

97 106- Amended

**MEMORANDUM** by 2001

**TO: Executive Director  
Planning and Conservation  
(Ref: Bruce Coey)  
(Ref: Lloydon McBarnette)  
Local Land Charges  
(Ref: John Stevens)**

**FROM: The Director of Legal Services**

My ref: JZ/cr

Your Ref:

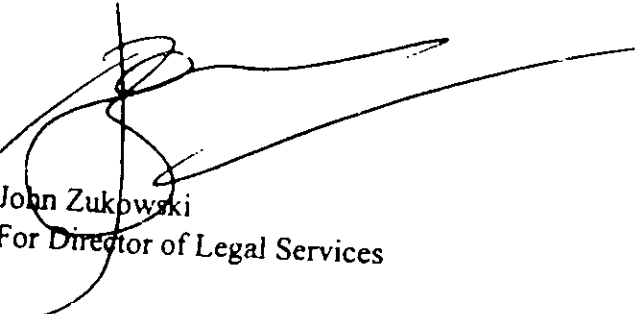
Room No: 313

Ext: 2617

Date 22 September, 1997

**SECTION 106 AGREEMENT**  
**FORMER KNIGHTSBRIDGE CROWN COURT, J HANS CRESCENT**

I write to advise you that the above-mentioned Section 106 Agreement has now been completed and a copy is enclosed herewith. A copy has already been handed to Alice Horan, who has been asked to issue the planning permission, listed building consent and conservation area consent.

  
John Zukowski  
For Director of Legal Services

*L. Lloyd v. H. Bennett*

THIS DEED is made the 19<sup>th</sup> day of *September* one thousand nine hundred and ninety-seven

**BETWEEN**

- (1) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA of the Town Hall, Horton Street, London, W8 7NX ("the Council")
- (2) HARRODS LIMITED whose registered office is at ~~14 South Street, London W1Y 5PL~~ *87-135 BROMPTON RD. London SW1X* *DOIB* ("the Owner")

**WHEREAS**

- A The Council is the local planning authority for the administrative area of the Royal Borough of Kensington and Chelsea for the purposes of the Town and Country Planning Act 1990 (as amended)
- B The Council is the Highway Authority for Basil Street Hans Crescent and Hans Road and is authorised to execute the Highway Works under Part V of the Highways Act 1980.
- D The Owner is registered at HM Land Registry with freehold title absolute in respect of the Land which is situated within the Council's area.
- E The Council are satisfied that the Highway Works are of benefit to the public.
- F The Owner has agreed to pay the whole of the cost of the Highway Works as provided in this Deed.
- G The Planning Application was made to the Council.
- H The Council resolved at a meeting of its Planning Services Committee on the 30 April 1997 to approve the Planning Application following completion of an agreement for the purpose of making acceptable arrangements for the carrying out of the Development (this Deed).

**NOW THIS DEED WITNESSES AS FOLLOWS:-**

1. **INTERPRETATION**

1.1 In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:-

**WORDS AND EXPRESSIONS & MEANINGS**

"Accommodation Works": the works described in the fourth Schedule and shown on Drawing Number 1

"Accommodation Works Contract": the contract or contracts to be entered into between the Council and a Contractor for the construction of the Accommodation Works.

"Accommodation Works Estimate": the estimated cost of the Accommodation Works at the date hereof excluding the Council's expenses in administration design and supervision of the works namely Fifty-five Thousand Pounds (£55,000)

"Appropriate Inflation Supplement": the sum to be applied to increase a sum payable under this Deed to compensate for the effects of inflation calculated in accordance with the Civil Engineering Formulae contained in the Price Adjustment Formulae for Construction Contracts published from time to time by the DOE in respect of sums in connection with the Highway Works to be calculated between the date hereof and the date upon which a payment is made and in the event of the above index ceasing to be published such other appropriate index as may be agreed between the parties hereto or determined by the Expert in default of agreement.

