

DATED

16th ^{January} ~~March~~

2012

(1) RAINBOW OVERSEAS LIMITED

and

(2) THE ROYAL BANK OF SCOTLAND PLC

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
179-189 Finchley Road, London NW3 6LB
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 5826
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CLS/DR/1685.856

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THIS AGREEMENT is made the 16th day of January 2012

BETWEEN:

1. **RAINBOW OVERSEAS LIMITED** (incorporated in the Isle of Man) of 2nd Floor, Viking House, Nelson Street, Douglas, Isle of Man IM2 2MH (hereinafter called "the Owner") of the first part
2. **THE ROYAL BANK OF SCOTLAND PLC** (Co. Regn No. SC90312) whose registered office is at 280 Bishopsgate, London EC2M 4RB (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

WHEREAS

- 1.1 The Head-Lessee is registered at the Land Registry as the leasehold proprietor under a 999 year lease with Title absolute of the Property under Title Number NGL811627 subject to a charge to the Mortgagee.
- 1.2 The British Railways Board is the freehold Owner of the Property whose interest is unregistered. Proper investigations have been undertaken to locate the current freeholder who has been found to be in absentia.
- 1.3 The leases to Datamonitor Publications Limited and to Archant Regional Limited (registered at the Land Registry under Title Number NGL610861 and Title Number NGL606564 respectively) have both been surrendered and applications have been submitted to the Land Registry for their removal from the Register. There are no other leases affecting the Property.
- 1.4 A Planning Application for the development of the Property was submitted to the Council and validated on 25 August 2010 and the Council resolved to grant

permission conditionally under reference number 2010/4614/P subject to conclusion of this legal Agreement.

1.5 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.

1.6 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.7 THE ROYAL BANK OF SCOTLAND as Mortgagee under a legal charge registered under Title Number NGL811627 and dated 30 January 2008 (hereinafter called "the Legal Charge") 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 | "Affordable Housing" | low cost housing including Social Rented Housing and Intermediate Housing that is occupied solely by and meets the needs of people who cannot afford to occupy homes available in the open market in accordance with Government policy statement PPS3 and successor documents |
| 2.3 | "the Agreement" | this Planning Obligation made pursuant to Section 106 of the Act |
| 2.4 | "the Development" | the conversion of first floor office (Class B1) to 7 residential units (Class C3) comprising 1x3 bed, |

3x2 bed, 2x1 bed and 1 studio) and erection of rear extension at first floor level plus alterations at ground floor to convert ancillary retail space at the rear of number 181 into a refuse storage area as shown on drawing numbers Site Location Plan; W01C; W02; W03; W04; W06A; W07; W09; Noise Survey and Assessment 10147-004 (Philip Acoustics Ltd, July 2010); Sustainability Statement (UK Energy Services); Letter from Pembertons (06/10/2010); Letting Advertisement, Collins Commercial (April 2009)

2.5 "the Education Contribution"

the sum of £16,547.00 (sixteen thousand five hundred and forty seven 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

2.6 "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

2.7 "Occupation Date"

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

2.8 "Off-Site Affordable Housing Contribution"

a contribution in lieu of the provision of Affordable Housing at the Property calculated by the Council based on the area comprising the

Whole Site Floorspace and the number of residential units therein provided

- 2.9 "the Parties" mean the Council the Owner and the Mortgagee
- 2.10 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 25 August 2010 for which a resolution to grant permission has been passed conditionally under reference number 2010/4614/P subject to conclusion of this Agreement
- 2.10 "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
- 2.11 "the Planning Permission" a planning permission granted for the Development substantially in the draft form annexed hereto
- 2.12 "the Property" the land known as 179-189 Finchley Road, London NW3 6LB the same as shown shaded grey on the plan annexed hereto
- 2.13 "Public Open Space Contribution" the sum of £9,018.00 (nine thousand and eighteen 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 existing public

open spaces and/or nature conservation improvements to parks and open space and/or the obtaining of land to make public open spaces in the vicinity of the Development

- 2.14 "Registered Provider" a registered social landlord providing Affordable Housing registered as such by the Regulator
- 2.15 "Regulator" means the Office for Tenants and Social Landlords (also known as the Tenant Services Authority or TSA) and any successor organisation
- 2.16 "Remaining Floorspace" any of the second and third floor floorspace within the Property
- 2.17 "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
- 2.18 "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
- 2.19 "Subsequent Planning Permission" a planning permission that may be granted in the event of any subsequent planning application for the further development of the Property in the Remaining Floorspace
- 2.20 "the Sustainability Plan" 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 Homes 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

2.21 "Whole Site Floorspace" all of the floorspace consisting of the first floor of the Property and the Remaining Site Floorspace

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 denoting 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 or 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 Council hereby agrees to grant the Planning Permission on the date hereof.

