing numbers 201B and 202B such written consent to be submitted to the Council.
- 4.4.2 Not to Implement the Development until the Council has confirmed in writing the receipt of the written consent referred to in Clause 4.4.1 above.
- 4.4.3 Without limiting the application of Paragraph 12 of the First Schedule hereto prior to the Implementation of the Development to secure the written consent of London Underground and Thames Water to construct the Development such written consent to be submitted to the Council.
- 4.4.4 Not to Implement the Development until the Council has confirmed in writing the receipt of the written consent referred to in Clause 4.4.3 above.

4.5 Streetworks Accredited Contractor

- 4.5.1 Prior to the Implementation of the Development to submit to the Council details of the contractor who will be carrying out the Development such contractor to be a Streetworks Accredited Contractor.
- 4.5.2 Not to Implement the Development until the Council has approved in writing the contractor referred to in clause 4.5.1 above.

5. NOTICE TO THE COUNCIL/OTHER MATTERS

- 5.1 The Developer shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Developer shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2008/4647/P the date upon which the Development is completed.
- 5.3 The Developer shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Developer shall comply with any reasonable requests to provide documentation within the Developer's possession (at the Developer's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Developer agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Developer of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 Payment of the Highway Contribution the Feasibility Contribution and the Maintenance Contribution pursuant to Clause 4.1 of this Agreement shall be made by the Developer to the Council sending the full amount in the form of a Banker's Draft to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such Contribution relates quoting the Income Code ZM727ZL065 or by Electronic Transfer directly to the Co-Operative Bank plc of 1 Islington High Street London N1 9TR quoting Sort Code 08-90-33 and London Borough of Camden General Account No. 61030019 and to inform the Planning Obligations Monitoring Officer of such

payment quoting the above details as if the payment had been made by Banker's Draft.

5.6 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Developer.

5.7 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{(Y-X)}{X}$$

5.8 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

5.9 The Council agrees that in the event that the Development is removed in accordance with clauses 4.2.4 or 4.2.5 above the Maintenance Contribution shall be repaid to the Developer unless the ownership of the Development has passed to the Council in accordance with clause 4.2.8 above.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection

with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2008/4647/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Developer agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 6.4 The Developer hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith on written demand with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Council the Developer nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.

6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by agreement with or at the request of the Developer) this Agreement shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

7. RIGHTS OF THIRD PARTIES


7.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Developer have executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY)
HOLBORN PARTNERSHIP)
acting by a Director and its Secretary)
or by two Directors)

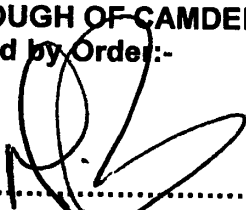

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Director


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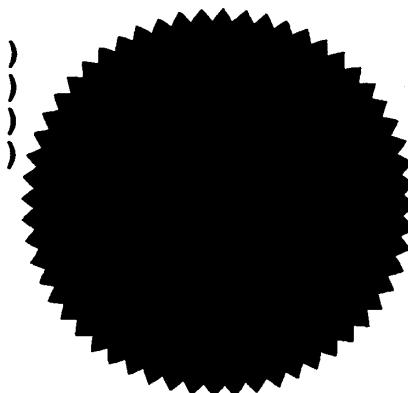
Director/Secretary

THE COMMON SEAL OF THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF CAMDEN was hereunto
Affixed by Order:-



.....

Authorised Signatory



FIRST SCHEDULE
THE INSTALLTION REQUIREMENTS

1. Interpretation

In this Schedule the following words or expressions shall, where the context so admits, have the following meanings:

- | | | |
|-----|----------------------------|---|
| 1.1 | "the Contract" | means the contract to be let by the Developer for the construction of the Works |
| 1.2 | "the Contractor" | means the contractor to whom the Contract is let in accordance with Clause 4.5.1 of this Agreement |
| 1.3 | "the Drawings" | means the detailed drawings of the Installation Works approved by the Council as part of the Programme under this Schedule together with such other drawings and documents as the Council may from time to time agree shall be used in addition to or in substitution of the same |
| 1.4 | "the Final Certificate" | means the certificate issued under clause 5 of this Schedule |
| 1.5 | "the Independent Surveyor" | means a surveyor appointed by agreement between the parties or in the absence of agreement appointed on the request of one party by the President of the Royal Institution of Chartered Surveyors |
| 1.6 | "the Index" | means the Road Construction Tender Price Index issued from time to time by the Department for Transport |
| 1.7 | "the Programme" | means in respect of each element of the Installation Works the programme and details prepared by appropriately qualified engineers for those Installation Works this to include all designs materials documents drawings specifications tender |

documents together with the Developer's arrangements for the supervision of the Installation Works incorporating a statement of the overall sequence of the Installation Works are to be carried out and a description of the contractual arrangements and methods of construction which the Developer is to adopt together with an estimate of the amount of time to be spent by the Developer in carrying out and completing each elements of the Installation Works

