

DATED

15 January

2009

(1) JAVA PROPERTIES INTERNATIONAL LIMITED

and

(2) BANK OF CYPRUS PUBLIC COMPANY LIMITED

and

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

A G R E E M E N T

relating to land known as

62-64 HAMPSTEAD ROAD, LONDON NW1 2NU and

144 DRUMMOND STREET, LONDON NW1 2NU

**pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)**

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

Tel: 020 7974 1918

Fax: 020 7974 2962

THIS AGREEMENT is made the 15 day of January 2009

BETWEEN:

1. **JAVA PROPERTIES INTERNATIONAL LIMITED** (Co. Regn. No. 6757451) whose registered office is at 281 Finchley Road London NW3 6ND (hereinafter called "the Owner") of the first part
2. **BANK OF CYPRUS PUBLIC COMPANY LIMITED** (incorporated in Cyprus) of Credit Administration Department 87 Chase Side London N14 5WH (hereinafter called "the Mortgagee") of the second part
3. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the third part

1. **WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Numbers LN144234 and 258905 subject to charges to the Mortgagee.
- 1.2 The Owner is the freehold Owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 7 December 2007 under reference number 2007/6220/P.
- 1.4 The Council refused permission on 26 February 2008.
- 1.5 An appeal under Section 78 of the Act in respect of the Planning Application was submitted to the Planning Inspectorate on 30 May 2008 and given reference number APP/X5210/A/08/2075312/NWF.

- 1.6 The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.
- 1.7 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.8 The Mortgagee as mortgagee under a legal charge registered under Title Number LN144234 dated 31 March 2008 and as mortgagee under a legal charge registered under Title Number 258905 dated 31 March 2008 is willing to enter into this Agreement to give its consent to the same.

2. DEFINITIONS

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

- | | | |
|-----|---|---|
| 2.1 | "the Act" | the Town and Country Planning Act 1990 (as amended) |
| 2.2 | "the Agreement" | this Planning Obligation made pursuant to Section 106 of the Act |
| 2.3 | "the Certificate of Practical Completion" | the certificate issued by the Owner's contractor certifying that the Development has been completed |
| 2.4 | "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 |

2.5 "Construction Management Plan"

a plan setting out how the Owner will undertake 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 has minimal impacts on the surrounding environment including (but not limited to):-

- (i) a statement concerning the construction of the Development to be submitted to the Council giving details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Developer in order to mitigate and offset potential or likely effects and impacts arising from the demolition of the existing buildings on the Property
- (ii) effects on the health and amenity of local residences site construction workers local businesses adjoining developments undergoing construction;
- (iii) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residents and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);
- (iv) proposed routes of vehicles to and from the Development and the access arrangements for vehicles;

- (v) sizes of all vehicles and the schedule of when they will need access to the site;
- (vi) swept path drawing for the vehicle routes for all vehicles sizes;
- (vii) parking and loading arrangement of vehicles and delivery of materials and plant to the Development;
- (viii) details of proposed parking bays suspensions and temporary traffic management orders;
- (ix) the proposed working hours;
- (x) the inclusion of a waste management strategy for handling and disposing of construction waste; and
- (xi) 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

2.6 "the Construction Phase"

the whole period between

- (i) the Implementation Date and
- (ii) the date of issue of the Certificate of Practical Completion

2.7 "the Development"

erection of mansard roof extension and second floor extension over rear wing on Drummond Street elevation and elevational alterations, in association with change of use from ancillary

retail space (Class A1) on upper floors to provide 5 x self-contained flats (Class C3) (1 x studio, 3 x 1-bed flats and 1x 3-bed flat) with the retention of retail use (Class C3) at basement and ground floor level as 3 units. as shown on drawing numbers: Site Location Plan; SV.01; SV.02; SV.03; SV.04; SV.05; SV.06; SV.07; SV.08; SV.09; GA.01; GA.02; GA.03; GA.04; GA.05; GA.06; GA.07; GA.08; GA.09; AX.01 and AX.02

2.8 "Education Contribution"

the sum of £7,572 (seven thousand five hundred and seventy two pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the provision of education needs arising in the London Borough of Camden

2.9 "Environmental Improvements Contribution"

the sum of £5,500 (five thousand five hundred pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt towards the Council's pedestrian environmental and safety improvement initiative arising in the London Borough of Camden

2.10 "Financial Contributions"

the Education Contribution, the Environmental Improvements Contribution and the Open Space Contribution

2.11 "the Implementation Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly

2.12 "Occupation Date"

the first date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly

2.13 "the Open Space Contribution"

the sum of £5,260 (five thousand two hundred and sixty pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the improvement maintenance and upkeep of open spaces in the vicinity of the Development

2.14 "the Parties"

mean the Council the Owner and the Mortgagee

2.15 "the Planning Application"

a planning application in respect of the development of the Property submitted to the Council and validated on 7 December 2007 under reference number 2007/6220/P