"Car Park": the car park forming part of the Development

"Certificate": the Certificate mentioned in Clause 4.8 below

"Conservation Area Consent": the conservation area consent to be granted in the form annexed hereto

"Construction Traffic": HGV construction traffic

**"Development"**: the development referred to in the Planning Application and described in the First Schedule

**"Director"**: the Council's Director of Transportation and Highways and shall be deemed to mean the officer of the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of the appointment.

**"Drawing Number 1"**: the drawing numbered D5547/LA/O1D annexed hereto

**"Drawing Number 2"**: the drawing numbered D5547/LA/02A annexed hereto

**"Engineer"**: the Council's Director or such other qualified person as the Director shall appoint for the purposes of carrying out the functions of the Engineer herein contained

**"Executive Director"**: the Council's Executive Director of Planning and Conservation and shall be deemed to mean the Officer for the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of the appointment.

**"Final Account"**: an account in respect of the balance of the full cost of the works mentioned in Clause 5.3 below

**"First Further Works Notice"**: the notice mentioned in Clause 5.1

**"First Notice"**: the notice mentioned in Clause 4.1 below being a notice or notices in respect of the whole or part of the Accommodation Works

**"First Payment"** the payment mentioned in Clause 6.2.1 below

**"First Works Notice"**: the notice mentioned in Clause 3.1 below

**"First Works Payment"** the <sup>payment</sup> mentioned in Clause 6.2.1 below *DOIB.*

**"Further Works"**: the works mentioned in the Seventh Schedule

**"Further Works Estimate"**: the estimate of the cost of the further works to be provided by the Director if required acting reasonably

**"Further Works Payment"**: the payment mentioned in Clause 6.3

**"Highway Improvement Scheme"**: the Scheme described in the Sixth Schedule

**"Highway Works"**: the Works and the Accommodation Works

**"Implementation"**: the carrying out of any act pursuant to the Planning Permission which constitutes a material operation exclusively referable to the Planning Permission within the meaning of Section 56 of the Town and Country Planning Act 1990 excluding the construction of the Highway Works by the Council and for the purpose of Clause 4.1 only any demolition to be permitted by the Conservation Area Consent

**"Land"**: the land described in the Second Schedule and shown for the purposes of identification only edged in red on the filed plan and registered at H M Land Registry under title number BGL 12893

**"Plan"**: the plan annexed hereto

**"Planning Application"**: the application for planning permission for the Development under the Council's reference TP/96/1584/F/29

**"Planning Permission"**: the planning permission to be granted pursuant to the Planning Application in the form of the draft annexed hereto.

**"Second Further Works Notice"**: the notice mentioned in Clause 5.3

**"Second Notice"**: the notice mentioned in Clause 4.3 below

**"Second Payment"**: the payment mentioned in Clause 6.2.2 below

**"Second Works Notice"**: the notice mentioned in Clause 3.3 below

**"Second Works Payment"**: the payment mentioned in Clause 6.2.2 below

**"Substantially Completed"**: apart from minor defects and omissions having reached a stage of construction at which the Works and Accommodation Works are substantially ready for use for the purposes for which they are designed and being free from known defects or omissions to the reasonable satisfaction of the Engineer and "Substantial Completion" shall be construed accordingly

**"Works"**: the highway works described in the Third Schedule and shown on Drawing Number 1

**"Works Contract"**: the contract or contracts to be entered into between the Council and a contractor for the construction of the Works

**"Works Estimate"**: the estimated cost of the Works at the date hereof excluding the Council's expenses in administration design and supervision of the works namely fifteen thousand pounds (£15.000)

1.2 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice versa.

1.3 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa.

1.4 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them; respectively from time to time and for the time being in force.

1.5 Covenants made hereunder if made by more than one person are made jointly and severally.

## 2 LEGAL EFFECT

2.1 This Deed is made pursuant to Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974, Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and all other powers so enabling.

2.2 This Deed contains planning obligations made pursuant to the said Section 106 which are enforceable by the Council against the Owner and his successors in title and against any Mortgagee in possession and which binds each and every part of the Land.