- 1.8 "the Provisional Certificate" means the certificate issued under clause 5.1 of this Schedule
- 1.9 "the Specification" means a specification for the Installation Works being in the form of the Manual of Contract Documents for Highway Works Specification for Highway Works published by HMSO in December 1991 as amended by subsequent updates published from time to time and in accordance with the Camden Streetscape Design Manual and other standards designs and specifications for highway and landscaping works adopted by the Council from time to time
- 1.10 "Statutory Undertaker" means any person, company, corporation, board or authority whose apparatus is pursuant to a statutory right or to a licence granted under Section 50 of the 1991 Act at the date of this Agreement already installed in, under, over or upon the land on which the Works are to be carried out PROVIDED THAT such expression shall include the authorised successor to any such person, company, corporation, board or authority
- 1.11 "Surety" means any bank or other financial institution as may be nominated by the Developer and approved in writing by the Council for the purposes of the Bond

- 1.12 "VAT" means Value Added Tax and any tax of similar nature substituted for it or in addition to it
- 1.13 "the 1991 Act" means the New Road and Street Works Act 1991

2. THE DEVELOPERS COVENANTS

The Developer covenants with the Council as follows:-

- 2.1 Prior to Implementation to submit to the Council the Programme for the Installation Works and not to permit Implementation until such time as the Developer has received written notification from the Council of the Council's approval of the Programme for each of the Installation Works.
- 2.2 To commence and thereafter proceed diligently to carry out and complete the Installation Works to the Council's reasonable satisfaction in accordance with requirements of the Programme as approved (including requirements as to timing of the Installation Works) in order to obtain the Final Certificate.
- 2.3 To give written notice to the Council of the Developer's intention to commence the Installation Works at least 28 working days prior to the service of any notification required by statute in respect of the Installation Works.
- 2.4 To indemnify the Council from and against all actions costs claims demands charges and expenses whatsoever arising or which may arise out of or be incidental to the execution of the Installation Works by the Developer and the use of the Installation Works.
- 2.5 Before commencement of any of the Installation Works and at no expense to the Council to obtain such consents, licences or permissions as may be required for the purposes or carrying out the Works and having obtained such consents, licences or permissions to comply with the terms of the same and to indemnify and keep the Council indemnified in respect of each of the Installation Works from and against all liabilities, costs, claims, actions, demands, or expenses which may arise from the Developer's failure to comply with such consents, licences or permissions.
- 2.6 At any time during the carrying out of the Installation Works (but without prejudice to

the obligation to carry out the Works), to use all reasonable endeavours not to prevent or impede the free movement of traffic along the roads unless a temporary closing order has been obtained under the Road Traffic Regulation Act 1984 or other statutory provisions.

- 2.7 To pay to the Council on prior to Implementation the sum of £1,000.00 in respect of the reasonable and proper costs and expenses to be incurred by the Council in the project management checking and design and carrying out periodic site inspections of the Installation Works.
- 2.8 To pay to the Council within 10 working days of demand any costs reasonably and properly incurred by the Council in connection with the making and implementing traffic regulation orders (as defined in the Road Traffic Regulation Act 1984) or traffic management orders under any other statute which the Council deem necessary as a result of the Installation Works irrespective of whether or not such orders are actually made or if made or implemented whether or not this happens prior to during or following the completion of the Installation Works.
- 2.9 For the avoidance of doubt the Council shall not be liable for any costs incurred by the Developer as a consequence of the Developer carrying out the Installation Works in connection with the necessary diversion or protection of the apparatus of Statutory undertakers required as a consequence of the Installation Works.