2.16 "Planning Obligations Monitoring Officer"

a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof

2.17 "the Planning Permission"

any planning permission granted for the Development granted by Secretary of State or the Planning Inspectorate in respect of the appeal of the Planning Application (reference number APP/X5210/A/08/2075312/NWF)

2.18 "the Property"

the land known as 62-64 Hampstead Road and 144 Drummond Street London NW1 2NU the same as shown shaded grey on the plan annexed hereto

2.19 "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

2.20 "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 Residents Parking Bays

2.21 "the Sustainability Plan"

a plan including a post construction review a plan including a post construction review securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation based on an assessment under the Code for Sustainable Buildings achieving at least Level 3 and attaining at least 50% of the credits in each of the Energy Water and Materials categories to be carried out by a recognised independent verification body in respect of the Property

3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning

obligation its provisions may be enforceable by the Council under any relevant statutory powers.

- 3.2 Words importing the singular shall include the plural and vice versa and any words donating actual persons shall include companies corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7 and 8 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Parties save where the context states otherwise shall include their successors in title.
- 3.7 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4 for all relevant purposes.

4. OBLIGATIONS OF THE OWNER

4.1 FINANCIAL CONTRIBUTIONS

- 4.1.1 On or prior to the Implementation Date to pay to the Council the Financial Contributions in full.
- 4.1.2 Not to Implement or to permit Implementation until such time as the Council has received the Financial Contributions in full.

4.2 CONSTRUCTION MANAGEMENT PLAN

- 4.2.1 On or prior to Implementation to provide the Council for approval the Construction Management Plan.
- 4.2.2 Not to Implement or 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.
- 4.2.3 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 as approved from time to time and in the event of non compliance with this sub-clause the Owner shall upon notice from the Council forthwith take any steps reasonably required by the Council to remedy such non-compliance.

4.3 SUSTAINABILITY PLAN

- 4.3.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.
- 4.3.2 Not to Implement nor permit Implementation until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect.
- 4.3.3 Not to Occupy or permit the Occupation of the Development until the Council has confirmed in writing that the measures incorporated in the Sustainability Plan as approved by the Council have been implemented in the construction of the Development.
- 4.3.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Sustainability Plan as approved by the Council and shall not occupy or permit occupation of the Development otherwise than in strict accordance with the requirements of the Sustainability Plan.

4.4 CAR FREE HOUSING

- 4.4.1 The Owner hereby covenants with the Council 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.
- 4.4.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.4.1 above will remain permanently.
- 4.4.3 On or prior to the Occupation Date the Owner shall inform 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 4.4.1 of this Agreement.

5. NOTICE TO THE COUNCIL/OTHER MATTERS

- 5.1 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.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2007/6220/P the date upon which the Development will be ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's

possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.

- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the 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 Payment of the Financial Contributions pursuant to Clause 4 of this Agreement shall be made by the Owner to the Council sending the full amount in the form of a Banker's Draft to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such Contribution relates quoting the Income Code ZM572ZL065 or by Electronic Transfer directly to the Co-Operative Bank plc of 1 Islington High Street London N1 9TR quoting Sort Code 08-90-33 and London Borough of Camden General Account No. 61030019 and to inform the Planning Obligations Monitoring Officer of such payment quoting the above details as if the payment had been made by Banker's Draft.
- 5.6 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.7 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Central Statistical Office at the date hereof is the

denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

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

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

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

- 6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Forward Planning and Projects Team, Planning Division Environment Department, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2007/6220/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.
- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.

- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Owner or the Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.
- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by agreement with or at the request of the Owner) this Agreement shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

7. **MORTGAGEE EXEMPTION**

- 7.1 The Mortgagee hereby consents to the completion of this Agreement and agrees to be bound by it and to the same being registered at the Land Registry as provided in Clause 6.4 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.

8. **RIGHTS OF THIRD PARTIES**

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

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

EXECUTED AS A DEED BY
JAVA PROPERTIES
INTERNATIONAL LIMITED
acting by a Director

)
)
)
)

.....
Director in the presence of:

[Signature]

*Michael J B Vann, Partner
Preston-Rouse & Co Solicitors
6 Gray's Inn Square
Gray's Inn, London WC1R 5AX*

EXECUTED AS A DEED BY
BANK OF CYPRUS
PUBLIC COMPANY LIMITED
by
in the presence of:-