2.3 The terms of this Deed (other than clause 13 below which shall have immediate effect) shall come into effect upon the grant of the Planning Permission.

- 24 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of their functions as Local Planning Authority and Highway Authority and their rights, powers, duties and obligations under all public and private statutes, bylaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed.
- 25 If any provision in this Deed is held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired
- 26 No waiver (whether express or implied) by the Council or the Owner of any breach of default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default.
- 27 Nothing in this Deed shall be construed as a grant of planning permission.
- 28 This Deed shall only be delivered as a Deed when dated
- 29 Before construction of any Highway Works commences the Council may terminate all or any of the terms of this Deed which relate to the construction of those Highway Works by giving the Owner notice of their decision to so terminate and on such termination by the Council the Owner shall have no further obligations and shall have no further liability under this Deed save in respect of any antecedent breaches of this Deed
- 2 10 Upon any termination under 2.9 above the Engineer shall give to the Owner an account of all abortive costs incurred by the Council in respect of this Deed and within 28 days from the date of that account
- 2.10.1 if the account shows that the payments made by the Owner under the provisions of this Deed have executed those costs the Council shall refund that excess; and

2.10.2 if the account show that those costs exceed the payment made by the Owner under the foregoing provisions of this Deed the Owner shall pay to the Council a sum equal to that excess.

2.11 In the event that the Council makes a supply or is deemed to have made a supply by HM Customs and Excise to the Owner under this Deed and Value Added Tax is payable by the Council in respect of such supply the Owner shall pay to the Council upon the Council issuing a Value Added Tax Invoice the amount of Value Added Tax so payable in addition to any amounts otherwise payable under this Deed.

2.12 The Owner shall pay to the Council upon the Council issuing a Value Added Tax Invoice the Council's Value Added Tax input tax insofar as that tax is not recoverable by the Council on any transaction entered into by the Council in performing their obligations under this Deed

2.13 Headings in this Deed are not intended to be taken into account in its construction or interpretation.

### 3 WORKS ARRANGEMENTS

3.1 Before bringing the Development into use the Owner shall serve notice ("the First Works Notice") upon the Council to commence the Works and shall tender the First Works Payment to the Council together with the First Works Notice.

3.2 Upon receipt of the First Works Notice and the First Works Payment the Council shall produce to the Owner within a reasonable time (which shall not be interpreted as being less than one nor more than two months) a design of the Works together with bills of quantities.

3.3 The Council shall make available to the Owner copies of all drawings, bills of quantities and other matters relevant to the Works and shall afford the Owner an opportunity to comment thereon and shall consider any comments made within one month by the



Owner on all such matters and shall serve the Second Works Notice within one month of receiving such comments.

- 3.4 Within 28 days of receiving the Second Works Payment the Council shall let a contract upon competitive terms as its own discretion to any contractor or agents ("the Works Contract").
- 3.5 Subject to the performance by the Owner of its obligations under this Deed the Council undertakes that it will carry out and complete the Works and to use its reasonable endeavours to do so as cost effectively as practicable within nine weeks of the Second Notice provided that the Council shall not be liable for any delay to the Works or to the Development occasioned by works to statutory undertakers' and other bodies' services or by any other matter beyond the reasonable control of the Council arising in any way out of the Works
- 3.6 The Engineer may from time to time make such minor alterations to the description of the Works contained in the Third Schedule hereto or any specification of the Works contained in the Works Contract as he may consider desirable or necessary and so far as may be reasonably practicable the Engineer shall give the Owner an opportunity to comment upon any such alterations which he proposes to make **PROVIDED ALWAYS** that the Works shall remain substantially the same and that the sums which the Owner is liable to pay under this Deed do not as a result rise by more than 5% ~~7.5%~~ <sup>7.5%</sup>
- 3.7 During the construction of the Works and subject to Clause 3.5 below, the Owner shall permit the Council, its servants or agents to enter the Land in so far as is necessary to carry out the Works at all reasonable hours and shall afford to the Council all reasonable assistance not involving expenditure of money other than for reasonable internal costs in order to carry out the Works.
- 3.8 Upon the Works being Substantially Completed and upon all of the Council's costs payable pursuant to Clause 3 having been paid by the Owner, the Engineer shall issue a

certificate ("the Works Certificate") to that effect and the issue of the Works Certificate shall not be unreasonably withheld or delayed.