3.7 The Parties save where the context states otherwise shall include their successors in title.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **EDUCATION CONTRIBUTION**

4.1.1 The Owner hereby covenants with the Council on the date of this Agreement to pay to the Council the Education Contribution.

4.1.2 The Owner hereby covenants with the Council not to Implement or to permit Implementation until such time as the Council has received the Education Contribution.

4.2 **PUBLIC OPEN SPACE CONTRIBUTION**

4.2.1 The Owner hereby covenants with the Council on the date of this Agreement to pay to the Council the Public Open Space Contribution.

4.2.2 The Owner hereby covenants with the Council not to Implement or to permit Implementation until such time as the Council has received the Public Open Space Contribution.

4.3 **CAR FREE DEVELOPMENT**

4.3.1 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.

4.3.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.3.1 above will remain permanently.

4.3.3 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 4.3.1 of this Agreement.

4.4 **SUSTAINABILITY PLAN**

4.4.1 Prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.

4.4.2 Not to Implement nor permit Implementation until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect.

4.4.3 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.

4.4.4 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.

4.5 **AFFORDABLE HOUSING**

4.5.1 If at any time after the date of this Agreement a Subsequent Planning Permission is granted which gives consent to the development of additional floorspace for residential purposes and/or additional residential units ("the Subsequent Development") it shall be subject to an agreement with the Council ("the Subsequent Agreement") to secure either:-

- (a) the Off-Site Affordable Housing Contribution; or
- (b) that an appropriate percentage of the residential units permitted by the Subsequent Planning Permission are allocated as Affordable Housing ("the Additional Affordable Housing Units") such percentage to be applied to the aggregate total of the Whole Site Floorspace.

4.5.2 Not to Implement or allow Implementation of the Subsequent Development until such time as the Owner has entered into the Subsequent Agreement as referred to in clause 4.5.1.

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 2010/4614/P the date upon which the Development is 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 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the planning reference 2010/4614/P.
- 5.6 Payment of the Education Contribution and Public Open Space Contribution pursuant to Clauses 4.1 and 4.2 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 ZN115ZL065 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.
- 5.7 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.
- 5.8 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 AllRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AllRP figure published before the date such payment

or application is made ("Y") less the last published AllRP figure at the date hereof ("X") is the numerator so that

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

5.9 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, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2010/4614/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 local land registry to register this Agreement in the Local Land Charges Register and will furnish the Council forthwith on written demand with satisfactory evidence to show the entry of this Agreement in the Local Land Charges Register relating 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 to the same being registered as a Local Land Charge 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

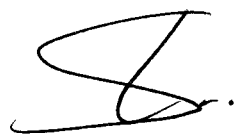
IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Head-Lessee, the First Lessee, the Second Lessee and the Mortgagee have executed this instrument as their Deed the day and year first before written

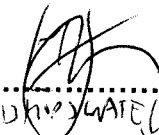
EXECUTED AS A DEED BY)
RAINBOW OVERSEAS LIMITED)
acting by a Director and its Secretary)
or by two Directors)

.....
Director

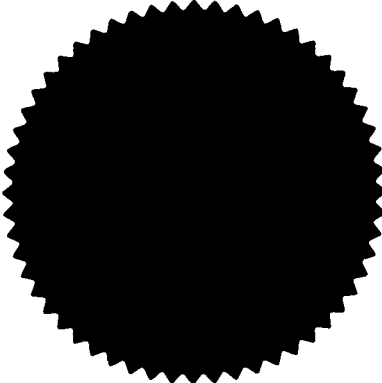
.....
Director/Secretary

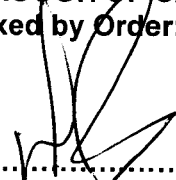
EXECUTED as a Deed)
By THE ROYAL BANK OF SCOTLAND plc)
By authorised signatory *STEFAN POTER JAM*)
in the presence of:- *DAVID LAZIAN*)
HOWARD LAURENCE SEFTON)




.....
280 BUCKINGHAM GATE LONDON, EC2M 4RB

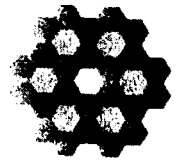
THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF CAMDEN was hereunto)
Affixed by Order:-)



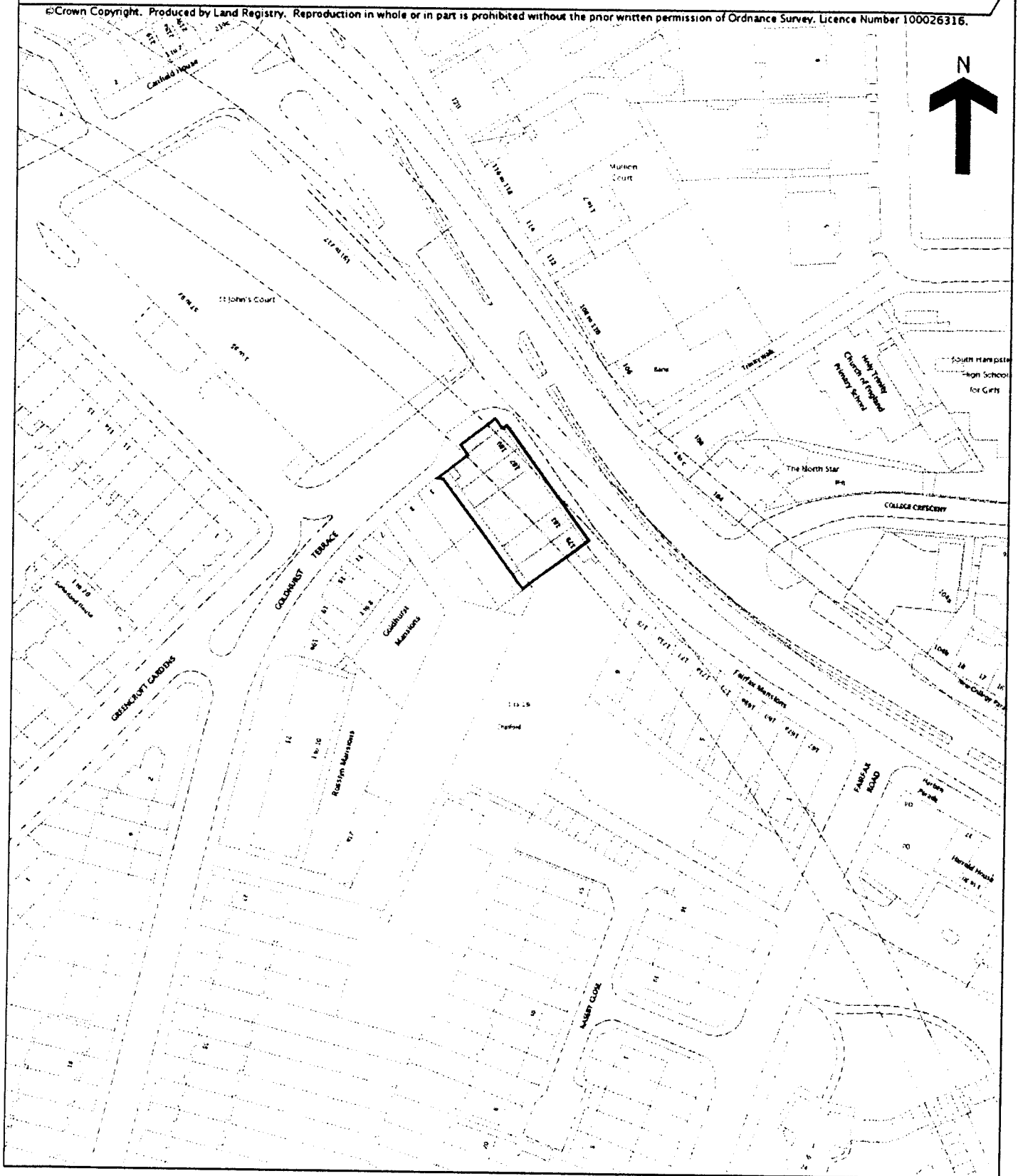

.....
Authorised Signatory

Land Registry Official copy of title plan

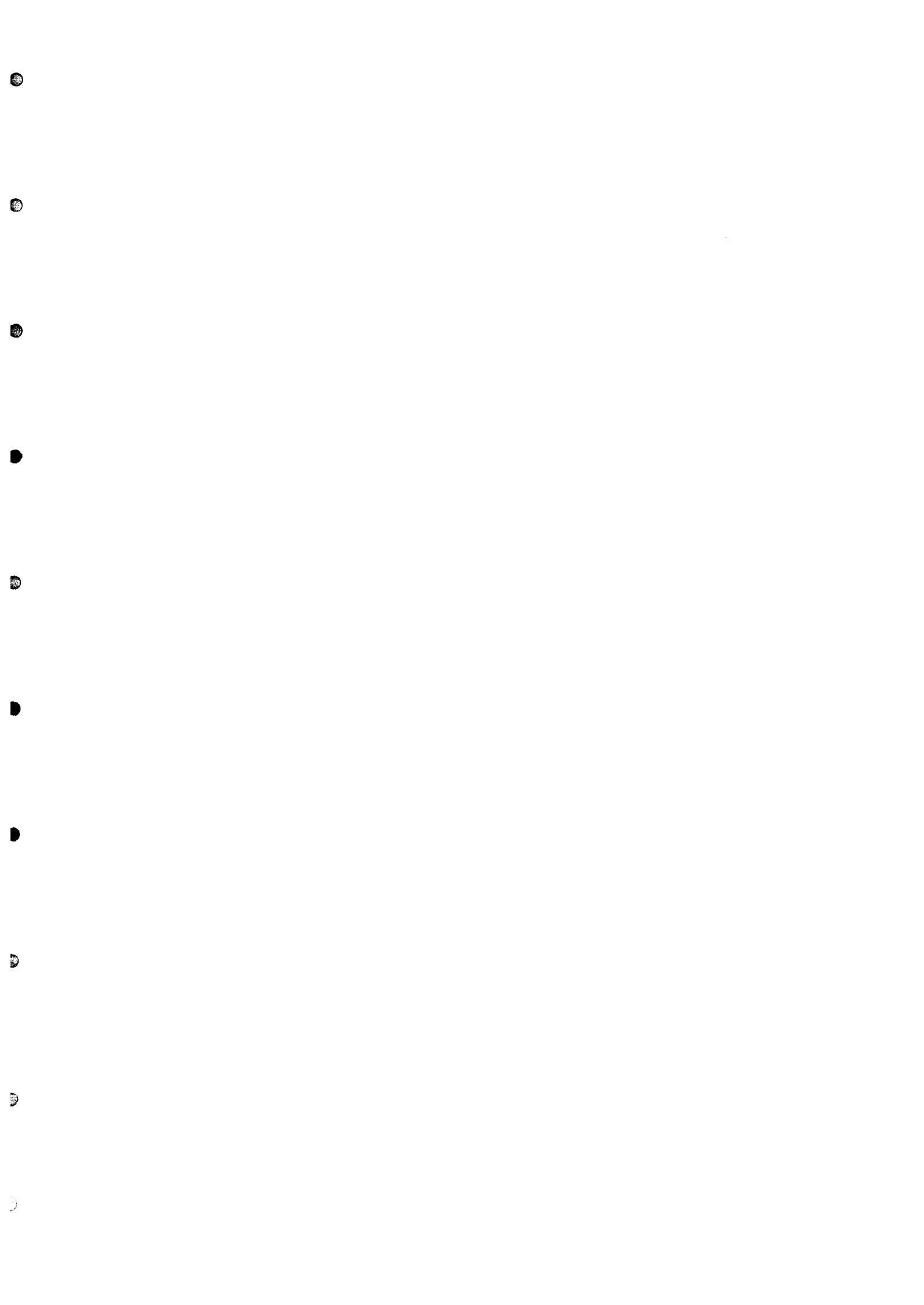
Title number **NGL811627**
Ordnance Survey map reference **TQ2684NW**
Scale **1:1250**
Administrative area **CAMDEN**



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DATED

2011

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