3. Access to the Public Highway

- 3.1 The Council shall in approving the Programme for each of the Installation Works give to the Developer licence to enter and to remain, with or without workmen, plant and machinery, upon so much of the public highway respectively under the Council's control as the Council shall agree in approving the Programme is reasonably necessary for the Developer to carry out its obligations under this Agreement in respect of the Installation Works and it is agreed and declared that such licence issued in accordance herewith extends to breaking open (subject where appropriate to making good on its surface) and, without limitation to the other provisions of this Agreement, carrying out works in on or under the public highway PROVIDED THAT (i) for the avoidance of doubt land shall not be regarded as being under the Council's control if entry on to the land would amount to a breach of an express or implied covenant by the Council to the occupier of such land (ii) for the avoidance of doubt

the Developer must first have obtained all of the consents in accordance with this Schedule and complied with all statutory notice requirements (iii) any licence given under this clause is without prejudice to the Council's statutory powers and duties and is separate and does not effect any statutory requirements for consent or the giving of notices.

4. Certification of the Works

4.1 When the Installation Works have been completed in accordance with the provisions of this Agreement and the Programme as approved to the Council's reasonable satisfaction the Council shall issue the Provisional Certificate to that effect.

4.2 The Developer shall at its own expense, maintain the Installation Works for a period beginning on the date the Provisional Certificate is issued and ending 12 months after the date the Provisional Certificate is issued and during such period the Developer shall as soon as practicable reinstate and make good any defects or damage to the Installation Works which may have arisen or be discovered during such period to the reasonable satisfaction of the Council (and without prejudice to the foregoing ongoing requirement shall ensure that at the expiry of such period all such defects and damage are remedied to the reasonable satisfaction of the Council.)

4.3 In respect of the Installation Works at the expiration of a 12 month period following the issue of the last of the Provisional Certificates then PROVIDED THAT:

- (a) any necessary reinstatement or other works to each or all of the Installation Works have been completed respectively to the Council's satisfaction;
- (b) all monies due to be paid to the Council under this Agreement have been paid;
- (c) the grant of any easements required to be made to the Council under this Agreement has been completed; and
- (d) the Council has been provided with the "As Built" drawings described in and pursuant to paragraph 17.2 of this Schedule and the Health and Safety File relating to the Works in accordance with paragraph 18.2 of this Schedule, the Council shall issue the Final Certificate to that effect.

5. Delegation of the Developer's Obligations

5.1 It is agreed that the performance of the obligations on the part of the Developer to carry out the Installation Works respectively on behalf of the Council may be delegated to a contractor or sub-contractors on the Council's list of approved Streetworks accredited contractors PROVIDED THAT:

- (a) The Developer shall remain liable respectively to the Council for the due performance and observance of this Agreement;
- (b) The Contract by which the obligations contained in this Agreement are delegated shall incorporate the **ICE 7th Edition** Conditions of Contract and shall incorporate the Specification and the requirements of the Programmed as approved and the Drawings and/or such other drawings as may be agreed between the Council to be contract drawings for the purposes of the Contract;
- (c) The Developer shall give the Council at least twenty working days to comment upon the documentation for the Contract and shall have regard to any reasonable representations made before letting the Contract; and
- (d) The Developer shall ensure that for the purposes of the Contract the amount of insurance cover against losses and claims for injuries or damage to persons or property arising out of or in consequence of the Installation Works shall not be less than five million pounds (£5,000,000.00) in respect of any one incident.

7. Assignment

The Developer shall not without the written consent of the Council have the right to assign or transfer the benefit of this Agreement or any part of it.

8. TERMS AND CONDITIONS FOR THE EXECUTION OF THE WORKS

- 8.1 The Installation Works shall be executed by the Developer in accordance with the Programme.
- 8.2 If the Developer shall wish to revise the Programme in relation to any of the Installation Works it shall notify the Council as the case may be in writing of any

revisions to the Programme at least 20 working days before implementing such revisions.

- 8.3 The Council shall use reasonable endeavours to approve or submit to the Developer their written comments in full upon those matters referred to in paragraph 8.2 of this Schedule within 20 working days of receipt.

9. Access

- 9.1 The Developer shall during the progress of the Works give or procure for the Council and any person or persons duly authorised by them unfettered access to every part of the Installation Works and permit him or them to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper direction given by the Council to conform to the Drawings and/or the Programme and the Specification in so far as they affect the Works.