- 3.9 The Owner shall enter into such arrangements as are necessary for arranging the supply and payment thereof of electricity to all signs referred to in the Third Schedule and for the future maintenance of and payment for electricity to the said signs and if the electricity supplier requires any rights over the Council's land or the highway the Council shall grant such rights at no charge other than reasonable legal and surveyor's fees which shall be borne by the Owner.

#### 4. ACCOMMODATION WORKS ARRANGEMENTS

- 4.1 On or (at the Owner's discretion) prior to Implementation the Owner shall serve notice ("the First Notice") upon the Council to commence the Accommodation Works and shall tender the First Payment to the Council together with the First Notice **PROVIDED THAT** this shall not require notice to be served prior to Implementation in respect of the raised table referred to in paragraph 7 of the Fourth Schedule

- 4.2 Upon receipt of the First Notice and the First Payment the Council shall produce to the Owner within a reasonable time (which shall be interpreted as being not less than one nor more than two months) a design of the Accommodation Works together with bills of quantities.

- 4.3 The Council shall make available to the Owner copies of all drawings, bills of quantities and other matters relevant to the Accommodation Works and shall afford the Owner an opportunity to comment thereon and shall consider any comments made within one month by the Owner on all such matters and shall serve the Second Notice within one month of receiving such comments.

- 4.4 Within 28 days of receiving the Second Payment the Council shall let a contract upon competitive terms at its own discretion to any contractor or agents ("the Accommodation Works Contract").

4.5 Subject to the performance by the Owner of its obligations under this Deed the Council undertakes that it will carry out and complete the Accommodation Works and to use its reasonable endeavours to do so as cost effectively as practicable within four months of the Second Notice provided that the Council shall not be liable for any delay to the Accommodation Works or to the Development occasioned by works to statutory undertakers' and other bodies' services or by any other matter beyond the reasonable control of the Council arising in any way out of the Accommodation Works.

4.6 The Engineer may from time to time make such alterations to the description of the works contained in the Accommodation Works Contract as he may consider desirable or necessary and so far as may be reasonably practicable the Engineer shall give the Owner an opportunity to comment upon any such alterations which he proposes to make **PROVIDED ALWAYS** that the Accommodation Works shall remain substantially the same and that the sums which the Owner is liable to pay in respect thereof do not as a result rise by more than 5% without the prior agreement of the Owner

4.7 During the construction of the Accommodation Works and subject to Clause ~~6.5~~ <sup>7.5</sup> below the Owner shall permit the Council, its servants or agents to enter the Land in so far as is necessary to carry out the Accommodation Works at all reasonable hours and shall afford to the Council all reasonable assistance not involving expenditure of money other than for reasonable internal costs in order to carry out the Accommodation Works.

4.8 Upon the Accommodation Works being Substantially Completed and upon all of the Council's costs payable pursuant to Clause 4 having been paid by the Owner, the Engineer shall issue a certificate ("the Certificate") to that effect and the issue of the Certificate shall not be unreasonably withheld or delayed.

## 5. FURTHER WORKS

5.1 If within 12 months of service of the Occupation Notice in accordance with Clause 7.1 the Director is of the opinion based upon the volume and type of service traffic attending th

Development and its interaction with the general traffic flow in Hans Crescent that the Accommodation Works mentioned in paragraph 3 of the Fourth Schedule are contributing to or are not sufficient in dealing with then existing traffic problems in Hans Crescent then he shall at the latest within 28 days of the expiration of the said 12 months serve notice on the Owner ("First Further Works Notice") that the Council intends to carry out the Further Works mentioned in paragraph 1 of the Seventh Schedule and the Council shall not design or carry out the Further Works so as to require acquisition of any rights over land or the carrying out of any works to any structure in the ownership of any third parties

- 5.2 Upon the issue of the First Further Works Notice the Council shall produce to the Owner within a reasonable time (which shall be interpreted as being not less than one nor more than two months) a design of the Further Works together with bills of quantities
- 5.3 The Council shall make available to the Owner copies of all drawings bills of quantities and other matters relevant to the Further Works and shall afford the Owner an opportunity to comment thereon and shall consider any comments made within one month by the Owner on all such matters and shall serve the Second Further Works Notice on the Owner within one month of receiving such comments.
- 5.4 Within 28 days of receiving the Further Works Payment the Council shall let a contract upon competitive terms at its own discretion to any contractor or agent ("the Further Works Contract")
- 5.5 The Council will carry out and complete the Further Works and use its reasonable endeavours to do so as cost effectively as practicable within three months of the Second Further Works Notice provided that the Council shall not be liable for any delay to the Further Works occasioned by the works to statutory undertakers and other bodies services or by any other matter beyond the control of the Council

5.6 The Engineer may from time to time make such alterations to the description of the works contained in the Further Works Contract as he may consider desirable or necessary and so far as may be reasonably practicable the Engineer shall give the Owner an opportunity to comment upon any such alterations which he proposes to make PROVIDED ALWAYS that the Further Works shall remain substantially the same and that the sums which the Owner is liable to pay in respect thereof do not as a result rise by more than 5% without the prior agreement of the Owner

5.7 If within 2 months of service of the First Further Works Notice the Director is of the reasonable opinion that the Further Works mentioned in paragraph 1 of the Seventh Schedule are not feasible for engineering or other reasons (including but not limited to the cost of the Further Works) or if the Owner so elects within 3 months of service of the First Further Works Notice then the Further Works shall consist of the works mentioned in paragraph 2 of the said Schedule ("the Paragraph 2 Works")

5.8 Where in accordance with paragraph 5.7 above the Further Works consist of the Paragraph 2 Works the Owner shall procure that at the commencement of the Further Works 3 parking spaces are made available at all times for as long as the Car Park shall be operated within the Car Park for the parking of diplomatic motor cars

## 6. **PAYMENT**

### **Liability to Pay**

6.1 The Owner shall be liable to pay to the Council:-

6.1.1 the whole cost of the Highway Works and if applicable the Further Works including value added tax (if that tax is payable) on that cost which the Council incurs by or in preparation for the execution of the Highway Works and the Further Works and in connection with the execution of the Highway Works and the Further Works including all costs in respect of the administration design and supervision

of the Highway Works and the Further Works required for the purposes of the Highway Works and the Further Works; and

6.1.2 the whole of any expense to which the Council is put in order to carry out the Highway Works and if applicable the Further Works (including without prejudice to the generality of the foregoing all costs or expenses incurred in obtaining any consent or making or confirming any Order and satisfying claims made under Part 1 of the Land Compensation Act 1973 arising from the execution of the Highway Works and the Further Works) other than any expense to which the Council is put as a result of its negligence or default.

6.1.3 interest at the rate of 4% above Lloyds Bank PLC's base rate from time to time on any sum payable to the Council if such sum has not yet been received by the Council within 14 days of that sum becoming payable hereunder.

#### **Method of Payment**

6.2 The Owner shall make the payments in respect of the sums referred to in Clauses 3 and 4 in respect of each Final Account as follows:-

6.2.1 a sum equal to one half of the Accommodation Works Estimate or the Works Estimate together with the Appropriate Inflation Supplement ("the First Payment or the First Works Payment respectively") on the date on which the First Notice or First Works Notice is served on the Council

6.2.2 a further sum equal to one half of the Accommodation Works Estimate or the Works Estimate together with the Appropriate Inflation Supplement ("the Second Payment or the Second Works Payment respectively") within 14 days of the date on which the Engineer informs the Owner that he proposes to let a contract for the execution of the Accommodation Works or the Works by serving the Second Notice or the Second Works Notice respectively on the Owner.

- 6.3 On receipt of the First Further Works Notice the Owner shall pay to the Council a sum equal to the whole of the cost of the Further Works Estimate ("the Further Works Payment")
- 6.4 If at any time after the payments referred to in 6.2.1 or 6.2.2 or 6.3 have become payable the Engineer estimates that the costs of the works referred to in Clause 6.1 will exceed the Accommodation Works Estimate the Works Estimate or the Further Works Estimate he may give notice to the Owner of the amount by which he then estimates those costs will exceed whichever estimate and the Owner shall pay to the Council within 14 days of the date of that notice a sum equal to that excess in so far as the same is due at the date of that notice.
- 6.5 In addition to and together with each sum payable under the foregoing provisions the Owner shall pay to the Council a further sum equal to 15 per cent of that sum in respect of the Council's costs of administration design and supervision.
- 6.6 Within a reasonable time after the Accommodation Works the Works and the Further Works respectively have been Substantially Completed and the Engineer has issued the appropriate certificate the Engineer shall give the Owner a final account of the Accommodation Works and the Works and the Further Works respectively ("Final Account").
- 6.7 Within 28 days from the date of a Final Account:-
- 6.7.1 if a Final Account shows a further payment due to the Council the Owner shall pay to the Council the sum shown due to them in the Final Account; or
- 6.7.2 if a Final Account shows that the payment or payments previously made to the Council have exceeded those costs the Council shall refund that excess to the Owner.

- 6.8 The Owner shall pay to the Council any sum due within 14 days of that date of the Council's making a demand for that sum and shall pay interest due on any outstanding sum when demanded.
- 6.9 The amounts of payments due under Clause 6 shall be certified on behalf of the Council by the Engineer and the Engineer's decision as to the amounts shall be final subject only to review pursuant to Clause 8 in relation to the Final Accounts, but he shall provide to the Owner any information relating to amounts as the Owner may reasonably require.
- 6.10 The Council shall plan and carry out the Highway Works and Further Works in such a way as to minimise the Owner's liability under this clause, so long as reasonable and proper quality of the Highway Works and Further Works is achieved, and will not design or carry out the Highway Works <sup>and Further Works. ~~so~~ Done.</sup> so as to require entry into the premises of or acquisition of any rights or land of third parties unless to do so would be cheaper to the Owner hereunder than an engineered solution not including such entry or acquisition.

## 7 OTHER COVENANTS RELATING TO THE HIGHWAY WORKS

The Owner hereby covenants with the Council as follows:-

### Restriction upon Occupation

- 7.1 That occupation of any part of the Development shall not (other than for the purpose of fitting out works) take place until such time as the Engineer has issued the Certificate and the Works Certificate and the Owner shall serve notice on the Director when occupation takes place ("Occupation Notice")
- 7.2 In the event of the occupation of the Development in breach of this Deed the Council without prejudice to any other remedy shall be at liberty to construct the Works and Accommodation Works and enter the Land as necessary and the Owner shall be liable to pay to the Council the full cost of the Works and Accommodation Works forthwith.



### Wheel Washing

- 7.3 To ensure that facilities for washing the wheels of Construction Traffic are installed and kept in operation on the Land during the construction of the Development in accordance with the arrangements set out in the Fifth Schedule and the Owner shall use all reasonable endeavours to ensure that Construction Traffic leaving the Land does not deposit mud on the highway.

### Statutory Undertakers

- 7.4 The Owner shall be responsible for the payment of all charge by Statutory Undertakers in respect of the Highway Works and Further Works

### Access

- 7.5 The Council shall co-ordinate its times and periods for entering on the Land with all other contractors carrying out work thereon for the construction of the Development so as to minimise disruption and any effect on the cost of the Development and the Highway Works.

## **8. EXPERT DETERMINATION**

- 8.1 Any dispute arising between the parties hereto in respect of the Highway Works and the Further Works including the Final Accounts shall be referred to a Chartered Civil Engineer (hereinafter called "the Expert") to be agreed between the parties hereto or failing agreement as to the same to be appointed upon the application of either party hereto by the President for the time being of the Institution of Civil Engineers and
- 8.2 Any person appointed as the Expert under this Clause shall act as an independent expert and not as an arbitrator and once the Expert has expressed willingness so to act the following provisions shall apply:-

8.2.1 the Expert shall fully consider all written representations made by or on behalf of the Owner and the Council which shall be delivered to him within 28 days of notice of his appointment; and

- 8.2.2 he shall use all reasonable endeavours to give his decision as speedily as possible; and
- 8.2.3 his decision shall be final and binding on the parties hereto in respect of all matters referred to him; and
- 8.2.4 his fees shall be payable by the parties hereto in such proportions as he shall determine or in default of such determination equally between them provided that in the event of either party failing to pay its proportion within 28 days of determination then the other party shall be entitled to pay the whole of his fees and the proportion due from the other party shall be recoverable as a debt, and if the Expert shall die or refuse or be unwilling to act, the procedure for appointment of another person in his place shall be repeated as often as may be necessary.
- 8.3 The terms of the Expert's appointment shall require him to comply with Clauses 8.2.1 and 8.2.2.

9. **THE OWNER'S COVENANTS**

9.1 **Car Park Management and Tariff**

From the opening of the Car Park and for as long as the Car Park shall be operated:-

- 9.1.1 to designate and maintain two car parking spaces on the first level of the car park to be created as part of the Development ("the Car Park") for persons having a Disabled Persons Badge pursuant to the Disabled Persons (Badges for Motor Vehicles) Regulations 1982 or any statutory modification or replacement thereof and to provide a free valet service to park and retrieve the cars of further such persons during the hours of operation of the car park (who for the avoidance of doubt shall be required to pay the normal parking charges)
- 9.1.2 not to use the Car Park as a car park other than in accordance with Condition 13 of the Planning Permission and to provide diplomatic car spaces in accordance with Clause 5.8 unless the following charging scheme (or such other scheme as

may be approved in writing by the Director) is in force between the hours of 6.00a.m. and 6.30 p.m. Mondays to Saturdays including bank holidays:-

Up to half an hour	½ EX
Up to one hour	EX
Over one hour and up to five hours	2EX - 5EX pro rata
Up to six hours	9EX
Over six hours	9EX plus 5EX for each hour or part thereof over six hours

Where X is the charge for parking up to one hour chosen by the Owner

9.1.3 To keep the Car Park open for the public to park their cars until at least 1.00 am on any day

## 9.2 Service Area

From the completion of the Service Area and thereafter for as long as the Service Area shall be operated not to use the service area shown shaded purple on Drawing Number 2 ("the Service Area") as a service area unless:-

9.2.1 a signal with a red default to control the exit of vehicles from the Service Area is located at its exit and installed so that the red default will operate to stop vehicles exiting from the Service Area in order to give priority to vehicles wanting to enter the Service Area

9.2.2 a traffic marshal is on duty during times when Service Area exit is open equipped with a remote controller of the signal referred to in 9.2.1 above enabling him to operate the signal

or other such measures as may be approved in writing by the Director

### **9.3 Construction Traffic**

**9.3.1** Unless otherwise approved in writing by the Executive Director not to carry out any construction work for the construction of the Development unless the following requirements are included in the Contract for the Development referred to in clause 9.4.2 below and a copy of the relevant clauses in the Contract has been sent to the Executive Director

**A** No HGV construction traffic ("Construction Traffic") shall use Hans Place Walton Place or Basil Street (North of Hans Crescent) and that Hans Crescent east of Landon Place is only used by Construction Traffic if the alternative route via Hans Crescent west of Landon Place or Hans Road is not available by reason any physical or legal obstruction.

**B** Construction Traffic entering or leaving the Land shall use the wheel wash facility described in the Fifth Schedule ("Wheel Wash") until such time as the Executive Director has confirmed in writing that the Wheel Wash is no longer required such confirmation not to be unreasonably withheld.

**9.3.2** Not to carry out any works for the Implementation of the Planning Permission unless the requirements referred to in clause 9.3.1 above are included in the demolition contract for the works of demolition to be carried out pursuant to the Conservation Area Consent ("the Demolition Contract") and a copy of the relevant clauses in the Demolition Contract has been sent to the Executive Director

**9.3.3** To take all reasonable steps to ensure compliance's with the requirements to be contained in the Contract and the Demolition Contract set out in clauses 9.3.1 and 9.3.2 above

### **9.4 Demolition and Construction**

The Owner covenants with Council as follows:

- 9.4.1 within seven days of the date ("the Commencement Date") as notified to the  
PLANNING PERMISSION WITHIN THE PERIOD OF VALIDITY OF THE PLANNING PERMISSION IN THE PLANNING PERMISSION  
9.4.2 within 16 weeks of the Commencement Date to enter into a binding contract (the  
"Contract") with a builder or construction company for the rebuilding of the Land in  
accordance with the Planning Permission and forthwith to send a copy of the  
Clause referred to in 9.4.3 below contained within the Contract and confirmation  
of the date of the Contract to the Executive Director
- 9.4.3 it shall be a term of the Contract that works for the said rebuilding of the Land  
shall be commenced within 4 weeks of the date of the Contract provided that the  
said demolition of the Land is completed by that date
- 9.4.4 to use its reasonable endeavours to enforce the provisions of the Contract and to  
ensure that the Land is rebuilt as soon as reasonably practicable in accordance  
with the Planning Permission and the Conservation Area Consent
- 9.4.5 not to carry out or cause or permit to be carried out any works of demolition on the  
Land pursuant to the Conservation Area Consent except as part of the process of  
rebuilding the Land in accordance with the Planning Permission
- 9.4.6 the said demolition of the Land shall be carried out as expeditiously as reasonable  
practicable in one continuous process and in the event it is completed prior to the  
expiry of 18 weeks from the Commencement Date the Owner shall procure that  
the said rebuilding of the Land in accordance with the Planning Permission  
commences within 14 days after completion of the said demolition of the Land

10. **HIGHWAY IMPROVEMENT SCHEME**

- 10.1 The Owner hereby covenants with the Council that prior to completing and operating the  
Car Park that it will pay to the Council £150,000 in respect of a highway improvement

scheme for the improvement of Hans Road, Hans Crescent Brompton Road and Basil Street ("the Scheme") in accordance with the Sixth Schedule.

10.2 The Council covenants with the Owner that it will consult with the Owner on the content of the Scheme and will take into account the Owners views expressed within 21 days of such consultation in deciding what the Scheme is to include

10.3. The Council further covenants with the Owner that if it has not within 24 months of payment of the sum of £150,000 by the Owner completed the Scheme it will repay to the Owner the said sum of £150,000 or the unexpended balance thereof

11. **SERVICE OF NOTICES**

11.1 Any notice or certificate required to be served on the Council shall be in writing and shall be sufficiently served upon the Council if left at or posted by Recorded Delivery to the Director of Transportation and Highways Royal Borough of Kensington and Chelsea Town Hall Hornton Street London W8 7NX or in the case of the Owner if left at or posted by Recorded Delivery to the registered office or last known address of the Owner.

11.2 Any payment required to be made to the Council shall be made to the Royal Borough of Kensington and Chelsea and shall be left at or (in the case of a cheque) posted by Recorded Delivery to the Director of Transportation and Highways at the above address and in the case of the Owner if left at or posted by Recorded Delivery to the registered office or last known address of the Owner

12. **GENERAL**

The Owner hereby covenants that he and his assigns and all successors in title shall be bound to observe and perform all covenants and stipulations herein contained but neither the Owner nor any successor in title nor any person deriving title shall be liable for any breach of this Deed after parting with its interest unless at the date of breach it held such an interest.