

**THIS DEED OF AGREEMENT** is made this                      day of                      **2020**

**BETWEEN:**

**THE MAYOR AND COMMONALTY AND CITIZENS  
OF THE CITY OF LONDON**

**-and-**

**THE WARDENS AND COMMONALTY OF THE MYSTERY  
OF MERCERS OF THE CITY OF LONDON**

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**DEED OF AGREEMENT UNDER SECTION 278  
OF THE HIGHWAYS ACT 1980  
RELATING TO HIGHWAY WORKS AT FREDERICK'S PLACE, EC2**

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Michael Cogher  
Comptroller and City Solicitor  
Guildhall  
London EC2P 2EJ  
Ref: BEN004/043

**THIS DEED OF AGREEMENT** is dated the \_\_\_\_\_ day of \_\_\_\_\_ **2020**

**BETWEEN**

1. **THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON** of PO Box 270 Guildhall London EC2P 2EJ (the “**City Corporation**”); and
2. **THE WARDENS AND COMMONALTY OF THE MYSTERY OF MERCERS OF THE CITY OF LONDON** of Mercers' Hall, Ironmonger Lane, London, EC2V 8HE (the “**Owner**”)

together, “**the Parties**”

**RECITALS**

- A. The City Corporation is the local planning and highways authority for the Highway.
- B. The Owner holds various interests in land in the vicinity of the Highway and adjacent to Frederick's Place, EC2 and wishes to fund the provision of the Section 278 Works and carry out the Barrier Operation Arrangements on behalf of the City Corporation to enhance security in the vicinity of the Highway.
- C. The City Corporation has by virtue of Part V of the 1980 Act agreed to enter into this Deed with the Owner to provide for the carrying out of the Section 278 Works and the Barrier Operation Arrangements and secure payment by the Owner of all costs associated with the implementation of the Section 278 Works and Barrier Operation Arrangements.
- D. This Deed is made pursuant to section 278 of the 1980 Act, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 33 of the City of London (Various Powers) Act 1960, section 111 of the Local Government Act 1972 and all other provisions so enabling.
- E. The City Corporation is satisfied that this Deed and the Section 278 Works will be of benefit to the public.
- F. The parties acknowledge that the Highway will benefit from the Section 278 Works.
- G. The Owner agrees to meet the reasonable and proper costs of the Section 278 Works and all other works provided for in this agreement.
- H. The Owner paid an advance sum of £16,000 to the City Corporation on 11 December 2019 to be put towards the costs of commissioning a camera survey, appointing a consultant to investigate the Barrier and working on the committee report.

**IT IS AGREED** as follows: -

**1. INTERPRETATION**

- 1.1. In this Deed the following defined terms and expressions have the following meanings:

<b>"the 1980 Act"</b>	means the Highways Act 1980 (as amended) or any re-enactment or modification thereof for the time being in force;
<b>"Accrued Interest"</b>	means for the purposes of this Deed interest at the Bank of England base rate from time to time;

<b>“Barrier”</b>	means the security barrier (and all equipment required for its operation) forming part of the Section 278 Works in the Highway;
<b>“Barrier Operation Arrangements”</b>	means the arrangements for the operation of the Barrier which are attached as Schedule 3 to this Deed;
<b>“Completion Date”</b>	means the date on which the City Corporation notifies the Owner of the completion of the Section 278 Works in accordance with clause 3.10;
<b>“Detailed Drawings”</b>	means the detailed design drawings prepared by or on behalf of the City Corporation for the Section 278 Works and agreed between the City Corporation and the Owner or any such revisions thereto as may be agreed;
<b>"Director of the Built Environment"</b>	means the Director of the Built Environment of the City Corporation from time to time or such officer as may be lawfully designated by the City Corporation to discharging his duties or functions;
<b>“Expert”</b>	means an independent and suitable person holding appropriate professional qualifications and of at least 15 years’ post qualification experience appointed in accordance with the provisions of clause 11.10 to determine a dispute;
<b>“Highway”</b>	means that part of the highway within the area shaded red on the drawing attached to this Deed as Schedule 1, and which may be amended by agreement between the Parties;
<b>“Maintenance”</b>	means works related to the upkeep of the Barrier to a standard considered appropriate by the City Corporation;
<b>"Maintenance Costs"</b>	means the reasonable costs incurred by the City Corporation from time to time in carrying out the Maintenance;
<b>"Reasonable Endeavours"</b>	means that the party under such an obligation shall not be required to take proceedings (including any appeal) in any court, public inquiry or other hearing (unless specified to the contrary) but such party shall be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including the importance to the other parties of the fulfilment of the relevant obligation) may be reasonable and proportionate;
<b>"Section 278 Works"</b>	means the highways and related works, including the Barrier, to be undertaken by the City Corporation and or its servants and agents within the Highway generally in accordance with the description contained in Schedule 2 to this Deed;
<b>"Section 278 Works Payment"</b>	means the sum of £29,000 (twenty nine thousand pounds) (£) being the estimate of the reasonable and proper costs likely to be incurred by the City Corporation of undertaking and completing the Section 278 Works and which may without limiting the generality of the foregoing words include:  (a) the City Corporation’s reasonable administrative, technical and supervisory costs in connection with the Section 278 Works; and