- 9.2 The Developer shall not cover up or put out of view any works relating to Installation Works without the approval of the Council and shall afford full opportunity for each of them as appropriate to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least 2 working days notice to the Council respectively as the case may be whenever such works or foundations is or are ready or about to be ready for examination.

- 9.3 In relation to any Installation Works the Council shall without unreasonable delay (unless they consider it unnecessary when they will within 2 working days of receipt of notice from the Developer advise the Developer accordingly) attend when required by the Developer upon at least 2 working days notice for the purpose of examining and measuring such works or of examining such foundations.

10. Testing of Materials

- 10.1 Before commencement and during the construction of the Installation Works the Developer shall procure that the Contractor shall submit for approval to the Council may be a list of suppliers from whom it wishes to obtain the Materials for incorporation in the Installation Works together (if the Council shall deem it reasonably necessary) with test certificates for such materials and shall procure that

the Contractor shall at its own cost provide the Council with any samples of materials they may reasonably request for testing purposes.

- 10.2 The Council shall have power in their reasonable discretion to test or require the testing of materials plant or processes proposed to be used in the Installation Works and to reject any materials plant or processes so tested which they may reasonably and properly find to be not in accordance with the Specification and the Drawings relating to any Works PROVIDED HOWEVER THAT approval by any of the Installation Works respectively in relation to any of the Materials shall upon the written request of the Developer or its agent be given in writing (such approval not to be unreasonably withheld or delayed) and once given shall (without prejudice to the provisions of paragraph 10 in this Schedule) be taken to be given in discharge or approval of any conditions in or requirements of the Planning Permissions relating to the relevant Materials or the use of the relevant Materials.
- 10.3 The Developer shall as soon as is reasonably practicable replace or repair any materials plant or process which have been found not in accordance with the Specification and the Drawings with such as are so in accordance.
- 10.4 The Council shall for the purposes of this Schedule be allowed reasonable access and admission to the Installation Works or the places where materials or plant for the Works may be stored or in the course of preparation manufacture or use.
- 10.5 The Developer shall as soon as is reasonably practicable remove any such materials or plant as are rejected by the Council pursuant to paragraph 10.2 of this Schedule which are not capable of repair or remedy from the site of the Installation Works and if the Developer shall wish to continue to store such rejected irreparable materials plant and workmanship on the site of the Installation Works they shall be stored separately from those materials plant and workmanship which have not been so rejected or which the Developer shall wish in future to use in execution of the Installation Works.

11. Opening Up of the Works

- 11.1 During the construction of the Installation Works and prior to the issue of the Final Certificate the Council may issue instructions to the Developer to open up or expose any part of the Installation Works which have been covered up without previously being inspected by the Council and the Council will use all reasonable endeavours to

confirm in writing any oral instruction as soon as possible after the oral instruction has been given.

- 11.2 Should the Developer fail to comply with any such instructions the Council may so take up or expose then Installation Works causing as little damage or inconvenience as is possible to or in respect of any other part or parts of the Installation Works the reasonable and proper cost of such taking up or exposure and reinstatement to be met by the Developer.
- 11.3 If inspection reveals that the relevant part or parts of the Installation Works has or have not been completed in accordance with the Drawings and the Specification all reasonable and proper costs in respect of such uncovering and inspection and of reinstating the part or parts of the Installation Works uncovered shall be borne by the Developer.
- 12. **Statutory Undertakers**
 - 12.1 Prior to the commencement of the Installation Works the Developer shall give notice to Statutory Undertakers of the proposal to carry out the Works as if they were works for road purposes or major highway works as defined in Section 86 of the 1991 Act and at the same time deliver a copy of such notice to the Council.
 - 12.2 The Developer shall at no cost to the Council carry out or procure the carrying out of any works or measures as are required by Statutory Undertakers in consequence of the proposal to carry out the Installation Works to the plant and equipment of Statutory Undertakers on the site of the Works including payment of the costs of any diversions or new installations necessary for their completion and the Works referred to in Schedule One shall be deemed not to have been completed until the cost of any such diversions or new installations has been paid by the Developer PROVIDED THAT in the event that any requirement made by any Statutory Undertaker shall be unreasonable the Council shall at the reasonable request of the Developer join with the Developer in resisting such requirement.
 - 12.3 The Developer shall cause all highway or other drains or sewers all existing utilities and statutory undertakers apparatus including but not limited to gas and water mains pipes electric cables (if any) or telephone cables (if any) which are to be laid by the Developer under the Installation Works together with all necessary connections from

them to the boundary of the Installation Works to be laid in so far as is practicable under the Installation Works before the foundations of the Installation Works are laid and shall also in so far as is practicable cause the connections from electric cables to any street lamps to be laid before the paving of any footways comprised in the Installation Works is carried out.