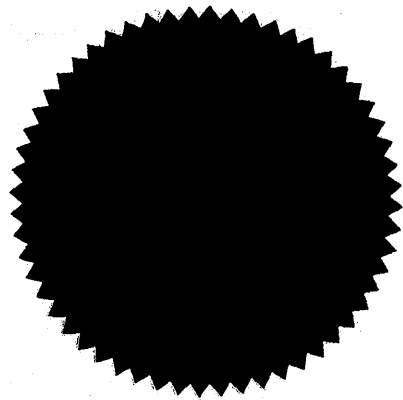
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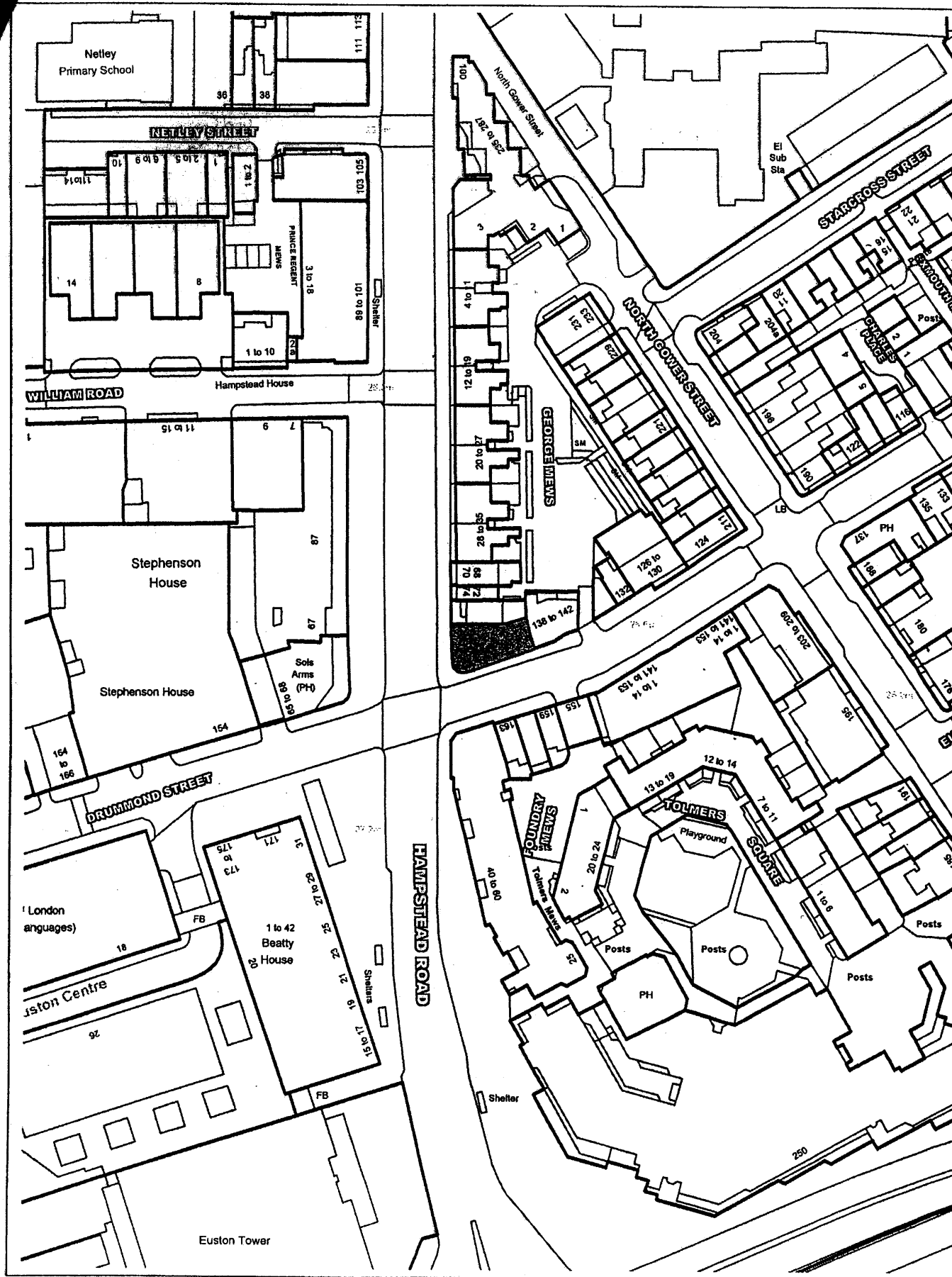
THE COMMON SEAL OF THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF CAMDEN was hereunto
Affixed by Order:-

)
)
)
)

.....
[Signature]

Authorised Signatory





Application No: 2007/6220/P

62-64 Hampstead Road & 144 Drummond Street
London
NW1 2NU

Scale:
1:1250

Date:
7-Jan-09



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I declare that I have not been informed of the revocation of the Power of Attorney dated 6 November 2008 by which I was appointed attorney of the Lender by virtue of holding one of the offices or posts referred to therein. To the best of my knowledge and belief the Lender has not done anything by which the Power has been revoked. This declaration shall be binding on Bank of Cyprus Public Company Limited notwithstanding any actual revocation.

Signed as a deed by the Bank of Cyprus Public Company Limited acting by its attorney:-

Name:-



Reg Molford

~~*Status: Chief Executive/Head of Legal & Compliance/Assistant General Manager Banking/Assistant General Manager Systems/Head of Credit/Credit Risk Manager/Credit Administration Supervisor/Senior Credit Administrator/Head of Finance.~~

in the presence of:-

Name:-



Roulla Antoniou

Address:-

PO BOX 17484
87 CHASE SIDE, SOUTHGATE,
LONDON N14 5WH
DX 34309 SOUTHGATE

Occupation:- Bank Officer

* Delete inappropriate alternative status