



Dated 21st November 2011 2011

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF  
SOUTHWARK**

- and -

**NOTTING HILL HOME OWNERSHIP LIMITED**

COUNTERPART

**AGREEMENT FOR LEASE**

relating to  
Site known Wooddene Peckham High Street London SE15

We hereby certify this to be a true  
and accurate copy of the original

Signed .....*Lewis Silkin LLP*.....  
Lewis Silkin LLP 7/1/14

Deborah Collins  
Director of Communities, Law & Governance  
London Borough of Southwark  
Legal Services  
PO Box 64529                      160 Tooley Street  
London SE1P 5LX                  London SE1 2TZ

Ref: LEG/CONV/137258/KR

THIS DEED OF AGREEMENT is dated *21st December* 2011

AND MADE BETWEEN

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of 160 Tooley Street London SE1 2QH("the Council")

(2) **NOTTING HILL HOME OWNERSHIP LIMITED** (an Industrial and Provident Society with registered number IP23066R) whose registered office is at Bruce Kenrick House 2 Killick Street London N1 9FL. ("NH")

WHEREBY IT IS AGREED as follows:-

1. Definitions

In this Agreement (where the context admits) the following expressions shall have the following meanings:-

1.1 "Affordable Homes" means any house maisonette flat or other dwelling constructed on the Property which is to be used for affordable housing as defined in Planning Policy Statement 3 Annex B published by the Department of Communities and Local Government in June 2011

1.2 "Appeal" means all or any of the following:

An appeal to the Secretary of State pursuant to Section 78 of the 1990 Act against:

1.2.1 a refusal or deemed refusal of planning permission or

1.2.2 the grant of a planning permission which is not a Satisfactory

Planning Permission

Or a call-in by the Secretary of State under s.77 of the 1990 Act

1.3 "Commercial Space" means any non-residential use (including student accommodation) falling outside Class C3(a) of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005

1.4 "Contract Rate" means for the purposes of the Standard Conditions four per cent above the base rate from time to time of National Westminster Bank plc

1.5 "Conventional Social Rents" means target rent as calculated in accordance with the formula attached hereto as Annexure 8

1.6 "Council" means the London Borough of Southwark in its capacity as freeholder of the Property and for the avoidance of doubt does not include any reference to its role as local planning authority

1.7 "Council's Solicitors" means Legal Services London Borough of Southwark of Second Floor 160 Tooley Street London SE1 2QH (reference: LEG/CONV/137258/KR)

1.8 "Counsel" means a leading counsel experienced in planning matters from the list attached at Schedule 5

1.9 "Court Application" means all or any of the following:

1.9.1 An application for judicial review under Part 54 of the Civil Procedures Rules 1998 in respect of any Planning Permission

1.9.2 An application by a person aggrieved under Section 288 of the 1990 Act in respect of any Planning Permission or otherwise howsoever including if appropriate a subsequent appeal or appeals to a higher court

- 1.10 "Deposit" means the sum of THREE HUNDRED AND SEVENTY FIVE THOUSAND TWO HUNDRED AND FIFTY POUNDS (£375,250)
- 1.11 "Lease" means the lease in the form of the draft annexed to this Agreement at Annexure 1 with such amendments as may be agreed between the Council and NH
- 1.12 "Lease Premium" means the sum of SEVEN MILLION FIVE HUNDRED AND FIVE THOUSAND POUNDS (£7,505,000)
- 1.13 "Local Planning Authority" means the London Borough of Southwark (and includes its successors to its town and country planning functions);
- 1.14 "NH's Solicitors" means Lewis Silkin LLP of 5 Chancery Lane Cliffords Inn London EC4A 1BL (reference: Ms G Bastow) or such other solicitor as NH notifies to the Council's Solicitors
- 1.15 "Notting Hill Housing Group" means NH, Notting Hill Housing Trust of Bruce Kenrick House 2 Killick Street London N1 9FL and the subsidiaries and associates of NH and Notting Hill Housing Trust and the expressions 'subsidiary' and 'associate' shall have the meanings assigned to them in section 271 of the Housing and Regeneration Act 2008 and any other corporate body whose accounts are consolidated with those of NH or Notting Hill Housing Trust
- 1.16 "Onerous Conditions" means a condition or conditions contained in a Planning Permission or a Planning Agreement which:
- 1.16.1 makes the Planning Permission personal to NH

- 1.16.2 grants a temporary Planning Permission
- 1.16.3 imposes time limits within which the development permitted by the Planning Permission must be commenced or applications for approval of reserved matters must be made which are more restrictive than those set out in ss.91 and 92 of the 1990 Act
- 1.16.4 imposes conditions which cannot physically or legally be complied with
- 1.16.5 contains a condition or conditions requiring works (which are not works to highway land or land which is to become highway land under the Planning Permission) to be carried out on land which is owned by a third party and preventing the commencement or occupation of the development permitted by the Planning Permission without such works being completed
- 1.16.6 requires the payment or expenditure of money or other consideration by way of planning gain (which expression shall include any community infrastructure levy required by the Local Planning Authority or the Mayor of London) whether by way of financial contribution and/or works the cost of which in aggregate would exceed £6,000 per residential unit within the development for which Planning Permission has been granted UNLESS the Council agrees to bear such additional cost by way of a reduction

of the Lease Premium AND PROVIDED THAT if the cost is less than £6,000 per residential unit within the development for which Planning Permission has been granted the Lease Premium will be increased by the shortfall (i.e. the difference between (i) the sum which is £6,000 multiplied by the number of residential units for which Planning Permission has been granted and (ii) the actual cost payable)

