

DATED 12 JANUARY **2015**

FROM:

(1) CLASSIC DESIGN INVESTMENTS LIMITED

(2) BSI SA

TO:

(3) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN

UNILATERAL UNDERTAKING

**pursuant to
Section 106 of the Town and Country Planning Act 1990**

**relating to
42 Bedford Square & 13 Bedford Avenue, London, WC1B
3HX**



Pinsent Masons

THIS UNDERTAKING is given by way of a Deed on

12 JANUARY

2015

FROM:

- (1) **CLASSIC DESIGN INVESTMENTS LIMITED** (incorporated in British Virgin Islands whose address for service is P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands ("**Owner**")
- (2) **BSI SA** (incorporated in Switzerland) of Sede Centrale Lugano, Via Magatti 2, Ch-6901, Lugano, Switzerland ("**Mortgagee**")

TO:

- (3) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London, WC1H 9LP ("**Council**")

WHEREAS:

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Property is located.
- (B) The Owner is the registered freehold owner of the Property registered at the Land Registry under title number NGL878879 subject to a registered charge to the Mortgagee.
- (C) By decision letters dated 2 September 2014 the Council granted the Listed Building Consent for the Development and gave notice of refusal to grant the Planning Application.
- (D) The Owner has appealed against refusal of the Planning Application under Section 78 of the Act to the Planning Inspectorate and the appeal has been assigned the reference number APP/X5210/A/14/2228630 ("the Appeal").
- (E) Further to the reasons for refusal of the Planning Application, the Owner enters into this Deed in order to secure the Development as car free and to secure the implementation of a Construction Management Plan.
- (F) The Owner enters into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Owner and its successors in title.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990
"Council's Planning Obligations Monitoring Officer"	a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to Section 106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed in this Deed
"Construction Management Plan"	a plan setting out the measures that the Owner will adopt in undertaking the construction of the Development using good site practices in accordance with the Council's Considerate Contractor Manual to ensure the

	Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):- (i) a statement to be submitted to the Council giving details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Owner in order to mitigate and offset potential or likely effects and impacts arising from the demolition of the existing buildings or structures on the Property and the building out of the Development; (ii) incorporation of the provisions set out in the Schedule annexed hereto; (iii) proposals to ensure there are no adverse effects on the listed building; (iv) proposals to ensure there are no adverse effects on the conservation area features; (v) effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction; (vi) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any); (vii) the inclusion of a waste management strategy for handling and disposing of construction waste; and (viii) identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as required from time to time
"the Construction Phase"	the whole period between (i) the Implementation Date; and (ii) the date of issue of the certificate of practical completion in respect of the Development
"the Council's Considerate Contractor Manual"	the document produced by the Council from time to time entitled "Guide for Contractors Working in Camden" relating to the good practice for developers engaged in building activities in the London Borough of Camden

"this Deed"	this planning obligation given by way an undertaking pursuant to Section 106 of the Act
"Development"	conversion of the existing building containing 6 self-contained dwellings for use as a single family dwellinghouse (Class C3), erection of two storey infill extension at lower ground floor level to existing link between primary and mews buildings, erection of new flat roof to enclose existing third floor terrace including lift overrun, installation of balustrade around lantern at roof level, removal of existing roof lights and vents, installation of hatch to roof, installation of 3 x air condensers to middle of existing roof, alterations to external steps and alterations to fenestration pursuant to the Planning Permission
"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
"Listed Building Consent"	the listed building consent in respect of development of the Property granted on 2 September 2014 following submission to the Council of an application under reference number 2014/4634/L
"Monitoring Fees"	the monitoring fees in the sum of seven hundred and thirty pounds (£730)
"Occupation"	first occupation of the Property for the purposes permitted in the Planning Permission and for the avoidance of doubt does not include occupation for the purposes of construction and marketing and security
"Planning Application"	a planning application in respect of the Development of the Property submitted to the Council under reference number 2014/4663/P
"Planning Permission"	any permission granted for the Development by the Secretary of State or any person appointed by the Secretary of State pursuant to the appeal of the Council's refusal of the Planning Application
"Property"	the land known as 42 Bedford Square & 13 Bedford Avenue, London WC1B 3DP as shown edged red on the Site Plan and registered at the Land Registry under title number NGL878879
"Residents Parking Bay"	a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by residents of the locality in which the Development is situated
"Residents Parking Permit"	a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in a Residents Parking Bay
"Site Plan"	the plan of the Property attached at Appendix 1