13. Prevention of mud being carried on the public highway

Provision shall be made at no cost to the Council at the site of the Installation Works and on the adjoining public highway to take all reasonable practicable steps to prevent the deposit of mud dust and other materials on public highways by vehicles and plant leaving the site of the Works and in accordance with the Code of Construction Practice.

14. Traffic control

During the period when any Installation Works are being executed the Developer shall institute at its own cost reasonable measures approved before their implementation by the Council to maintain the flow and safety of traffic and pedestrians on the highways in the vicinity of the site of the Installation Works and shall use reasonable endeavours to ensure that contractors site traffic in respect of the Installation Works and the Development shall adhere to such route or routes when approaching or departing from the site of the Works as may from time to time be agreed with the Council.

15. Road safety

During the period over which the Installation Works are being executed the Developer shall comply with the provisions of Chapter Eight of the Department of Transport's Traffic Signs Manual 1991 (published by HMSO) and any amendment thereto for lighting and signing the Installation Works and any further reasonable requirements of the highway authority.

16. Remedial works

- 16.1 If the Installation Works or any part or parts of them (including without prejudice to the generality of this obligation any requirement to make good defects) are not executed or completed in accordance with the terms of this Agreement the Council

may execute or complete the relevant part or parts of the Installation Works in accordance with the provisions of this Agreement by its own employees or by contractors and recover all of its reasonable and proper costs from the Developer.

- 16.2 Any notice served pursuant to paragraph 16.1 of this Schedule shall specify the Installation Works which have not been executed or completed in accordance with the terms of this Agreement and the period of the notice ("the Notice Period") given.
- 16.3 If before the expiry of the Notice Period the Developer shall serve written notice upon the Council as the case may be that the Developer intends forthwith to execute and/or to complete the part of the Installation Works specified in the notice served by under paragraph 16.2 of this Schedule in accordance with the terms of this Agreement the party who served the notice shall not be entitled to execute or to complete such part of the Installation Works unless the Developer then fails to execute and/or complete them.

17. Final Site clearance

- 17.1 On completion of the Installation Works the Developer shall clear away and remove from the site of the Installation Works all construction plant surplus material rubbish and temporary works of every kind and leave the site of the Works in a workmanlike condition.

17.2 "As built" Drawings

Within 1 month of the issue of each of the Provisional Certificates the Developer shall provide the Council with three sets of drawings showing to a scale of 1:500 (or such other scale as the Council shall reasonably require) the Installation Works "as built".

17.3 The "As built" drawings must include:

- (a) all departures from the drawings approved under the Programme as approved;
- (b) the position of all Statutory Undertakers plant and equipment;
- (c) any additional levels boreholes retards or other information which the Council reasonably consider to be useful for the purposes of the public record;
- (d) separate titled drawings outlining or identifying;
- (e) the location direction of flow and construction materials of all new and existing drainage ditches and the location of outfalls or soakaways;

- (f) all street lighting illuminated signs and cables;
- (g) signs and road markings on highway and location and details of sign faces;
- (h) all completed finishes on the highway that is (but without limitation) high friction surfacing, wearing course, tactile paving, carriageway, footway finishes and kerb types.

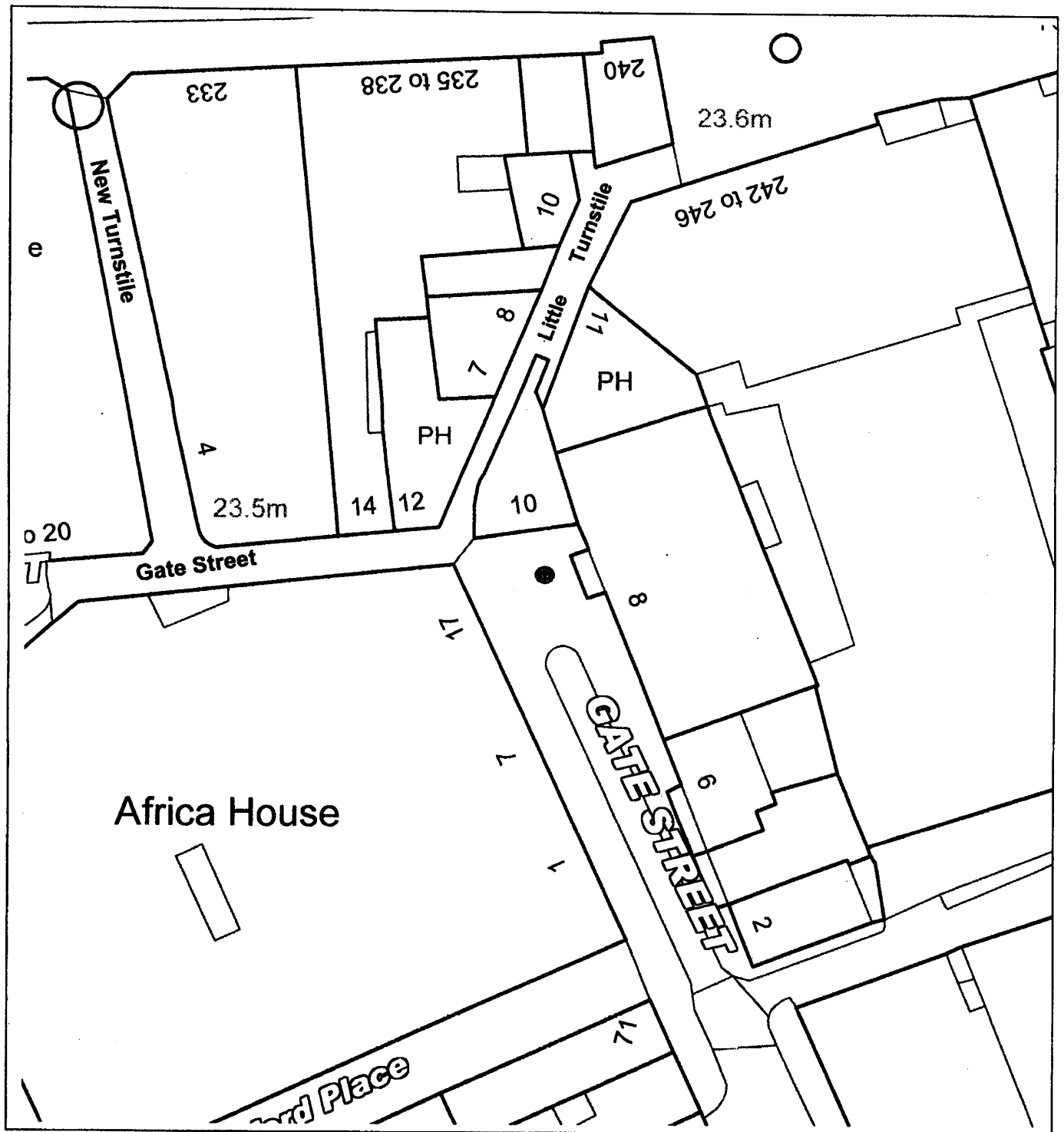
18. CDM Regulations

18.1 Within 12 months of the issue of the Provisional Certificate for any of the Installation Works the Developer shall supply to the Council in relation to any Installation Works the Health and Safety File relating to the Installation Works pursuant to the Construction (Design and Management) Regulations 1994 together with one copy (or two copies if the Works include structures or bridges) of the said File.

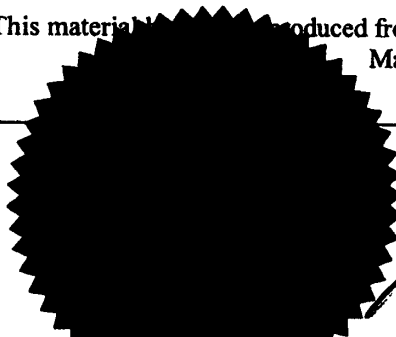
18.2 The Health and Safety File shall:

- (a) include a report summarising the construction phase of the Installation Works;
- (b) identify any significant problems encountered during the construction phase of the Installation Works and describe how those problems were overcome;
- (c) include details of the design options for the Installation Works selected by the Developer (including the Developer's Contractor) any significant design changes and the reasons for the changes;
- (d) include a section describing all materials used in the Installation Works their source of supply and their level of performance together with the name and address of the manufacturer and shall describe any problems encountered;
- (e) include a report summarising details of the handover walk through with the officers nominated by the Council to undertake that function (amongst others) together with the date of that activity, the names of the attendees, a summary of the issues raised and consequential actions; and
- (f) include the "As built" drawings referred to in paragraph 17.2 of this Schedule.

Site at Gate Street, London WC2A 3HP



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hu 13/7/10

JR 13/7/10

Measure Arts Ltd
157a Rushmore Road
LONDON
E5 0HA

Application Ref: **2008/4647/P**

2 March 2009

Dear Sir/Madam

DRAFT
FOR INFORMATION ONLY - NOT A FORMAL DECISION
Town and Country Planning Acts 1990 (as amended)

DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT

Address:
Site at
Gate Street
Holborn
London
WC2A 3HP

DECISION

Proposal:

Installation of new freestanding externally uplit sculpture on pavement at end of Gate Street, and associated relocation of cycle stands, removal of lamppost and installation of street lamps on nos. 8 and 17 Gate Street.

Drawing Nos: 001, 002, 010, 101, 111, 112; 201/B, 202/B, 211, 212, 221;

The Council has considered your application and decided to grant permission subject to the conditions and informatives (if applicable) listed below **AND** subject to the successful conclusion of a Section 106 Legal Agreement.

The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The details at minimum scale 1:50 of the elevations and materials to be used on the sculpture shall not be otherwise than as those submitted to and approved by the Council before any work is commenced on the relevant part of the development. In particular the details shall show the beginning of the 'wrap-around' section of the sculpture (where a person may be able to get a hand hold) shall be at a minimum height of 2.4m above the footway level. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To safeguard the appearance of adjoining premises and the character of the immediate area in accordance with the requirements of policies S1/ S2, SD1, T3, B1 and B7 of the London Borough of Camden Replacement Unitary Development Plan 2006.

- 3 The details of the proposed uplighters for the sculpture and proposed 2 replacement street lights to be placed on adjoining buildings shall not be otherwise than as those submitted to and approved by the Council before any work is commenced on the relevant part of the development. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To safeguard the appearance of adjoining premises and the character of the immediate area in accordance with the requirements of policies S1/ S2 and B1 and B7 of the London Borough of Camden Replacement Unitary Development Plan 2006.

- 4 Before the development commences, structural calculations demonstrating the structural integrity of both the sculpture and its foundations (piled or otherwise) shall be submitted to and approved by the Council.

Reason: To ensure the development maintains safety of footway and road users in accordance with the requirements of policies SD1 and T12 of the London Borough of Camden Replacement Unitary Development Plan 2006.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts which cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 2363).
- 2 This consent is without prejudice to, and shall not be construed as derogating from, any of the rights, powers, and duties of the Council pursuant to any of its statutory functions or in any other capacity and, in particular, shall not restrict the Council

from exercising any of its powers or duties under the Highways Act 1980 (as amended). In particular your attention is drawn to the need to obtain permission for any part of the structure which overhangs the public highway (including footway). Permission should be sought from the Council's Highways Engineering Team, Town Hall, Argyle Street WC1H 8EQ, (tel: 020 7974 4444) or email highwayengineering@camden.gov.uk

- 3 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Environmental Health Service, Camden Town Hall, Argyle Street, WC1H 8EQ (Tel. No. 020 7974 2090 or by email env.health@camden.gov.uk or on the website www.camden.gov.uk/pollution) for advice under Section 61 of the Act if you anticipate any demolition or construction other than within the hours stated above.

- 4 Reasons for granting permission.

The proposed development is in general accordance with the policy requirements of the London Borough of Camden Replacement Unitary Development Plan 2006, with particular regard to policies SD1,6; B1,3,6,7,9; T3,12. For a more detailed understanding of the reasons for the granting of this planning permission, please refer to the officers report.

Yours faithfully

DECISION

Culture and Environment Directorate

DATED

19 July

2010

(1) THE HOLBORN PARTNERSHIP LIMITED

and

**(2) THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

A G R E E M E N T

relating to land known as

**Site at Gate Street, Holborn, London WC2A 3HP
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended) and
Sections 278 and 115E of the Highways Act 1980**

**Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP**

**Tel: 020 7974 5826
Fax: 020 7974 2962**

CLS/DR/1685.176