- 1.16.7 requires that more than 35% of the Habitable Rooms (as defined in Schedule 1) within the Development are to be designated for Affordable Homes
- 1.17 "Pink Land" means the land shown coloured pink on the Plan and  
"Green Land" means the land shown coloured green on the Plan
- 1.18 "Plan" means the plan attached to this Agreement
- 1.19 "Planning Agreement" means an agreement stipulated as a requirement pursuant to a Satisfactory Planning Permission pursuant to all or any of the following provisions Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 38 and or 278 of the Highways Act 1980 Section 104 of the Water Industry Act 1991 or any statutory re-enactment or modification to those Acts or any provision to similar intent or any unilateral undertaking pursuant to Section 106 of the 1990 Act or an Agreement or Licence with any competent authority or body relating to other services and Planning Agreement shall be construed accordingly

1.20 "Planning Application" means the application or applications to the local planning authority for detailed planning permission for the redevelopment of the Property to provide for the demolition of the buildings standing on the Property at the date of this Agreement (if any) and the redevelopment of the Property to provide a mix of residential and commercial units in accordance with NH's scheme submitted to the Council prior to the date of this Agreement and which will provide no less than 53 dwellings comprising the respective number of bedrooms as set out in Schedule 6 at Conventional Social Rents

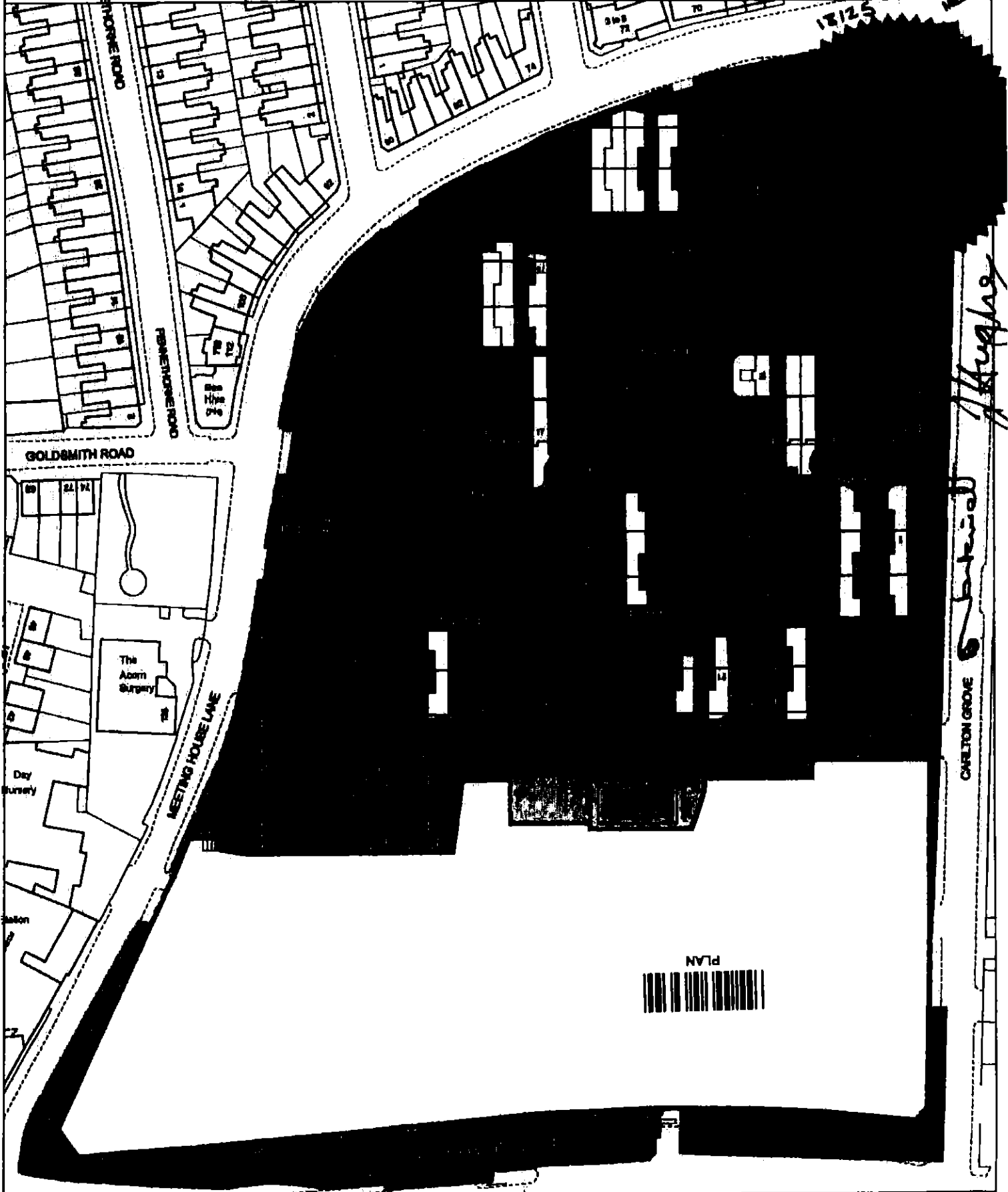
1.21 "Planning Date" means the earlier of the following:

1.22.1 in the event of the grant of a Satisfactory Planning Permission by the local planning authority or the Secretary of State the date which is in the case of a grant by the local planning authority 3 months and 2 Working Days and in the case of a grant by the Secretary of State 6 weeks and 2 Working Days from (but excluding) the date of the grant of the Satisfactory Planning Permission (provided that no Court Application has been instituted before this date) and

1.22.1 in the event that following the grant of a Satisfactory Planning Permission a Court Application is instituted the date on which the Satisfactory Planning Permission is finally upheld following the exhaustion of Court



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*A Hughes*  
CARLTON GROVE





Applications which shall occur on the withdrawal of such Court Application or when the time for appealing against the decision of any court has expired and no such appeal has been lodged

- 1.23 "Planning Permission" means a full planning permission granted in respect of the Planning Application
- 1.24 "Property" means the parcel of freehold land lying to the north of Peckham High Street/Queens Road Peckham SE15 and shown edged red on the Plan being registered at the Land Registry under Title Number TGL334569 but excluding the Pink Land and the Green Land
- 1.25 "Satisfactory Planning Permission" means a written Planning Permission whether granted pursuant to the Planning Application or pursuant to an Appeal which does not contain any Onerous Conditions and is not contrary to or outside of the planning policy of the Local Planning Authority as defined in the Unitary Development Plan and the Supplementary Planning Documents in force at the date of this Agreement
- 1.26 "Standard Conditions" means the Standard Conditions of Sale (Fourth Edition)
- 1.27 "Target Date" means the date which is 5 months after the date of registration of the Planning Application by the Local Planning Authority or such extended date as provided for under the terms of clause 3.8

1.28 "Unconditional Date" means the date on which the condition contained in clause 3.1 becomes satisfied

1.29 "the 1990 Act" means the Town and Country Planning Act 1990 (as amended)

1.30 "VAT" means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax

1.31 "Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday

## **2. Interpretation**

In the interpretation of this Agreement:-

2.1 Words importing the singular number only shall include the plural number and vice versa and where two or more persons are included in the definition of any party the agreements and covenants contained in this Agreement which are expressed to be made by that party shall be deemed to be made by such persons jointly and severally

2.2 The expressions 'Council' and 'NH' include their respective successors in title

2.3 The headings appearing in this Agreement are for reference only and shall not affect the construction hereof

2.4 If any provision in this Agreement is held to be illegal void invalid or unenforceable for any reasons the legality validity and enforceability of the remainder of this Agreement shall not be affected

2.5 Reference to any Act of Parliament shall be deemed to be reference

to such Act and any statutory modification or re-enactment thereof from time to time in force and any and every order instrument regulation direction or plan made or issued thereunder or deriving validity therefrom from time to time in force

2.6 words importing the masculine shall include the feminine and neuter genders and vice versa

2.7 Any obligation on a party to do any act or thing includes an obligation to procure that it be done and any obligation not to do any act or thing includes an obligation not to allow that act or thing to be done by any person under its control.

### **3. Conditions Precedent**

3.1 Completion of this Agreement is conditional on NH obtaining the Satisfactory Planning Permission

3.2 NH shall use its reasonable endeavours to obtain the Satisfactory Planning Permission by the Target Date and shall keep the Council informed of its progress in doing so

3.4 If the condition set out in clause 3.1 shall not have not been satisfied on or before the Target Date either party may terminate this Agreement by serving written notice to that effect on the other and on receipt of that notice this Agreement will terminate

3.5 If at the Target Date (here meaning the date which is 5 months after the date of registration of the Planning Application by the Local Planning Authority):

3.5.1 the Planning Application has been refused AND in the opinion of Counsel there is a more than 50% chance of an Appeal being successful AND an Appeal has been lodged and an inquiry and/or decision are awaited or

3.5.2 a Court Application has been instituted but not finally resolved or

3.5.3 the Local Planning Authority has passed a resolution to grant a Satisfactory Planning Permission subject to the completion of a Planning Agreement which remains to be completed

3.5.4 the Planning Application has not been determined then the Target Date shall be extended to the date 12 months from the Target Date (the "Extended Target Date") or, if earlier, the date on which any decision or judgement in respect of an Appeal or Court Application if that decision or judgement results in a refusal of planning permission or the quashing of a Planning Permission

3.6 Notice to terminate under clause 3.4 may not be given if the condition set out in clause 3.1 has been satisfied prior to the service of such notice

3.7 If the provisions of sub-clause 3.5 apply and the Target Date has been extended to the Extended Target Date but at that date the Appeal has not been decided or the Court Application has not been finally resolved or the Planning Agreement referred to in clause 3.5.3

has not been completed then either party may terminate this Agreement on or after the Extended Target Date by serving written notice to that effect on the other and on receipt of that notice this Agreement will terminate

3.8 Termination of this Agreement under this clause 3 shall be without prejudice to the rights of NH or the Council against the other in respect of any antecedent breach of the provisions of this Agreement by the other

3.9 If this Agreement is terminated under this clause 3:

3.9.1 the Deposit shall be returned by the Council to NH excluding any interest which has accrued on the Deposit (if any).

3.9.2 NH shall procure an irrevocable royalty free licence from each of the professionals who have prepared plans, designs, drawings, quantities, specifications, surveys, reports and any other work required for any Planning Applications made by NH in respect of the Properties for the Council to use the copyright in those plans designs drawings quantities specifications surveys and reports (including any digital copies)

3.10 Any dispute between the parties as to whether the condition set out in clause 3.1 has been satisfied shall be settled in accordance with clause 21

#### 4. Grant of Lease

Subject to the condition in clause 3.1 being satisfied by the Target Date the Council shall grant and NH shall accept the Lease on payment of the Lease Premium (less any Deposit)

**5. The Deposit**

On the date of this Agreement NH shall pay to the Council the Deposit which shall be held in the Council's bank account as being held subject to the terms of this Agreement

**6. Completion**

Completion of the Lease shall take place 10 Working Days after the Planning Date or earlier by agreement between the parties (but no earlier than the Unconditional Date) and shall take place at the offices of the Council's Solicitors when the balance of the Lease Premium less the Deposit shall be paid by NH to the Council

**7. Assignment of this Agreement**

This Agreement is personal to NH and NH cannot require the Council to grant the Lease to any person other than NH

**8. Title**

Title to the Property having been deduced to NH or NH's Solicitors prior to the date hereof NH shall be deemed thereby to have

accepted such title and shall not be entitled to raise any objection or requisition in respect thereof save for matters revealed by pre-completion searches

## **9. Matters Affecting the Property**

9.1 The Property is sold subject to and (as the case may be) with the benefit of:

9.1.1 the covenants agreements restrictions stipulations provisions and conditions and the other matters contained or referred to in the Registers maintained at the Land Registry in respect of Title Number TGL334569 (insofar as these affect the Property) as evidenced in official copies of the Registers dated 13 December 2011 timed at 17:03:52;

9.1.2 the substation leases affecting the Property details of which have been provided by the Council to NH ("the Substation Leases")

9.2 The Council will use reasonable endeavours to ensure that the land between the end of the roadway shown hatched blue on the plan and the adopted highway known as Carlton Grove and the crossover from Carlton Grove to the Property on the eastern boundary of the Property are either adopted as public highway or are included within the Council's title to the Property and will keep NH of progress in this regard

## **10. Title Guarantee**

The Council sells with full title guarantee

#### **11. Overriding Interests**

The Properties are sold subject to any matters discoverable by inspection of the Properties before the date of this Agreement and any matters which the Council does not and could not reasonably know about and any unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002

#### **12. Local Land Charges**

The Lease is granted subject to all Local Land Charges and matters capable of registration as Local Land Charges (whether registered or not before the date of this Agreement) and all notices served and orders demands proposals or requirements made by a local or other public or competent authority (whether made before or after the date of this Agreement and whether or not made by the London Borough of Southwark in one of its statutory capacities) and all development plans town planning and other schemes proposals resolutions orders or requirements affecting the same in any manner whatsoever and all actual or proposed charges notices orders restrictions agreements conditions contraventions or other matters whatsoever arising under the Town and Country Planning Acts (whether made before or after the date of this Agreement and whether or not made by the London Borough of Southwark in one of its statutory capacities) and NH (as it



hereby submits) shall be deemed to have satisfied itself prior to the date of this Agreement on all matters referred to in this clause and shall be deemed to take the Lease with full knowledge of the same and shall raise no objection or requisition in relation thereto

Save where it is required to do so by law or where such matter is beyond its control the Council (in its capacity as owner of the Properties) will not after the date of this Agreement enter into any arrangement or agreement that would result in the Property being affected by any such matters that are not in existence at the date hereof without the consent of NH which shall not be unreasonably withheld if such matters do not adversely affect the Property nor require NH to make any additional payments

### **13. Standard conditions**

13.1 The Standard Conditions are incorporated in this Agreement so far as they:

- (a) apply to the grant of a lease;
- (b) relate to freehold property;
- (c) are not inconsistent with the other clauses in this

Agreement; and

- (d) have not been modified by the other clauses in this Agreement

13.2 Standard Condition 5 shall not apply to this Agreement and the Council shall continue to insure the Property until the date of completion of

the Lease PROVIDED THAT the Council shall not be obliged to transfer the Property in the same physical state as it was in at the date of this Agreement AND for the avoidance of doubt and bearing in mind that NH intends to demolish any buildings standing on the Property at the date of this Agreement, in the event that there is complete or partial destruction of or any damage to the buildings on the Property prior to the completion date there will be no obligation on the Council to reinstate or rebuild such buildings and any such destruction or damage will not entitle NH to rescind this Agreement.

#### **14. Vacant Possession**

The Lease of the Property is granted with vacant possession on completion but subject to the Substation Leases notwithstanding that any furniture fittings building materials rubbish debris and/or any other property whether belonging to the Council or to its tenants licensees or other occupiers (whether lawful or unlawful) have been left at the Property and the Council shall not be liable for the cost of removal of the aforementioned articles and NH fully indemnifies the Council in respect of the same provided that the Council shall have kept the Property enclosed and secure and taken reasonable steps to keep it free of such articles.

#### **15. Legal and Surveyors Fees**

On the date of this Agreement NH shall pay the sum of Thirty Seven

Thousand Five Hundred and twenty five Pounds (£37,525) to the Council as a non-refundable contribution to its legal and valuation fees

## **16. Planning Obligations**

16.1 NH undertakes to use its reasonable endeavours to submit the Planning Application to the Local Planning Authority no later than the date which is nine months from the date of this Agreement

16.2 NH is to prepare a Planning Application for submission to the Local Planning Authority which is:

16.2.1 A residential led mixed use scheme density to be between 600 and 700 Habitable Rooms per hectare, and which will provide 53 dwellings comprising respectively the number of bedrooms set out in Schedule 6 at Conventional Social Rents and Commercial Space providing an active frontage along Queens Road

16.3 NH undertakes to use Jestico and Whiles as its architects for preparation of the Planning Application, or such other architects approved by the Council, such approval not to be unreasonably withheld or delayed

16.4 Prior to submission of the Planning Application (or any revision of it) to the Local Planning Authority NH shall first submit a draft detailing

the layout of the proposed development, the plans to be submitted as part of the Planning Application and the schedule to the Planning Application containing details of the proposed mix of tenure and the sizes of the individual units to the Head of Property of the Council for approval such approval not to be unreasonably withheld or delayed (and where the aforesaid draft is in accordance with all of the requirements of clause 16.2 any refusal of approval shall be deemed to be unreasonable)

- 16.5 Within 10 Working Days after receipt of the aforesaid draft Planning Application the Council shall inform NH in writing of its approval or objection to the draft and if it fails to do so within the time specified the Council will be deemed to have approved the draft
- 16.6 If the Council objects to the aforesaid draft NH and the Council shall work together to agree any revisions required to the draft but in the event that no agreement is reached within 20 Working Days of the date of the Council's written objection then the matter may be referred to an independent expert pursuant to the provisions of clause 20 at the request of either party (though the parties will always be mindful of the time limit for submission of the Planning Application referred to in clause 16.1)
- 16.7 NH may (with the Council's consent (in its capacity as landowner) such consent not to be unreasonably withheld or delayed) vary the Planning Application Provided that consent will not be withheld or delayed if the proposed variations are materially in accordance with

the principles referred to in clause 16.2

16.8 NH shall at all times keep the Council advised as to the progress of the Planning Application and of any Appeal and deal promptly with all reasonable requests for information as the Council may from time to time make relating to the Planning Application or the Appeal and will give at least 5 Working Days notice of and allow the Council to attend at conferences with counsel and/or relevant meetings with the Local Planning Authority, the highways authority, service undertakers and local residents

16.9 NH shall within 10 Working Days of receipt of a written planning determination of the Planning Application supply a copy to the Council and NH shall within those same 10 Working Days notify the Council in writing that either:

16.9.1 NH accepts the determination as a Satisfactory Planning Permission; or

16.9.2 the determination is not a Satisfactory Planning Permission and state the reasons why it is not

16.10 Neither NH nor the Council shall knowingly do any act or thing in any way to prejudice the Planning Application or any Appeal AND for the avoidance of doubt this clause shall have no application to the London Borough of Southwark in its capacity as local planning authority or in any other statutory capacity

16.11 NH shall use its reasonable endeavours to procure that Satisfactory Planning Permission is obtained as soon as possible and this

obligation shall include the obligation to put in an Appeal in the event that the Planning Application has been refused or there is a deemed refusal AND in the opinion of Counsel there is a more than 50% chance of an Appeal being successful

16.12 Time shall be of the essence in relation to the time limit contained in clause 16.1 AND for the avoidance of doubt if NH does not submit the Planning Application by the date which is nine months from the date of this Agreement this shall be considered a material breach of this Agreement and entitle the Council to terminate the Agreement and in such circumstances the Council shall be entitled to retain the sum of £25,000 from the Deposit and the balance shall be returned by the Buyer to the Seller

## **17. Planning Agreements**

17.1 NH and the Council shall enter into any Planning Agreement required to obtain Satisfactory Planning Permission (and shall also procure that any other person or body having an interest in the Property including any mortgagee shall enter into any such Planning Agreement) provided that such Planning Agreement does not contain any Onerous Conditions and the Lease of the Property shall be granted subject to any such Planning Agreement and NH will in the Lease indemnify the Council in respect of all obligations and payments thereunder so far as they relate to the Property

## **18. Overage Payments and other payments**

18.1 NH and the Council agree that the provisions of Schedule 1 are incorporated into this Agreement

18.2 On completion of the Lease NH will grant to the Council a first legal charge over its interest in the Property in order to secure the Additional Consideration (as defined in Schedule 1) PROVIDED THAT where it is a term of any lender providing finance to NH (or its successor in title) to acquire the Lease and develop the Property that its legal charge should rank ahead of that of the Council, the Council will accept a second legal charge to rank behind that of the lender

18.3 The parties agree that if NH receives any income from advertisements at the Property (having obtained any permissions necessary for the display of any advertisements at the Property) at any time from the date of this Agreement until the date of Practical Completion (as defined in the Lease) it will account to the Council for 50% of any income received.

## **19. Licence**

19.1 With effect from the date of this Agreement NH shall be entitled as bare licensee to enter the Property together with its respective contractors agents and workmen as may be necessary for the purpose of carrying out surveys and investigations

19.2 The licence granted pursuant to clause 19.1 above is in the terms set out in clauses 19.3 to 19.7 below and (subject to clause 19.7 below)

NH shall be entitled to register this Agreement against the Council's freehold title to the Property

19.3 The licence granted pursuant to clause 19.1 above shall not create any relationship of landlord and tenant as between the Council and NH nor any tenancy

19.4 The licence granted by this clause shall be exclusive to NH its authorised agents and contractors only and shall continue in respect of the Property (unless determined under clause 19.6) until the earliest of :-

19.4.1 the termination of this Agreement; or

19.4.2 the grant of the Lease pursuant to Clause 4

19.5 NH agrees and undertakes with the Council to carry out any such surveys and demolition works in compliance with all statutory requirements, bye-laws and regulations (including but not limited to the Wildlife and Countryside Act 1981) and to make good any damage caused to the Property thereby as soon as reasonably practicable and to the Council's satisfaction

19.6 The Council may serve notice terminating the Licence granted under this clause 19 immediately in the event that NH fails to perform its obligations set out in clause 19.5

19.7 In the event the licence is terminated for whatever reason NH shall



forthwith arrange for the removal of any entry it may have registered against the Council's freehold title to the Property pursuant to clause 19.2 above and lodge any documentation necessary to effect such removal at the Land Registry

## **20. Environmental Liabilities**

NH and the Council agree that the provisions of Schedule 4 are incorporated into this Agreement

## **21. Disputes**

21.1 Any dispute relating to the provisions of or relating to any Planning Permission or any obligations relating thereto or any obligations on the part of either party relating to a Planning Agreement or any provisions relating thereto or any other planning matters (including whether the Planning Permission has been properly granted containing no Onerous Conditions as envisaged by this Agreement) shall be referred to an expert who shall be a Counsel at the request of either the Council or NH such person to be agreed between the parties or in default of agreement to be appointed on the application of either party by the chairman or next senior officer available of the Bar Council

21.2 Any dispute relating to any other matter in this Agreement shall be referred to an expert who shall be an independent chartered surveyor

with at least ten years experience in dealing with similar developments in urban areas appointed by agreement between the parties or in default of agreement by the President or next available senior officer of the Royal Institution of Chartered Surveyors

21.3 The expert shall act as an expert and not as an arbitrator and his decision shall be final and binding on NH and the Council

21.4 The cost of the expert shall be borne equally by NH and the Council unless the expert otherwise directs

21.5 If the expert dies refuses to act or otherwise incapable of fulfilling his instructions then a replacement will be appointed in the manner set out in this clause which process may be repeated as often as is necessary to achieve a decision

21.6 The expert shall be instructed to produce his opinion on the dispute within eight weeks from the date of his appointment and:

21.6.1 the Council and NH may make written representations within ten Working Days of the expert's appointment and will copy the written representations to the other party;

21.6.2 the Council and NH are to have a further ten Working Days to make written comments on each other's representations and will copy the written comments to the other party;

21.6.3 the expert is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as the expert may reasonably require;

21.6.4 the expert is not to take oral representations from the Council or NH without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

21.6.5 the expert is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and be required to give reasons for his decision;

## **22 VAT**

22.1 Each amount stated to be paid by NH to the Council under or pursuant to this Agreement is exclusive of VAT (if any)

22.2 The Council warrants to NH that it has not elected to tax the Property in respect of VAT at this date of this Agreement and further undertakes that it will not elect to tax the Property on or before the date of completion (unless required by law to do so or agreed by the parties) PROVIDED THAT where the Council will be unable to recover any VAT expended by it on goods or services relating to the Property NH will pay to the Council on completion a sum equivalent to the amount of VAT which the Council has been unable to recover.

## **23 Confidentiality**

23.1 Except as permitted by this clause no party to this Agreement will make or permit any disclosure of the existence or the terms of or any negotiations in connection with:

- (a) this Agreement;
- (b) any document supplied to NH or its advisors in connection with this Agreement;
- (c) the Lease.

23.2 Disclosure is permitted to the extent that it is:

- (a) necessary and desirable to enable the parties' professional advisers to carry out their duties effectively;
- (b) required in connection with the stamping of the Lease or the registration of the Agreement or the Lease at the Land Registry;
- (c) required by law
- (d) necessary to notify any rating or other public authority or utility supplier of the new leasehold ownership of the Property;
- (e) necessary for the purposes of any subsequent dealing with or financing of the Property by NH; or
- (f) required by any regulator.

23.3 Disclosure is permitted by one party to this Agreement with the prior written approval of the other party. If approval is requested, it will not be unreasonably withheld or delayed.

23.4 The Council and NH have prepared a consultation protocol and communications strategy which is attached to this Agreement as Annexure 2 and both parties agree to abide by the strategy .

## 24. Notices

24.1 Any notices given under this Agreement must be in writing and signed by or on behalf of the party giving it

24.2 Any notice to be given or delivered under this Agreement must be given by delivering it personally or sending it by pre-paid first class post, or recorded delivery to the address and for the attention of the relevant party as follows or to such other address which either party may notify in writing to the other party at any time:

24.2.1 to the Council at:

PO Box 64529

London SE1P 5LX (if sent by post)

Or at:

160 Tooley Street

London SE1 2QH (if delivered by hand)

marked for the attention of: The Head of Property; or to the Council's Solicitor, quoting the reference LEG/CONV/137258/KR

24.2.2 to NH at:

Bruce Kenrick House

2 Killick Street

London N1 9FL

marked for the attention of: Land Director

or at NH's Solicitor, quoting the reference GMB

24.3 Giving or delivering a notice to NH's or the Council's Solicitors has the same effect as giving or delivering it to that party

24.4 Any such notice will be deemed to have been received:

24.4.1 if delivered personally, at the time of delivery provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day.

24.4.2 in the case of pre-paid first class or recorded delivery post, at 10.00 am on the second Working Day after posting;

24.5 Unless the time of actual receipt is proved, a notice served by the following means is to be treated as having been received;

24.5.1 if delivered by hand, at the time of delivery;

24.5.2 if sent by first class post, on the second Working Day after posting

24.6 A notice given under this Agreement shall not be validly given or delivered if sent by e-mail or by fax and Standard Condition 1.3 shall not apply to this Agreement

## **25. Provisions relating to the Pink Land and the Green Land**

25.1 It is acknowledged that the Pink Land and the Green Land shall not be included in the Lease PROVIDED THAT if the Council shall at any time within a period of 10 years from the date of this agreement ("the

Pre-emption Period") wish to dispose of the Pink Land or the Green Land (which for the purposes of this clause shall mean the whole of the Pink Land and/or the Green Land or any part of it) it shall first offer to grant NH (which shall include for the purposes of this clause its successors in title to the Property) a lease of the Pink Land and/or the Green Land as the case may be supplemental to the Lease for a consideration to be agreed between the parties and to be the Market Value

- 25.2 If the Council shall wish to dispose of the Pink Land and/or the Green Land it shall first serve notice ("Offer Notice") on NH offering to grant a supplemental lease of the Pink Land and/or the Green Land to NH and such offer shall be binding and irrevocable.
- 25.3 NH shall serve a counter notice ("Counter Notice") within 3 months of the date of the Offer Notice indicating whether or not it wishes to accept the offer contained in the Offer Notice.
- 25.4 If NH shall wish to accept the grant of the supplemental lease of the Pink Land and/or the Green Land the supplemental lease shall be granted within 20 working days of the date of the Counter Notice.
- 25.5 If NH shall not serve a Counter Notice within the 3 month period provided for in clause 25.3 or if NH shall indicate in the Counter Notice that it does not wish to accept the offer contained in the Offer Notice the Council may dispose of the Pink Land and/or the Green

Land to any party for such price and on such terms as the Council shall see fit and NH shall remove all entries relating to this clause registered against the title to the Pink Land and/or the Green Land .

25.6 The Council consents to the following entries being made against the Council's title to the Pink Land and the Green Land at the land registry :

25.6.1 an agreed notice; and

25.6.2 a restriction in the following terms:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Notting Hill Home Ownership Limited or their conveyancers that the provisions of clause 25 of an agreement dated [ ] made between the Mayor and Burgesses of the London Borough of Southwark (1) and Notting Hill Home Ownership Limited (2) have been complied with or that they do not apply to the disposition.

25.7 Immediately at the end of the Pre-emption Period NH will cancel all entries relating to this clause registered against the title to the Pink Land and/or the Green Land



25.8 For the avoidance of doubt the Council may serve an Offer Notice in respect of both the Pink Land and the Green Land or may serve an Offer Notice in respect of the Pink Land only or the Green Land only in which case the Council shall not be precluded from serving a further Offer Notice in respect of the Green Land or the Pink Land respectively at a later date but within the Pre-emption Period

## **26. Acknowledgement**

This Agreement constitutes the entire agreement between the parties and may only be varied or modified (whether by way of contract or otherwise) in writing under the hands of the parties or their solicitors and NH hereby acknowledges and admits that NH has not entered into this Agreement in reliance upon any representation made by or on behalf of the Council but not embodied in this Agreement other than such information supplied in writing by the Council's Solicitors or the Council's replies to preliminary enquiries

## **27. Council's powers as local authority unaffected**

27.1 Nothing contained or implied in this Agreement shall prejudice or affect the Council's rights powers duties and obligations in the exercise of its functions as a local authority.

27.2 The rights powers duties and obligations of the Council under all public and private statutes bye-laws orders and regulations may be as fully and effectually exercised in relation to the Properties as if it were not the owner of the Property and this Agreement had not been entered into by it.

27.3 The Council does not by entering into this Agreement or otherwise warrant or represent that the Property is fit for any development or use (including that proposed by NH in its scheme) or that the Property has or will be granted planning permission for any particular development or use

## **28. Non-merger**

The provisions of this Agreement shall not merge on the completion of the Lease in so far as they remain to be performed

## **29. Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this contract will not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999

This Agreement has been executed as a deed by the parties to it on the date stated at the beginning of it

## SCHEDULE 1

1. In this Schedule the following definitions shall have the following meanings:

"Additional Consideration"	the additional consideration (if any) to be calculated in accordance with paragraph 3.1 and/or paragraph 3.2 and/or paragraph 3.3 and/or paragraph 3.4 and/or paragraph 3.5
"Commercial Overage"	the additional amount (if any) payable by NH to the Council pursuant to and in accordance with paragraph 3.6
"Deed of Covenant"	A deed of covenant in substantially the form set out in Schedule 3 with any amendments agreed between the Council and NH (acting reasonably)
"Disposition Overage"	the additional amount (if any) payable by NH to the Council pursuant to and in accordance with paragraph 3.3
"Disposition"	one or more of the following in respect of the Property whether by the registered proprietor of the Property or by the registered proprietor of any Security:  (a) the transfer or assent of the whole or any part of the Property (not being an Exempt Disposal), whether or not for valuable consideration;  (b) the grant of a lease over the whole or any part of the Property (not being an Exempt Disposal) whether or not for valuable consideration; or

(c) the change of ownership of the registered proprietor of the Property whether by sale of its shares or other means to an organisation which in the case of Notting Hill Home Ownership Limited is not a member of the Notting Hill Housing Group

together with all contracts for and agreements for the same and any declaration of trust in respect of the whole or any part of the Property

**"Exempt Disposal"**

Any sale of a Residential Unit; disposal to a utility company of any land for the purpose of installing gas water electricity or communication media for the Property; an Intra-Group Disposal

**"Gross Internal Area"**

Means the gross internal area whether Commercial Space or Residential Units measured in accordance with the Measurement Code

**"Habitable Room"**

means a room within a dwelling the main purpose of which is for sleeping living or dining including any room with a window which could be used for sleeping regardless of what it is actually used for but excluding toilets bathrooms landings halls lobbies and excluding any kitchen with an overall floor area of less than 11 sq metres

**"Initial Sales"**

the first Unit Sale by NH of each Residential Unit when built but not any subsequent sale of the same Residential Unit

**"Intra-Group Disposal"**

means a Disposition of the whole or parts of the Properties to one or more members of the Notting Hill Housing Group but not a Disposition to an entity in which one or more members of the Notting Hill Housing Group has/have in aggregate

	less than a 100% interest
<b>"Market Value"</b>	The estimated amount for which the property being disposed of should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably prudently and without compulsion AND for the avoidance of doubt where the property being disposed of includes Affordable Homes the valuation will take that into account
<b>"Measurement Code"</b>	the Code of Measuring Practice (sixth edition RICS/ISVA 2007) (as amended)
<b>"Net Sales Area"</b>	has the meaning given in the Measurement Code
<b>"Overage Period"</b>	the period of ten years commencing on the date of completion of the Lease
<b>"Planning Overage"</b>	The additional amount payable by NH to the Council pursuant to and in accordance with paragraph 3.2
<b>"Previously Paid Overage"</b>	any Additional Consideration already paid (other than Sales Overage or Disposition Overage) in respect of the same part or parts of the Property
<b>"Purchase Costs"</b>	means: (a) in the case of NH (1) The sums reasonably and properly expended by NH on legal fees in acquiring the Lease of the Property, plus any VAT and/or Stamp Duty Land Tax (2) the sums reasonably and properly expended by NH on obtaining the Satisfactory Planning Permission (though not the cost of obtaining or applying for any other planning permission or permissions)