1.2 In interpreting this Deed:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom (as amended); and
 - (b) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision (as amended);
- 1.2.4 references to the Property include any part of it;
- 1.2.5 the expression "the Owner" "the Mortgagee" or "the Council" and shall include their respective successors in title and assigns and/or any successor body to relevant statutory functions;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually; and

1.3 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. LEGAL BASIS

- 2.1 This Deed is made pursuant to section 106 of the Act. To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council in its capacity as local planning authority.
- 2.2 This Deed will be registrable as a local land charge.
- 2.3 Nothing in this Deed prohibits or limits the right to develop any part of the Property in accordance with a planning permission or planning approval granted after the date of this Deed other than the Planning Permission.
- 2.4 No person will be liable for any breach of the terms of this Deed occurring after parting with their interest in the part of the Property to which the breach relates but they will remain liable for any breaches of this Deed occurring before that date. Neither the reservation of any rights nor the inclusion of any covenants or restrictions over the Property in any transfer of the Property will constitute an interest for the purposes of this clause 2.4.

3. CONDITIONALITY

3.1 This Deed is not conditional.

3.2 This Deed shall take immediate effect once it has been dated.

4. OWNER'S COVENANTS

The Owner covenants to comply with the following obligations:

4.1 Construction Management Plan

4.1.1 On or prior to the Implementation Date to provide the Council for approval a draft Construction Management Plan.

4.1.2 Not to Implement nor allow Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect.

4.1.3 The Owner acknowledges that the Council will not approve the Construction Management Plan unless it demonstrates to the Council's reasonable satisfaction that the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

4.1.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Construction Management Plan and not to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non-compliance with this sub-clause the Owner shall upon notice from the Council forthwith take any steps required to remedy such non-compliance.

4.2 Car Free Housing

4.2.1 To ensure that prior to occupying any residential unit forming part of the Development each new resident of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.

4.2.2 The Owner for itself and successors in title to the Property hereby acknowledges that the provision in paragraph 4.2.1 above will remain permanently.

4.2.3 On or prior to the Occupation Date to notify the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.2.1 of this Deed.

5. MISCELLANEOUS

5.1 Any notice, demand or any other communication shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

5.2 Insofar as any provision or provisions of this Deed are found for (whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity of the remaining provisions of this Deed.

5.3 The Owner 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.

- 5.4 The Owner agrees declares and undertakes to 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 Deed and further shall indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner 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 Submission of any plan to the Council for approval by the Council under the terms of this Deed shall be made by the Owner to the Council sending the full document and any appendices in electronic format to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Deed and citing the specific clause of this Deed to which such plan relates quoting the planning reference APP/X5210/A/14/2228630.
- 5.6 All costs and expenses payable to the Council under this Deed 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.
- 5.7 The Owner undertakes to pay to the Council the Monitoring Fees within fourteen days of the date of issue of the Planning Permission on appeal.

MORTGAGEE EXEMPTION

- 5.8 The Mortgagee hereby consents to the completion of this Deed and agrees to be bound by it and to the same being registered as a local land charge as provided in Clause 2.2 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.

6. TERMINATION OF THIS DEED

- 6.1 This Deed will come to an end and the obligations in the Schedule shall not be enforceable if any of the following occur:
- 6.1.1 the Planning Permission is not granted at appeal, revoked or otherwise withdrawn so as to render this Deed or any part of it irrelevant, impractical or unviable; or
- 6.1.2 the Planning Permission expires through non implementation.

7. JURISDICTION

- 7.1 This Deed is to be governed by and interpreted in accordance with the law of England.
- 7.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

8. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

9. COUNTERPARTS

This Deed may be executed in any number of counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts together shall constitute the one deed.

SCHEDULE

Construction Management Plan Highway Measures

A Construction Management Plan outlines how construction work will be carried out and how this work will be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations and minimising the impact on local amenity. A Construction Management Plan should cover both demolition and construction phases of development. Details of the Construction Management Plan will relate to the scale and kind and location of the development and they should assess the impact on transport and on local amenity including road user amenity. Should any one of these criteria be considered not to be relevant, then specific justification, as to why that particular criterion is not relevant, will need to be provided. The Construction Management Plan should demonstrate that the following has been considered and where necessary the impacts mitigated:

(Note the term 'vehicles' used here refers to all vehicles associated with the implementation of the development, e.g. demolition, site clearing, delivering of plant, material and construction, staff parking etc)

