

DATED

26th March

2004

(1) CURTIS DU PONT WAIBEL

and

(2) CLYDESDALE BANK PLC

and

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

AGREEMENT

relating to land known as
16 New End Square, Hampstead, London NW3 1LN
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)

Alison Lowton
Borough Solicitor
London Borough of Camden
Town Hall
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London WC1H 9LP

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S:\plan\imm\s106 Agreements\New End Square 16 (SD)

THIS AGREEMENT is made the 26th day of March 2004

BETWEEN:

1. **CURTIS DU PONT WAIBEL** of 14 King William Walk Greenwich London SE10 9JH (hereinafter called "the Owner") of the first part
2. **CLYDESDALE BANK PUBLIC LIMITED COMPANY** (Scottish Company Registration No. 1111) of 30 St. Vincent Place Glasgow G1 2HL (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 Owner is registered at HM Land Registry as the freehold proprietor with Title absolute of the Second Property under Title Number NGL461176 subject to a charge to the Mortgagee.
- 1.2 The Owner is the freehold Owner of and is interested in the Second Property for the purposes of Section 106 of the Act.
- 1.3 A third revised planning application ("the Second Application") for the development of the Second Property was submitted to the Council on 23 September 2002 and the Council resolved to grant permission conditionally under reference number PWX0102152/R3 subject to conclusion of this legal Agreement.
- 1.4 A third revised Application for Listed Building Consent for the development of the Second Property was submitted to the Council on 23 September 2002 and the Council resolved to grant consent conditionally under reference number LWX0102153/R3 subject to the conclusion of this legal Agreement.

1.5 The Council considers it expedient in the interests of the proper planning of its area that the development of the Second Property should be restricted or regulated in accordance with this Agreement.

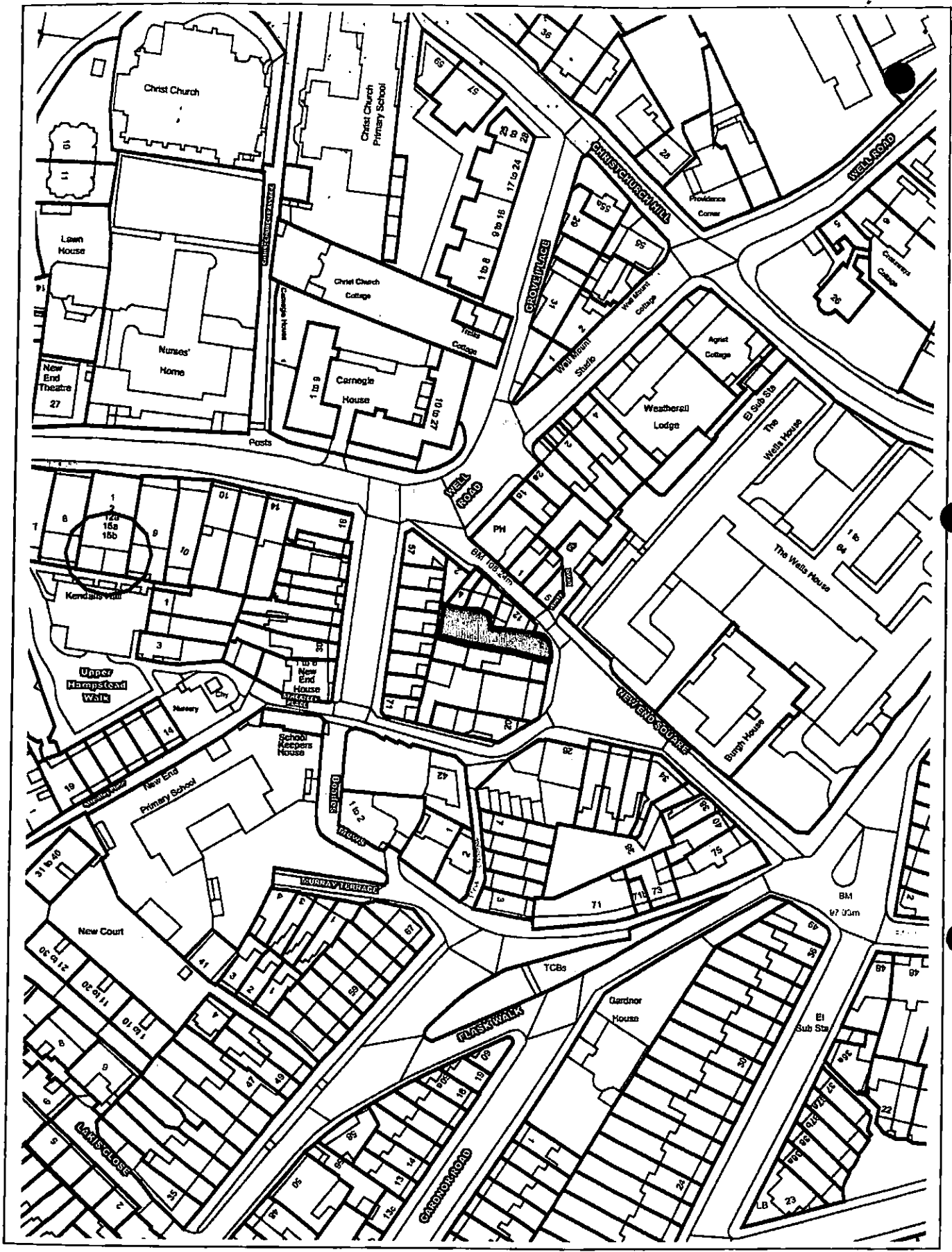
1.6 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.7 The Mortgagee as Mortgagee under a legal charge registered under Title Number NGL461176 and dated 7 July 1999 and as Mortgagee under a legal charge registered under Title Number NGL461176 and dated 23 March 2003 (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 by the Planning and Compensation Act 1991) |
| 2.2 | "the Agreement" | this Planning Obligation made pursuant to Section 106 of the Act |
| 2.3 | "Application for Listed Building Consent" | the third revised application for Listed Building Consent for the development of the Second Property submitted to the Council on 23 September 2002 for which the Council resolved to grant permission conditionally under reference number LWX0102153/R3 subject to conclusion of this legal Agreement |
| 2.4 | "the First Application " | a third revised planning application in respect of the development of the First Property submitted |



Application No: PWX0102151

14 □ NEW END SQUARE
 □ LONDON
 □ NW3 1LN

Scale:
 1:1250
Date:
 24-Feb-04



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to the Council on 23 September 2003 for which a resolution to grant permission has been passed conditionally under reference number PWX0102151/R3 subject to conclusion of this Agreement

- 2.5 "the First Development" the erection of a mansard roof extension incorporating an existing stair tower to provide additional habitable accommodation for the existing dwellinghouse together with minor façade alterations as shown on drawing numbers 0132.001C, 003D, 004A, 006 and 2x A4 perspective sketches
- 2.6 "the First Property" the land known as 14 New End Square Hampstead London NW3 1LN the same as shown edged in red on the plan annexed hereto
- 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 first date when any part of the Development is occupied
- 2.9 "the Parties" mean the Mayor and Burgesses of the London Borough of Camden the Owner and the Mortgagee
- 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 Permissions"

the planning permission granted for the Second Development in the draft form annexed hereto and the Listed Building Consent granted for the Second Development in the draft form annexed hereto

2.12 "the Second Application "

a third revised planning application in respect of the development of the Second Property submitted to the Council on 23 September 2003 for which a resolution to grant permission has been passed conditionally under reference number PWX0102152/R3 subject to conclusion of this Agreement

2.13 "the Second Development"

the erection of a mansard roof extension to include a new stair tower to provide additional habitable accommodation for the existing dwellinghouse together with minor façade alterations as shown on drawing numbers 0132.002F, 003D, 004A, 005C and 2 x A4 perspective sketches

2.14 "the Second Property"

the land known as 16 New End Square Hampstead London NW3 1LN the same as shown edged in red on the plan annexed hereto

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 Second Property from the Owner and insofar as it is not a



Application No: PWX0102152

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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 and 7 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**

Simultaneous Development

4.1 To notify the Council in writing when the Second Development has commenced or is about to commence.

4.2 To complete the Second Development to the reasonable satisfaction of the Council within one year of the earliest of the following two dates namely the Implementation Date for the First Development or the Implementation Date for the Second Development.

- 4.3 Not to occupy or use or permit occupation or use of any part of the Second Development until such time as the First Development has been Implemented and fully completed to the reasonable satisfaction of the Council, such completion to be demonstrated by written notice from the Council to that effect.

5. **NOTICE TO THE COUNCIL/OTHER MATTERS**

- 5.1 Within 7 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 PWX0102152/R3 the date upon which the Second Development is ready for occupation.
- 5.2 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.
- 5.3 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 Second 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.

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, Property and Projects Team, Planning Division Environment Department, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number PWX0102152/R3 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 lodge its Charge and or Land Certificates in relation to the Second Property with HM Land Registry and apply to the Chief Land Registrar to register this Agreement in the Charges Register thereof and will furnish the Council forthwith on written demand with office copies of such title to show the entry of this Agreement in the Charges Register of the title to the Second 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 the Owner or the Mortgagee shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Second 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.
- 6.9 Nothing in this Agreement shall be construed as affecting prohibiting or limiting any rights to develop any part of the land in accordance with any other planning permission granted whether before or after the date of this Agreement by the Council or the Secretary of State for the Department for Transport Local Government and the Regions or any other competent authority.
- 7. The Mortgagee hereby consents to the completion of this Agreement and agrees to be bound by it and to the same being registered at HM Land Registry as provided in Clause 6.4 hereof
- 8. 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

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



Authorised Signatory