	<p>(b) the costs of making and implementing any Traffic Orders that the City Corporation considers necessary to enable the Section 278 Works to be carried out;</p> <p>(c) the City Corporation's reasonable costs in obtaining or attempting to obtain any other consents, licences permissions or approvals as may be required for the purposes of carrying out the Section 278 Works (including from TfL, the Mayor of London or the Greater London Authority) and in complying with any requirements imposed with those consents, licences, permissions or approvals;</p> <p>(d) the City Corporation's reasonable costs incurred in supervision, project management, checking the design, safety audits and carrying out periodic site inspections of the Section 278 Works;</p> <p>(e) any other reasonable costs incurred by the City Corporation in assessing and managing the Section 278 Works and making good the Highway;</p>
<b>"Section 278 Works Payment Excess"</b>	means such reasonable and proper sum or sums properly evidenced and certified by which the actual costs of the Section 278 Works to the City Corporation exceed or are likely to exceed the Section 278 Works Payment. For the avoidance of doubt, the Section 278 Works Payment Excess shall include any reasonable costs attributable to works in the area or vicinity of the Section 278 Works which were unforeseen by the City Corporation at the date of this Deed and which directly interfere with the works programme and/or the efficient progress of the same where such interference is not caused by any act, default or omission on the part of the City Corporation or someone acting on its behalf;
<b>"Specifications"</b>	means the detailed specifications for the Section 278 Works as prepared by or on behalf of the City Corporation in accordance with its standard specification and in accordance with this Section 278 Agreement and agreed between the City Corporation and the Owner or any such revisions thereto as may be agreed;
<b>"Statutory Undertaker"</b>	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 Deed already installed in, under, over or upon the land on which the Section 278 Works are to be carried out including the authorised successor to any such person, company, corporation, board or authority;
<b>"Traffic Order"</b>	means an order restricting the use of the highway at or adjoining the area of the Section 278 Works (made under the Road Traffic Regulation Act 1984 or any other statute and whether made or implemented prior to during or following the completion of the Section 278 Works);
<b>"VAT"</b>	means Value Added Tax as referred to in the Value Added Tax Act 1994 and / or any tax of a similar nature substituted for it or in addition to it;
<b>"Working Day"</b>	means any day (other than a Saturday, Sunday, or any statutory bank holiday) on which Clearing Banks '(being a bank which is a member of the

	CHAPS Clearing Company Limited and APACS Limited) are open in England for the transaction of banking business;
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- 1.2. A reference to a clause, schedule or recital followed by a number is a reference to the clause, schedule or recital of this Deed bearing that number.
- 1.3. The headings in this Deed are for convenience only and shall not be deemed to be part of, or taken into consideration in the interpretation of, this Deed.
- 1.4. The Schedules form part of this Deed and shall have effect as if set out in full in the body of the Deed. Any reference to the Deed includes the Schedules.
- 1.5. Words importing the singular number only shall include the plural number and vice versa and words importing any gender shall include masculine, feminine and neuter genders and words denoting actual persons include company's corporations and firms and all such words shall be construed as interchangeable in that manner.
- 1.6. Words denoting an obligation on a party to this Deed to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction.
- 1.7. Nothing in this Deed shall fetter or restrict the City Corporation in the exercise of their powers under any enactment, statutory instrument, regulation, order or power for the time being in force.
- 1.8. References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order, delegated legislation, plans, regulations, permissions and directions, amending, re-enacting or made pursuant to the same as current and in force from time to time.
- 1.9. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. If any provision of this Deed shall be 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 impaired or called into question.
- 1.11. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individual unless there is an express provision otherwise.
- 1.12. The Interpretation Act 1978 shall apply to this Deed.
- 1.13. All works will be constructed to the City of London's 'Construction and Material Specification for highway works' and in line with the City of London's Streetscape design manual.

## **2 THE OWNER'S COVENANTS**

The Owner covenants with the City Corporation as follows:

- 2.1. To pay to the City Corporation on or before the date of this Deed:
  - (a) the Section 278 Works Payment; and

- (b) the City Corporation's reasonable legal costs in connection with the preparation and completion of this Deed.
- 2.2. To pay within 28 days to the City Corporation following the City Corporation's written request and following receipt of evidence relating to the incurring of such excess, the Section 278 Works Payment Excess (if any) **PROVIDED THAT** the Owner shall not be required to pay the City Corporation's costs in respect of any cost, claim, demand, charge or expense whatsoever arising, or which may arise or be incidental to, any negligent or defective act, default or omission on the part of the City Corporation, their agents, workmen, contractors or employees.
- 2.3. Subject to the provisions of Clause 2.5 and for twelve (12) months from the Completion Date:
- (a) to indemnify the City Corporation from and against all liabilities, actions, costs, claims, demands, and reasonably incurred expenses whatsoever arising, or which may arise out of or be incidental to the execution of the Section 278 Works, other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions of Clause 2.4 (b) shall apply; and
- (b) to indemnify the City Corporation against all claims under Parts I and II of the Land Compensation Act 1973 arising directly out of the execution and use of the Section 278 Works and other works required under this Deed.
- 2.4. The indemnity provided at Clause 2.3 shall not apply (to the extent necessary) to any case where there is any action, cost, claim, demand, charge or expense or any negligent or defective act default or omission on the part of or attributable to the City Corporation and its agents, workmen, employees or contractors.
- 2.5. The indemnity under Clause 2.3 is conditional upon the City Corporation: -
- (a) giving to the Owner written notice of any such claims as soon as reasonably practicable upon receipt of any such claim referred to in Clause 2.4;
- (b) not admitting liability to any third party or making any offer to settle the same without first consulting the Owner and paying due regard to any representations made by the Owner;
- (c) upon the prior written approval of the City Corporation allowing the Owner to conduct jointly with the City Corporation in the name of the City Corporation any litigation or other dispute resolution process each party giving to the other such assistance and cooperation as the other reasonably may require the Owner bearing the reasonable costs of the City Corporation of providing such co-operation;
- (d) taking all reasonable and proportionate steps to mitigate any claims;
- AND PROVIDED THAT** if the City Corporation shall recover (whether by payment, discount, credit, saving, relief or other benefit whatsoever) a sum that is directly attributable to a claim the City Corporation shall within two calendar months give credit to the Owner for the sum that is the lesser of (a) an amount equal to the sum recoverable (or the value of the saving or benefit obtained) less any reasonable costs and expenses incurred by the City Corporation in recovering the same and (b) the amount paid by the Owner under this indemnity.
- 2.6. To pay any Maintenance Costs to the City Corporation within twenty-eight (28) days of the City Corporation's written request and upon production to the Owner of a proper invoice for the same.

- 2.7. Where there is a material breach of a term of this Deed attributable to the Owner and/or its agents or contractors, the Owner shall pay to the City Corporation all reasonable costs of enforcing the terms of this Deed against the Owner.

### **The Barrier**

The Owner covenants with the City Corporation in respect of the Barrier as follows:

- 2.8. From the Completion Date (or such other date as agreed between the Parties), to carry out and comply with the Barrier Operation Arrangements at all times for the life of the Barrier and at no cost to the City Corporation.
- 2.9. In the event of a breach of the covenant in clause 2.8 above, the City Corporation may (subject to providing reasonable prior notice to the Owner) carry out the Barrier Operations Arrangements and recover the reasonable costs so incurred from the Owner.
- 2.10. Following the date on which the Owner commences the Barrier Operation Arrangements in accordance with Clause 2.8 above, and for the life of the Barrier the Owner covenants to:
- (a) indemnify the City Corporation from and against all liabilities, actions, costs, claims, demands, and reasonably incurred expenses whatsoever arising or which may arise out of or be incidental to the use and operation of the Barrier, other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions of clause 2.10(b) shall apply; and
  - (b) indemnify the City Corporation against all claims under Parts I and II of the Land Compensation Act 1973 arising out of the use and operation of the Barrier.
- 2.11. The indemnities provided at clauses 2.10(a) and 2.10(b) shall not apply (to the extent necessary) to any case where there is any action, cost, claim, demand, charge or expense or any negligent or defective act, default or omission on the part of or attributable to the City Corporation and its employees or contractors.
- 2.12. The indemnities under clauses 2.10(a) and 2.10(b) are conditional upon the City Corporation:
- (a) giving the Owner written notice of any such claims as soon as reasonably practicable upon receipt of any such claim referred to in clauses 2.10(a) and 2.10(b);
  - (b) not admitting liability to any third party or making any offer to settle the same without first consulting the Owner and paying due regard to any representations made by the Owner;
  - (c) upon the prior written approval of the City Corporation allowing the Owner to conduct jointly with the City Corporation in the name of the City Corporation any litigation or other dispute resolution process each party giving to the other such assistance and co-operation as the other reasonably may require the Owner bearing the reasonable costs of the City Corporation of providing such co-operation;
  - (d) taking all reasonable and proportionate steps to mitigate any claims;

**AND PROVIDED THAT** if the City Corporation shall recover (whether by payment, discount, credit, saving, relief or other benefit whatsoever) a sum that is directly attributable to a claim the City Corporation shall within twenty-eight (28) days give credit to the Owner for the sum that is the lesser of (a) an amount equal to the sum recoverable (or the value of the saving or benefit

obtained) less any reasonable costs and expenses incurred by the City Corporation in recovering the same and (b) the amount paid by the Owner under this indemnity.

### **3 THE CITY CORPORATION'S COVENANTS**

3.1. Prior to the commencement of the Section 278 Works, the City Corporation shall provide to the Owner for its approval the Detailed Drawings and Specifications and shall have regard to such amendments and alterations to the Detailed Drawings and Specifications as the Owner may reasonably request.

3.2. Subject to:

- (a) the performance by the Owner of its covenants in this Deed; and
- (b) the making by the City Corporation of any Traffic Order(s) that the City Corporation reasonably considers necessary to enable the Section 278 Works and the Barrier Operation Arrangements to be implemented;
- (c) the City Corporation obtaining all other consents, licences, permissions and approvals as may be reasonably required for implementing the Section 278 Works and the Barrier Operation Arrangements;
- (d) any changes to the Section 278 Works that may properly be required as conditions of such Traffic Orders, approvals, consents, licences and permissions;

the City Corporation shall use all Reasonable Endeavours to commence and to diligently proceed with and complete the Section 278 Works in accordance with the Detailed Drawings and Specifications in a good and workmanlike manner and shall use all Reasonable Endeavours to obtain the Traffic Order(s) referred to in 3.2(b) and the consents, licences, permissions and approvals referred to in clause 3.2(c) **PROVIDED THAT** such obligation shall be at no cost to the City Corporation and shall in no way infer any particular outcome from any statutory process and shall not fetter the City Corporation in the performance of its statutory duties **AND FOR THE AVOIDANCE OF DOUBT** the City Corporation shall be under no obligation to complete the Section 278 Works if the necessary Traffic Order(s) or other consents, licences, permissions and approvals are not obtained.

3.3. The City Corporation shall provide to the Owner regular updates regarding progress and costs in relation to the matters contained in clause 3.2 and the completion of the Section 278 Works.

3.4. Upon receipt of the Section 278 Works Payment and Section 278 Works Payment Excess (if any) the same shall be placed into an interest bearing section of the City Corporations bank account such that there shall be Accrued Interest with all Accrued Interest to be applied towards the costs of the Section 278 Works as required under this Deed **PROVIDED THAT** in the event of the Owner defaulting in the performance of its covenants herein the Section 278 Works Payment may be used by the City Corporation for the purpose of performing such covenants or carrying out any reinstatement or repair to the highway required as a direct result of such default.

3.5. If requested within three (3) calendar months of the expiry of the period of twelve (12) months from the date of completion of the Section 278 Works the City Corporation shall provide the Owner with a statement of final account in respect of the Section 278 Works Payment and Section 278 Works Payment Excess (if any).

3.6. The City Corporation shall apply the payments received (and any Accrued Interest thereon) only for the purposes for which they were provided.



- 3.7. In the event that the sum of the Section 278 Works Payment and Section 278 Works Payment Excess (if any) exceeds the actual cost of the Section 278 Works, the Owner shall be entitled to issue to the City Corporation at any time following receipt of the final account in accordance with clause 3.5 a written demand in respect of any overpayment and the City Corporation shall repay to the Owner any such overpayment within two calendar months of receiving a written demand for the same (along with all Accrued Interest and a statement of how such interest has been calculated).
- 3.8. The City Corporation shall carry out the Maintenance for the life of the Barrier at the Owner's expense
- 3.9. The City Corporation shall issue the Owner with written requests for payment of the Maintenance Costs from time to time, as soon as reasonably practicable.
- 3.10. The City Corporation shall notify the Owner of the completion of the Section 278 Works on the Completion Date.
- 3.11. Subject to the Traffic Order(s) referred to in 3.2(b) and the consents, licences, permissions and approvals referred to in clause 3.2(c) for the Section 278 Works being obtained and the Barrier being installed, the City Corporation gives to the Owner licence to enter and to remain upon so much of the public highway under the City Corporation's control as the City Corporation shall agree is reasonably necessary for the Owner to carry out the Barrier Operation Arrangements.

#### **4 PERFORMANCE OF THE CITY CORPORATION'S COVENANTS**

It is agreed that the performance of the covenants on the part of the City Corporation to carry out the Works may be performed by its contractor or sub-contractors.

#### **5 REASONABLENESS**

The parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to the generality of the foregoing) if any consent approval agreement consideration requirement or expression of satisfaction is due from one party to another under the terms of this Deed then the same shall not be unreasonably withheld or delayed.

#### **6 NOTICES**

- 6.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post marked for the attention of the person and copied to the person(s), identified below or instead to such other persons as may be substituted for them from time to time:

<b>The City Corporation</b>	The Director of the Built Environment
Address	PO Box 270 Guildhall London EC2P 2EJ Attention: Carolyn Dwyer
With a copy to:	The Transportation and Public Realm Director Attention: Zahur Khan
	The Comptroller and City Solicitor Attention: Michael Cogher
<b>The Owner</b>	Mr Rob Abernethy, Clerk

Address	The Mercers' Company Frederick's Place London EC2R 8AB TEL: (+44) 2077767200
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6.2 Any such notice must be delivered by hand or prepaid first-class post and shall conclusively be deemed to have been received on:

- (a) If delivered by hand, the next Working Day after the day of delivery;
- (b) If sent by post and posted within the United Kingdom, the day two (2) Working Days after the date of posting.

6.3 Any such notice consent or approval, or request by the Owner for consent or approval from the City Corporation shall specifically refer to the name, date and parties to the Deed, and shall cite the clause of this Deed to which it relates.

**7 INTEREST ON OVERDUE PAYMENTS**

In the event of any delay in the making of any payment required to be made under this Deed interest shall be payable on that sum at the rate of four (4) per cent above the base lending rate of the Bank of England from time to time from the date when payment was due until the date of actual payment.

**8 VAT**

- 8.1 Any sum specified in this Deed is exclusive of VAT that may be payable.
- 8.2 The Owner shall not be obliged to make any contribution towards the VAT payable by the City Corporation in respect of any Section 278 Works insofar as and to the extent that the amount of such VAT is (by way of set-off or otherwise) recoverable by or reimbursable to the City Corporation.

**9 MISCELLANEOUS PROVISIONS**

If construction of the Section 278 Works shall not have commenced within two (2) years of the date of this Deed, it shall cease to have effect and any unallocated part of any of the payments made by the Owner to the City Corporation under this Deed together with all Accrued Interest shall be repaid by the City Corporation to the Owner within two calendar months.

**10 THE HIGHWAY AUTHORITY FUNCTIONS OF THE CITY CORPORATION**

- 10.1 It is hereby declared and agreed that the Section 278 Works shall form part of the public highway and shall vest in the City Corporation and nothing in this Deed shall be taken to require the retention of the Section 278 Works or to restrict the City Corporation's exercise of its respective functions as highway or traffic authority including its functions under the 1980 Act **AND FOR THE AVOIDANCE OF DOUBT** the City Corporation may at its sole discretion determine to remove the Section 278 Works.
- 10.2 In the event of the removal of the Section 278 Works (or any part thereof) in accordance with Clause 10.1 above, the City Corporation may claim from the Owner any costs reasonably and properly incurred by it in respect of such removal. The Owner shall pay such costs to the City Corporation within twenty-one (21) days of receipt of the City Corporation's written request.

## 11 **GENERAL**

### **Successors in Title**

- 11.1 The Owner shall not assign or transfer the benefit or obligations of this Deed or any part thereof unless permitted in writing by the City Corporation.

### **The Functions of the City Corporation**

- 11.2 It is hereby declared and agreed that nothing in this Deed shall be taken to restrict the City Corporations exercise of its functions as highway authority, traffic authority, local planning authority or local authority.

### **Third parties**

- 11.3 A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

### **Freedom of Information**

- 11.4 If the City Corporation receives a request in connection with the Freedom of Information Act 2000 in relation to this Deed:
- (a) The Owner will use reasonable endeavours to assist the City Corporation, at no additional charge and within such timescales as the City Corporation may reasonably specify, in meeting any requests for information in relation to this Deed which are made to the City Corporation; and
  - (b) the City Corporation will, wherever reasonably practical, consult with the Owner disclosing information that relates to the Owner.

### **Governing Law and Jurisdiction**

- 11.5 This Deed shall be governed by and construed in accordance with the Laws of England and the parties hereto irrevocably submit to the exclusive jurisdiction of the courts of England.

### **Termination**

- 11.6 Any Party may terminate this Deed and the Barrier Operation Arrangements without cause by giving six (6) months' written notice to the other Party **PROVIDED THAT** the other Party shall be first consulted and regard shall be had to the other Party's representations.
- 11.7 If this Deed is terminated in accordance with clause 11.6 above the City Corporation (or its agent or contractor) may remove the Section 278 Works and any associated equipment from the Highway and re-instate the Highway to the standard set by the City Corporation.
- 11.8 The City Corporation may terminate this Deed and the Barrier Operation Arrangements upon immediate written notice in the event of material breach by the Owner of any of its obligations under this Deed, following written notification of the said breach by the City Corporation and failure by the Owner to remedy said breach within one (1) month of receiving written notice from the City Corporation.

11.9 If this Deed is terminated the City Corporation (or its agent or contractor) may remove the Section 278 Works and any associated equipment from the Highway and re-instate the Highway to the standard set by the City Corporation at the Owner's expense. The Owner shall pay such costs to the City Corporation within twenty-one (21) days of receipt of the City Corporation's written request.

### **Expert Determination**

11.10 In the event of any dispute or difference arising between the Parties touching or concerning any matter arising out of this Deed (other than a dispute or difference touching or concerning the meaning or construction of this Deed) such dispute or difference shall be referred by either party to an Expert to be appointed (in the absence of agreement) on the application of either party by the President (or equivalent person) for the time being of a professional body chiefly relevant in England to such qualifications.

11.11 The Expert shall act as an expert and save in case of manifest error his decision shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares.

11.12 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in clause 11.10 within ten (10) days after a written request by one party to the other to agree to the appointment of an Expert then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of either party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares.

11.13 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received any final written representation.

11.14 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) Working Days.