- a) A brief description of the site, surrounding area and development proposals for which the Construction Management Plan applies.
- b) Proposed start and end dates for each phase of construction.
- c) The proposed working hours within which vehicles will arrive and depart.
- d) The access arrangements for vehicles.
- e) Proposed routes for vehicles between the site and the Transport for London Road Network (TLRN). Consideration should also be given to weight restrictions, low bridges and cumulative effects of construction on the highway. A map of the TLRN can be downloaded from the following site:-
http://www.tfl.gov.uk/assets/downloads/TFL_Base_Map_Master.pdf
- f) Typical sizes of all vehicles and the approximate frequency and times of day when they will need access to the site, for each phase of construction.
- g) Swept path drawings for any tight manoeuvres on vehicle routes to the site.
- h) Details (including accurate scaled drawings) of any highway works necessary to enable construction to take place.
- i) Parking and loading arrangement of vehicles and delivery of materials and plant to the site.
- j) Details of proposed parking bays suspensions and temporary traffic management orders.
- k) Proposed overhang (if any) of the public highway (scaffolding, cranes etc.).
- l) Details of hoarding required or any other occupation of the public highway.
- m) Details of how pedestrian and cyclist safety will be maintained, including any proposed alternative routes (if necessary), and any Banksman arrangements.
- n) Details of how traffic associated with the Development will be managed in order to reduce congestion.
- o) Details of any other measures designed to reduce the impact of associated traffic (such as the use of construction material consolidation centres).

- p) Details of how any significant amounts of dirt or dust that may be spread onto the public highway will be cleaned or prevented.
- q) Details of consultation on a draft Construction Management Plan with local residents, business, local groups (e.g. residents/tenants and business associations) and Ward Councillors. Details should include who was consulted, how the consultation was conducted and the comments received in response to the consultation. In response to the comments received, the Construction Management Plan should then be amended where appropriate and where not appropriate a reason should be given why not. The revised Construction Management Plan should also include a list of all the comments received. You are advised to check your proposed approach to consultation with the Council before carrying it out.
- r) Details of any Construction Working Group that will be set up, addressing the concerns of surrounding residents, as well as contact details for the person responsible for community liaison on behalf of the developer, and how these contact details will be advertised to the community.
- s) Details of any schemes such as the "Considerate Contractors Scheme" that the project will be signed up to should form part of the consultation and be notified to the Council. Contractors will also be required to follow the "Guide for Contractors Working in Camden" also referred to as "Camden's Considerate Contractor's Manual"
- t) Details of other construction sites in the local area and how your Construction Management Plan takes into consideration the cumulative effects of construction local to your site.
- u) All contractors and sub-contractors operating HGVs must meet all of the following conditions:-
 - 1) Operators must be a member of TfL's Fleet Operator Recognition Scheme (www.tfl.gov.uk/fors) or similar at the Bronze level.
 - 2) All drivers must have undertaken cycle awareness training such as the Safe Urban Driver module through FORS or similar.
 - 3) All vehicles associated with the construction of the Development must:
 - i. Have Side Guards fitted, unless it can be demonstrated to the reasonable satisfaction of the Employer, that the Lorry will not perform the function, for which it was built, if Side Guards are fitted.
 - ii. Have a close proximity warning system fitted comprising of a front mounted, rear facing CCTV camera (or Fresnel Lens where this provides reliable alternative), a Close Proximity Sensor, an in-cab warning device (visual or audible) and an external warning device to make the road user in close proximity aware of the driver's planned manoeuvre.
 - iii. Have a Class VI Mirror
 - iv. Bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
- v) Any other relevant information with regard to traffic and transport.
- w) The Construction Management Plan should also include the following statement:-

"The agreed contents of the Construction Management Plan must be complied with unless otherwise agreed with the Council. The project manager shall work with the Council to review this Construction Management

Plan if problems arise in relation to the construction of the Development. Any future revised plan must be approved by the Council and complied with thereafter."

Note: It should be noted that any agreed Construction Management Plan does not prejudice further agreement that may be required for things such as road closures or hoarding licences

APPENDIX 1

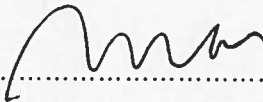
SITE PLAN



EXECUTED AS A DEED by the Owner on the date which first appears in this Deed.

EXECUTED as a Deed by
CLASSIC DESIGN INVESTMENTS LIMITED
acting by two Directors or a Director
and a Witness:-

)
)
)
)
)
Director:.....

Director/Witness:.....

Name of Witness:.....

Address:.....
.....

Occupation:.....

EXECUTED as a Deed by **BSI SA**
acting by an authorised signatory
in the presence of:-

) **Signature:**
)
)
)

Print Name:

Signature of witness:

Name of witness (in BLOCK CAPITALS):

Address:

