

DATED

16 AUGUST

2016

(1) NEW END LLP

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  
29 New End, London NW3 1JD  
Section 278 of the Highways Act 1980

Andrew Maughan  
Head of Legal Services  
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THE TAVNA II

OF THE TAVNA II

OPERATING MANUAL

FOR THE TAVNA II

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THIS AGREEMENT is made the 16<sup>th</sup> day of AUGUST 2016

**BETWEEN:**

- i. **NEW END LLP** (LLP. Regn. No. OC401581) whose registered office is at 14 Basil Street, Knightsbridge, London SW3 1AT (hereinafter called "the Owner") of the first part
- ii **THE ROYAL BANK OF SCOTLAND PLC** (Scot. Co. Regn. No. 090312) care of Andrew Guthrie, Director Head of Structured Team, syndicated loans agency IB Service & Operations, 250 Bishopsgate, London EC2M 4AA (hereinafter called "the Mortgagee") of the second part
- iii. **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 Number NGL681828, subject to a charge to the Mortgagee.
- 1.2 The Council is the local highway authority for the purposes of the Highways Act for the Public Highway.
- 1.3 The Planning Permission contains at Condition 23 an obligation that no Development, including demolition, shall commence until it has entered into with the Council as the local highway authority an agreement under section 278 of the Highways Act to secure the proposed changes to the highway and parking layout (more particular set out in the Highways Works and this Agreement). This agreement is entered into in satisfaction of Condition 23.
- 1.4 The Council is empowered by Section 278 of the Highways Act to undertake the Highways Works to be carried out pursuant to this section 278 Agreement and is satisfied that the Highways Works are of benefit to the public.

- 1.5 For that purpose the Council and the Owner is willing to enter into this Agreement pursuant to the provisions of section 278 of the Highways Act
- 1.6 The Owner agrees to meet the reasonable and proper costs (set out in clauses 2.5 and 2.6) incurred by the Council in carrying out the Highway Works provided that the Council observe the covenants set out herein.
- 1.7 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL681828 and dated 11 December 2015 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 Planning Act" | the Town and Country Planning Act 1990 (as amended)  |
| 2.2 | "the Agreement"    | this agreement made pursuant to Section 278 of the Highways Act  |
| 2.3 | "the Development"  | the demolition of the existing building at 29 New End and creation of 17 residential (C3) units over lower ground, ground, first, second, third, fourth and fifth floor levels; creation of a new vehicular access and access to basement parking; works to boundary wall; works to soft and hard landscaping; and other incidental works in accordance with the terms of the application, Ref 2012/3089/P, dated 13 June 2012, subject to the conditions in Annex 3 – Schedule of Conditions of Appeal Decisions APP/X5210/A/14/2218243 and APP/X5210/E/14/2218267 as shown on drawing numbers: |

2.4 "the Highways Act"

Site plan NEN-PL-001B; Proposed plans NEN-PL-003B, 090P, 100M, 110L, 120L, 130L, 140K, 150J, 160I, 200E, 210N, 220H, 230G, 240G, 300E, 310G, 320F, 330E, 340E, 350D, 370D, 380D; Landscaping plans 1375-11-01 rev 1, 1375-11-02 rev 1; On street parking layout 2011-1007-CR-004; Overlooking plan NEN-SK-05

the Highways Act 1980

2.5 "the Highways Contribution"

the sum of £54,000 (fifty four thousand 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 carrying out of the Highways Works in accordance with this Agreement.

It is agreed all works will be subject to final measure and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertaker's costs.

2.6 "the Highways Works"

Works to the public highway and associated measures in the vicinity of the Property and as are required due to the Development ("the Highways Works") these to include costs associated with the following:-

- (a) Construction of a new vehicular crossover (to provide access to the basement car park);
- (b) Relocation of street furniture where necessary;
- (c) Removal of any redundant street furniture;

- (d) Removal of a small tree (to facilitate construction of the new vehicular crossover);
- (e) Repaving of the footway directly adjacent to the site;
- (f) Amendments to the existing kerb build out and drainage (to facilitate construction of the new vehicular crossover);
- (g) Amendments to existing traffic management orders (to facilitate construction of the new vehicular crossover); and
- (h) any other works the Council acting reasonably considers necessary as a direct result of the Development

2.7 "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

2.8 "Occupation Date"

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

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 13 July 2012 and accorded reference 2012/3089/P

- |      |   |   |
|------|---|---|
| 2.11 | "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 |
| 2.12 | "the Planning Permission"                 | the planning permission granted for the Development pursuant to the appeal decision under reference number APP/X5210/A/14/2218243 (Council reference 2012/3089/P) on the 2 February 2015  |
| 2.13 | "the Property"                            | the land known as 29 New End, London NW3 1JD the same as shown shaded grey on the plan annexed hereto   |
| 2.14 | "the Public Highway"                      | any carriageway footway and/or verge adjoining the Property maintainable at public expense  |

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

- 3.1 This Agreement is made in pursuance of Section 278 of the Highways Act 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 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 a 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.

#### **4. OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

##### **4.1 HIGHWAYS CONTRIBUTION**

4.1.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.

4.1.2 Not to Implement or to permit Implementation until such time as the Council has received the Highways Contribution in full.

4.1.3 On completion of the Highways Works the Council will provide to the Owner a certificate specifying the sum ("the Certified Sum") reasonably and properly expended by the Council in carrying out the Highways Works together with (upon written request) details of how the Highways Contribution has been spent.

4.1.4 If the Certified Sum exceeds the Highways Contribution then the Owner shall within twenty eight working days of receipt of the said certificate pay to the Council the amount of the excess.

4.1.5 If the Certified Sum is less than the Highway Contribution then the Council shall within twenty eight days of the issuing of the said certificate pay to the Owner the amount of the difference between the Certified Sum and the Highways Contribution.



## **5. OBLIGATIONS OF THE COUNCIL**

- 5.1 The Council covenants with the Owner that it will comply with its obligations contained in this Agreement.
- 5.2 The Council hereby covenants with the Owner to use all reasonable endeavours to carry out the Highways Works in a good and workmanlike manner.
- 5.3 The Council shall use reasonable endeavours to liaise with the Owner's project manager for the Development (should the Owner's project manager contact the Council) to establish a programme that aims to have the Highways Works completed within a reasonable period to coincide with the stage of the Development so as not to impede or delay the Development progressing to completion and the Council shall use its reasonable endeavours to achieve that aim.
- 5.4 The Council agrees that once the Council have completed the Highways Works it will direct that the Planning Obligations Monitoring Officer shall issue a certificate to the Owner to confirm the same.

## **6. NOTICE TO THE COUNCIL/OTHER MATTERS**

- 6.1 The Owner shall give written notice to the Council specifying the date of implementation of the Development has taken or is about to take place.
- 6.2 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 7.1 hereof quoting the Planning Permission reference 2012/3089/P the date upon which the Development is ready for Occupation.
- 6.3 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 in respect of the Highways Works.

- 6.4 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 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.
- 6.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall provide through its Planning Obligations Monitoring Officer confirmation of compliance (and if requested to do so in writing by the Owner) and subject to payment of a fee of £1,000 in respect of each such obligation shall provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation (as applicable).
- 6.6 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 (where practicable) to the Planning Obligations Monitoring Officer r referring to the Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2012/3089/P.
- 6.7 Payment of the Highways Contribution pursuant to Clause 4.1 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable). The Owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to the Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2012/3089/P. An electronic transfer can be made to the Council by sending payment to National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and Account Name as London Borough of Camden General and Account as 24299480 quoting the planning reference 2012/3089/P

6.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax reasonably and properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax reasonably and 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.

6.9 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

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

6.10 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.

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

7.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any certificate or notice or approval or agreement to be served under or in connection with this Agreement and any such certificate or notice or approval shall be in writing and shall specifically refer to the Parties to this 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 Permission reference number 2012/3089/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.

7.2 This Agreement shall be registered as a Local Land Charge.

- 7.3 The Owner agrees to pay the Council its proper and reasonable legal costs reasonably and properly incurred in preparing this Agreement on or prior to the date of completion of the Agreement
- 7.4 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 on written demand with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 7.5 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.
- 7.6 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.
- 7.7 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.
- 7.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of Development this Agreement shall forthwith determine and cease to have effect.

## 8. **MORTGAGEE EXEMPTION**

- 8.1 The Mortgagee hereby consents to the terms of this Agreement but without liability save in the event that the Mortgagee becomes successors in title to the Owner any time before the Owner has fully performed all its obligations contained in this Agreement.



9. **RIGHTS OF THIRD PARTIES**

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

**IN WITNESS** whereof the Council and the Owner have caused their respective common seals to be hereunto affixed and the Mortgagee has executed this instrument as a Deed the day and year first before written

EXECUTED AS A DEED BY  
NEW END LLP  
was hereunto affixed  
in the presence of:-  
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  
in the presence of:-

) Kevin Knowles  
)  
)  
)  
)

KK

.....  
Jane Copestake

Bank Official

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

.....  
Authorised Signatory

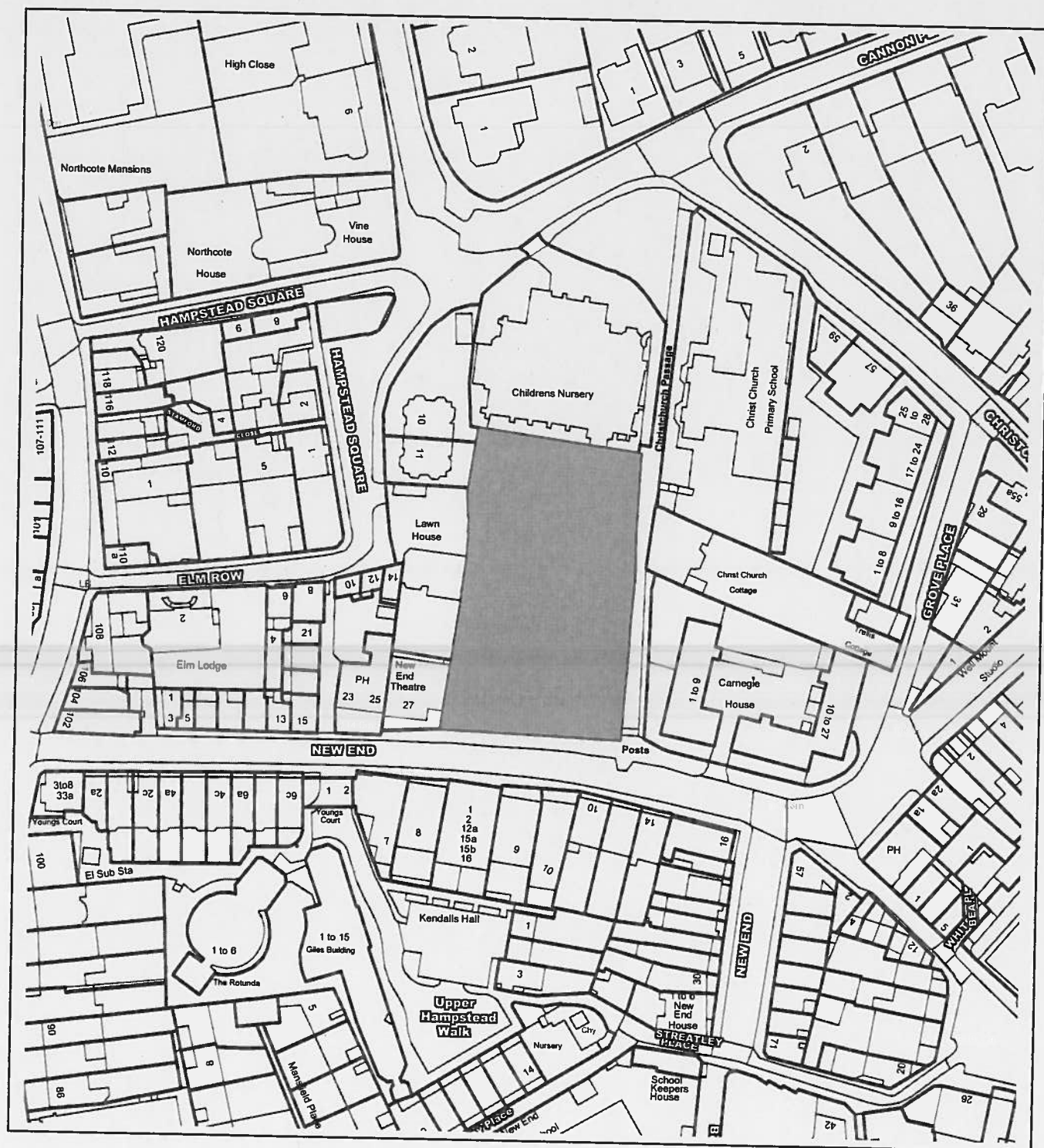


Kevin Knowles

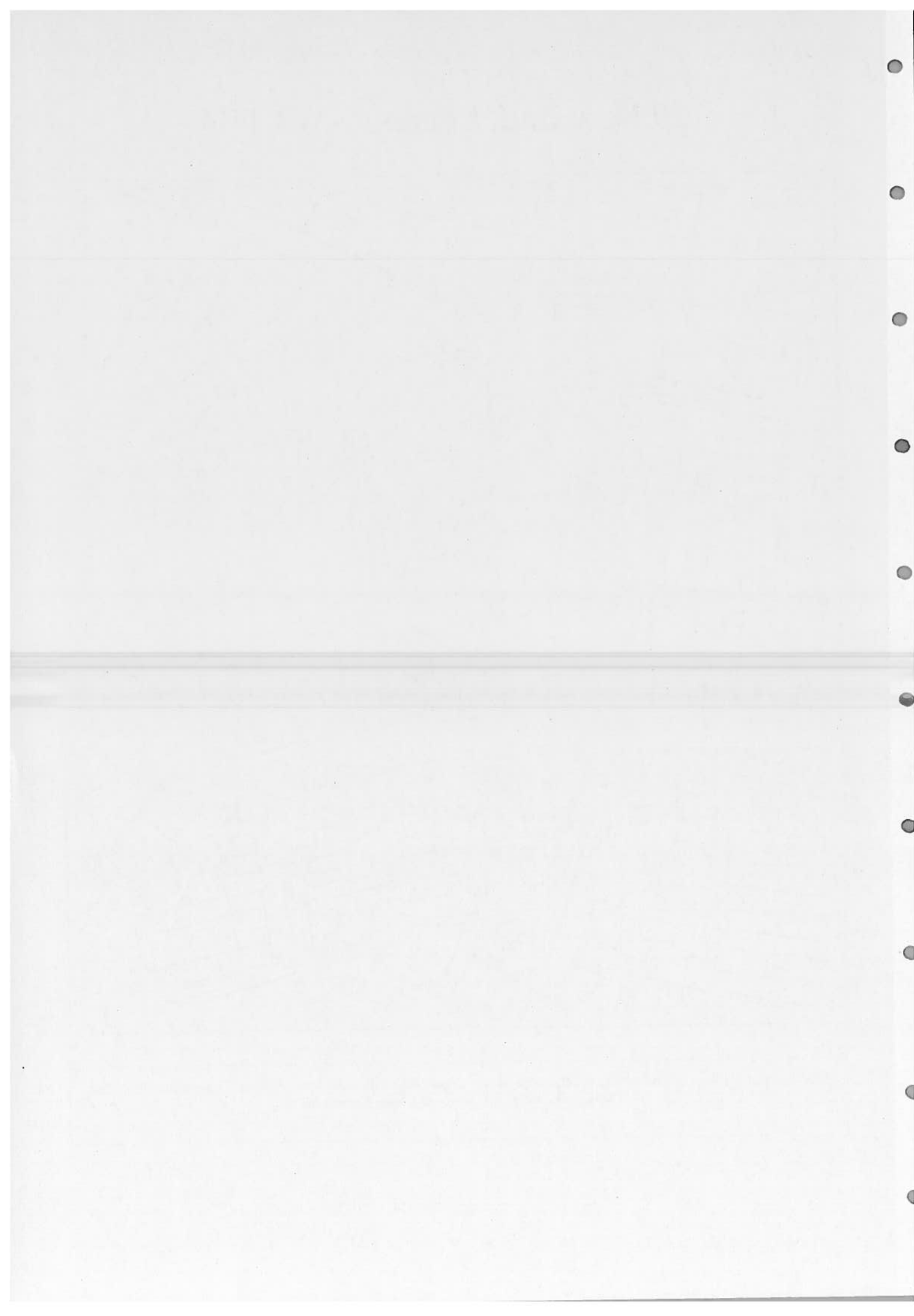
Jane Cooperlake Bank Official



# 29 New End, London NW3 1JD



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16 AUGUST

2016

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(2) THE ROYAL BANK OF SCOTLAND PLC

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(3) THE MAYOR AND BURGESSES OF  
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