### **Counterparts**

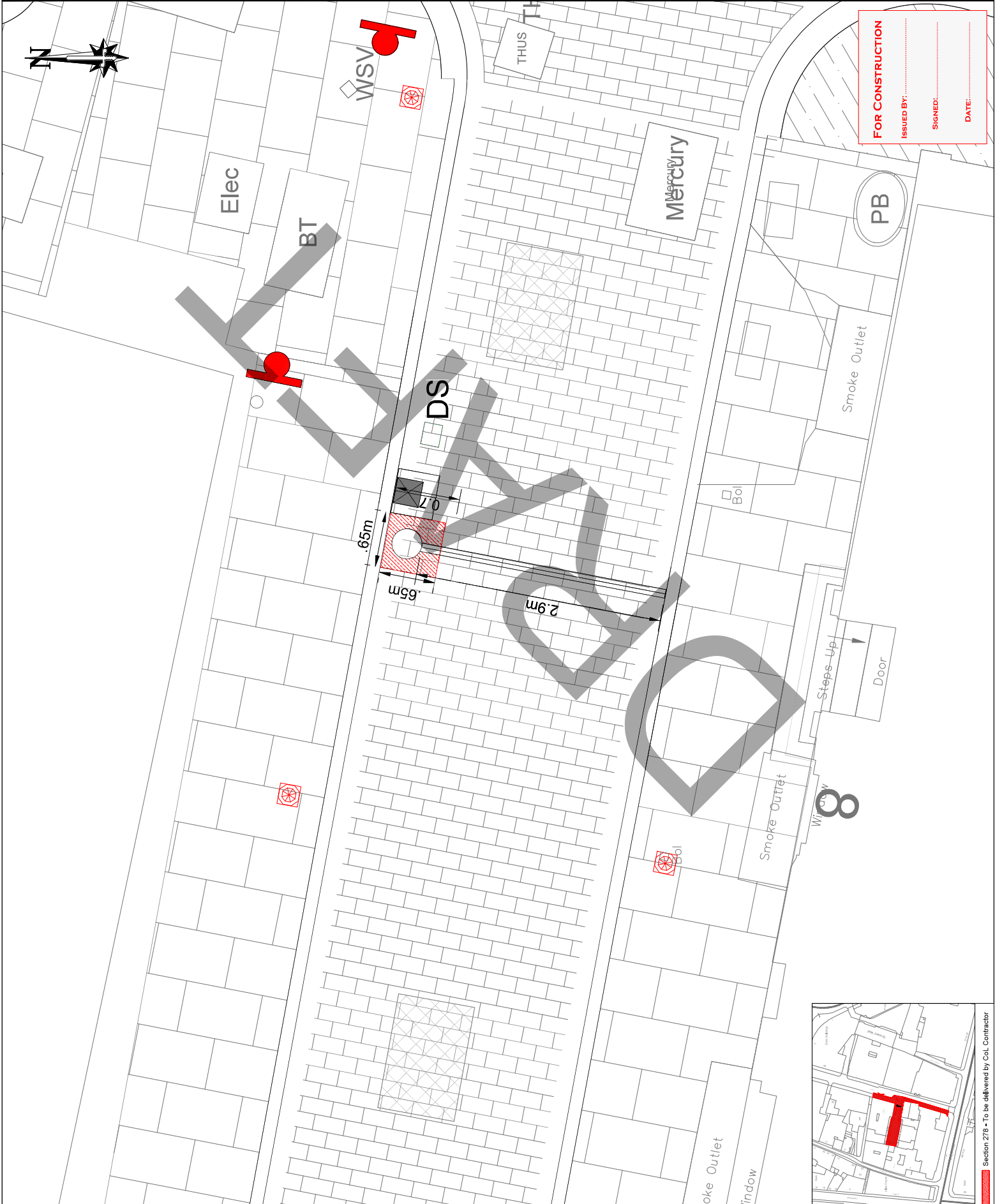
11.15 This Deed may be executed in two or more counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**IN WITNESS** the parties have signed this Deed as a deed on the date written above

**SCHEDULE 1**  
**PLAN OF THE HIGHWAY**

DRAFT

- NOTES**
- DRAWING BASED ON TOPOGRAPHICAL SURVEY RECEIVED FROM MACLEOD SIMMONDS (AUG 2018) DRAWING NO. MSLD181136\_01
  - NO INFORMATION TO BE SCALED FROM THIS DRAWING.
  - YORKSTONE PAVING TO BE LAID PERPENDICULAR TO ADJACENT KERB.
  - WORKS SHALL COMPLY WITH THE CURRENT CITY OF LONDON SPECIFICATION FOR HIGHWAY WORKS.
  - ALL HARD MATERIAL BROKEN OUT UNDER THE CONTRACT IS TO BE DISPOSED OF TO CONTRACTOR'S TIP.
  - REUSE OF ANY EXISTING ROAD SIGNS AND OTHER INFRASTRUCTURE IS AT THE DISCRETION OF THE CONTRACTOR.
  - THE CONTRACTOR WILL BE HELD RESPONSIBLE FOR ANY DAMAGE CAUSED TO PRIVATE HIGHWAYS AND PRIVATELY OWNED STREET FURNITURE.
  - EXACT LOCATION OF DROPSHAFT / GULLIES WILL BE DETERMINED IN DETAILED DESIGN STAGES.
  - FOOTWAY DUTTY CHAMBERS TO BE REPLACED WITH FOOTWAY DUTTY CHAMBERS TO BE REPLACED WITH YORKSTONE PAVING.
  - REFER TO CONSTRUCTION DRAWING 800-161 00329-00 FOR DETAILS



**FOR CONSTRUCTION**

ISSUED BY: .....

SIGNED: .....

DATE: .....

Rev No.	Date	Description	By

**FREDERICK'S PLACE  
HIGHWAY ENHANCEMENT  
SCHEME**

**SECTION 278  
PROPOSED GATE LOCATION**

**HIGHWAY DESIGN  
AND CONSTRUCTION**

DEPARTMENT OF THE ENVIRONMENT  
GUILDHALL  
CITY OF LONDON  
TELL: 020 7606 3030

**CITY OF LONDON**

THIS MAY BE REPRODUCED FROM OR CHANGE THE INFORMATION CONTAINED HEREIN WITHOUT THE WRITTEN PERMISSION OF THE CHIEF OF HIGHWAY DESIGN AND CONSTRUCTION ON BEHALF OF THE CHIEF OF HIGHWAY DESIGN AND CONSTRUCTION OF THE CITY OF LONDON.

SHEET 1 of 1

DATE: JULY 19

ISSUED BY: .....

DESIGNED BY: .....

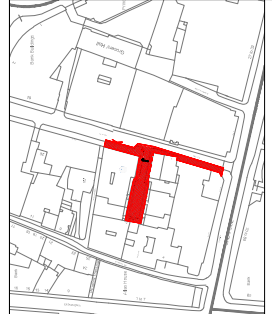
CHECKED BY: .....

APPROVED BY: .....

SCALE & DRAWING SIZE: BM

PROJECT NO: 100-16100325-GT

REVISION: 1:100 @ A1



## **SCHEDULE 2**

### **DESCRIPTION OF THE SECTION 278 WORKS**

The Section 278 Works may include:

- (a) the design, construction and installation of the Barrier and associated landscaping; and
- (b) any ancillary works the City Corporation, acting reasonably, considers necessary.

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**SCHEDULE 3**  
**BARRIER OPERATION ARRANGEMENTS**

**Barrier Operator**

1. The Owner shall manage the Barrier which will be operated by a member of the Owner's staff or a contractor employed by them (the "**Barrier Operator**"), with the Owner acting as the City Corporation's agent.
2. The Owner shall:
  - (a) provide details of the Barrier Operator to the Director of the Built Environment no later than the Completion Date;
  - (b) advise the Director of the Built Environment of any changes to the Barrier Operator;
  - (c) provide the Barrier Operator with adequate Health & Safety training, equipment and clothing; and
  - (d) provide the Barrier Operator with adequate training in carrying out these arrangements.

**Appointment of a Representative**

3. The Owner shall:
  - (a) no later than the Completion Date:
    - (i) appoint one or more representatives to liaise with the Director of the Built Environment in relation to the Barrier Operation Arrangements;
    - (ii) provide the representatives' contact details to the Director of the Built Environment;
  - (b) ensure that the City is notified as soon as possible of any issues or complaints received in respect of the Barrier and its operation;
  - (c) ensure that a representative can be contacted by the City Corporation at all times.

**Operation of the Barrier**

4. Following the commencement of this agency (in accordance with paragraph 15), the Owner shall:
  - (a) close the Barrier and restrict vehicular access to the part of Frederick's Place shown shaded red on the plan attached as Schedule 4 to this Deed (the "**Restricted Area**") during the hours of 00:00 to 07:00 and 19:00 to 23:59 on every Working Day (the "**Restricted Hours**"); and
  - (b) ensure that the Barrier remains open at all other times .

**EXCEPT** as provided for in paragraph 5 below.

5. During the Restricted Hours, the Owner shall permit immediate access to the Restricted Area to:
  - (a) those persons or vehicles with a right of access the Restricted Area under section 6 of the Road Traffic Regulation Act 1984;
  - (b) those persons or vehicles accessing premises within the Restricted Area;
  - (c) those persons or vehicles servicing premises within the Restricted Area;
  - (d) utility company vehicles carrying out apparatus maintenance;
  - (e) local authority vehicles;



- (f) Statutory Undertakers' vehicles; and
- (g) emergency services vehicles

together with any plant and equipment required by the persons falling within these classes of traffic.

6. The Owner shall:
  - (a) ensure that the Barrier is appropriately staffed by a Barrier Operator at all times during the Restricted Hours in order to permit access to the Restricted Area in accordance with paragraph 5 above and to comply with these Barrier Operation Arrangements;
  - (b) not obstruct pedestrians or pedal cycles from accessing the Restricted Area; and
  - (c) comply with any direction of a police constable in uniform.
7. For the avoidance of doubt, the Barrier is to remain open at all times outside of the Restricted Hours (the "**Open Hours**") and the Owner is under no obligation to staff the Barrier with a Barrier Operator during the Open Hours, unless otherwise directed by the City Corporation.

### **Reporting**

8. The Owner shall report quarterly following the commencement of this agency (in accordance with paragraph 15) in writing to the Director of the Built Environment on the operation of the Barrier and shall provide any information that the Director of the Built Environment may reasonably request.
9. The City shall review these Barrier Operation Arrangements annually, commencing on the first anniversary of the commencement of this agency (in accordance with paragraph 15) and may make any amendments to the Barrier Operation Arrangements that it considers necessary acting reasonably **PROVIDED THAT** the Owner shall be first consulted and regard shall be had to the Owner's representations.

### **Insurance**

10. The Owner shall maintain public liability insurance of not less than £25,000,000 and employer's liability insurance of not less than £5,000,000 and shall provide evidence of that insurance to the City Corporation if requested.

### **General**

11. The Restricted Area will remain public highway at all times and for the avoidance of doubt, the Owner may not use this area of highway as a private forecourt. Subject to the terms of any Traffic Order all other current limitations applicable to a public highway will remain in force and subject to the same enforcement as any other public highway. The City Corporation may alter these limitations at any time for the benefit of the public.
12. The City Corporation may terminate this agency arrangement upon immediate written notice in the event of material breach by the Owner of any of its obligations under this arrangement, following written notification of the said breach by the City Corporation and failure by the Owner to remedy said breach within one (1) month of receiving written notice from the City Corporation.
13. Any Party may terminate this agency arrangement by providing at least six (6) months' notice to the other Party.
14. If this agency is terminated in accordance with paragraph 12 or 13 above, the City Corporation (or its agent or contractor) may remove the Section 278 Works and any associated equipment from the Highway and re-instate the Highway to the standard set by the City Corporation at the Owner's expense.

15. This agency shall commence on the Completion Date (unless otherwise agreed by the Parties in writing) and shall be automatically renewed annually on each subsequent anniversary of the Completion Date unless it is terminated in accordance with paragraph 12 or 13 above.
16. The City Corporation may at its sole discretion, determine to amend the Barrier Operation Arrangements PROVIDED THAT any such amendment shall not contradict the terms of any relevant Traffic Order AND FURTHER PROVIDED THAT prior to so determining, it shall notify the Owner and consider the Owner's representations.

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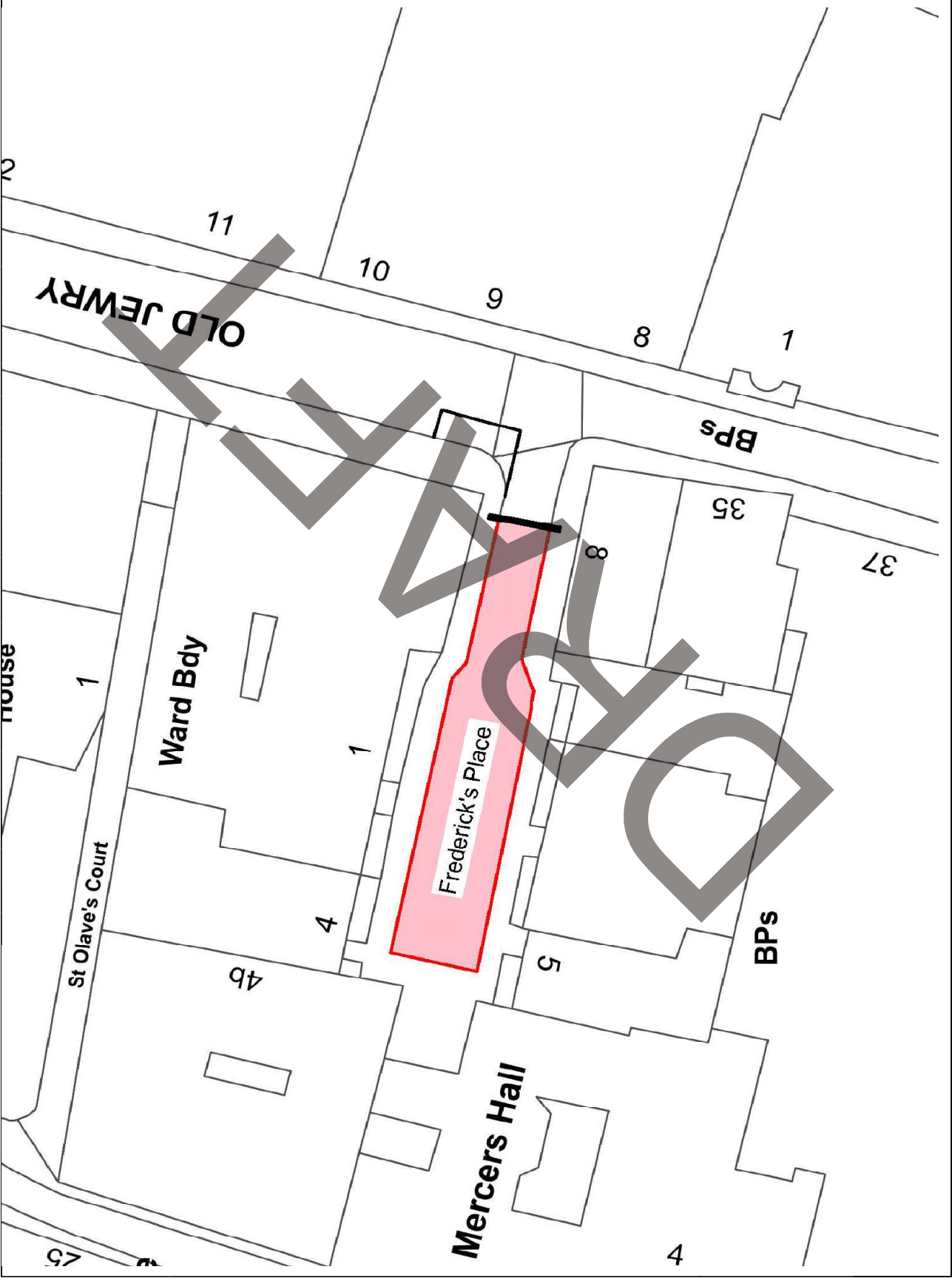
**SCHEDULE 4  
PLAN DEPICTING THE RESTRICTED AREA**

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Frederick's Place Restricted area

13/02/2020  
GDL



**THE COMMON SEAL OF  
THE MAYOR AND COMMONALTY  
AND CITIZEN OF THE CITY OF  
LONDON** was hereunto affixed in the  
presence of:

Authorised Signatory

DRAFT

**EXECUTED as a DEED by**

Affixing the common seal of  
**THE WARDENS AND COMMONALTY  
OF THE MYSTERY OF MERCERS  
OF THE CITY OF LONDON**

**Clerk**

**DRAFT**