(3) Interest paid on any loan taken out by NH in order to pay the Lease Premium plus any VAT for the period from the date of completion of the Lease to the date of the disposal referred to in paragraph 3.3

(4) where a new building or buildings on the Property have been constructed and completed so that it is ready for full occupation then the sums reasonably and properly expended by NH in the costs of developing such building or buildings (b) in the case of a successor in title to NH the costs in items (1), (3) and (4) above expended by such successor in title in respect of the whole or part of the Property purchased by such successor in title

**"Purchase Price"**

means (a) in the case of NH the sum paid by NH to the Council for the Lease inclusive of any VAT paid and (b) in the case of a successor in title to NH the price paid by such successor in title in respect of the whole or part of the Property purchased by such successor in title inclusive of any VAT paid

**"Quarterly Period"**

The three month period commencing on the date of the completion of the Unit Sale of the first Residential Unit and each and every subsequent three month period (or in the case of the final period such period from the date following the end of the previous three month period to the date on which the Unit Sale of the last Residential Unit is completed) until the date on which the Unit Sale of the last of the Residential Units takes place

"Residential Unit"	Any house maisonette flat or other dwelling constructed on the Property which is to be used for residential purposes for sale on the open market and the phrase "Residential Units" means all such accommodation
"Sales Incentive"	on an Initial Sale a 5% deposit paid plan and/or payment of a purchaser's legal fees and/or payment of a purchaser's Stamp Duty Land Tax liability and/or other additions to the standard specification such as carpets, furnishings, white goods
"Sales Overage"	The additional amount (if any) payable by NH to the Council pursuant to and in accordance with paragraph 3.1
"Sales Overage Period"	Means the earlier of (1) 10 years commencing on the date of completion of the Lease and (2) the date of the Initial Sale of the last of the Residential Units
"Sale Price"	The price at which the Property or any part or parts thereof (as the case may be) are sold or in the case of a sale which is not an open market sale, the Market Value
"Sales Revenue"	The sale price generated from the Initial Sale of each Residential Unit after deducting any Sales Incentives evident from the contract for sale or reservation form relating thereto subject to a maximum deduction in respect of each Residential Unit of 10% of the sale price of that Residential Unit
"Security"	Any legal charge, debenture, mortgage, lien or other form of security granting any legal or

"Council's Bank"	equitable charge over the Property whether fixed or floating but excludes any charge granted to the Council to secure the Additional Consideration National Westminster Bank plc or such other bank as the Council shall use which the Council shall notify to NH
"Unit Sale"	The sale of a Residential Unit whether by sale of freehold or the grant of a long lease at a premium but not a sale to an individual on a shared ownership/shared equity basis, rent to buy, right to acquire or other similar disposal

## 2. NH's Covenants

### 2.1 Use of the Property

NH covenants with the Council so as to bind the Property and each and every part of it during the Overage Period or, in the case of the Residential Units, during the Sales Overage Period that NH:

- 2.1.1 will not make any application to the Land Registry to remove or vary the restriction on title referred to in paragraph 2.3;
- 2.1.2 will not make any Disposition without complying with the provisions of paragraph 2.2;
- 2.1.3 will pay the Additional Consideration to the Council on the terms of this Agreement if and when it becomes due;
- 2.1.4 will not make any Initial Sale other than on the open market;



- 2.1.5 will use all reasonable endeavours to maximise the sales prices generated from the Initial Sales of all of the Residential Units taking into account market conditions
- 2.1.6 will supply to the Council within 7 days of receipt by NH copies of all the planning permissions received by NH in respect of the Properties and will allow the Council to inspect (at its request) (or at the Council's request will supply copies of) the originals or certified copies of all contracts for sale and agreements for lease, leases and reservation forms relating to any Disposition or Exempt Disposal and such other documentation and information as the Council may reasonably request in order to satisfy itself that NH is complying with its obligations under or arising from this Agreement;
- 2.1.7 will upon written request supply to the Council within 14 days of request copies of invoices bills receipts VAT returns contracts marketing leaflets, brochures, advertisements, spreadsheets, and any other supporting documentation reasonably requested by the Council as evidence of and in order to support NH's calculation of the Additional Consideration

## **2.2 Dispositions**

Unless a Disposition is an Exempt Disposal, NH is not to make a Disposition unless its successor in title:

- 2.2.1 executes a Deed of Covenant on or before the date of the deed or document effecting the Disposition and delivers it to the Council's Solicitors; and
- 2.2.2 makes an application to the Land Registrar on form RX1 for a restriction to be entered onto the proprietorship register of the title number of the Property allocated to it by the Land Registry in the form of the restriction set out in Schedule 2.

## **2.3 Title restriction**

- 2.3.1 NH is to apply to the Land Registrar on Form RX1 for a restriction to be entered onto the proprietorship register of the title number of the Property in the form of the restriction set out in Schedule 2 at the same time as applying for registration of the Lease.
- 2.3.2 The Council will cancel the restriction referred to above and release the legal charge referred to in clause 18 of this Agreement (together referred to in this paragraph 2.3 as the "Incumbrances") on the later of (i) expiry of the Overage Period and (ii) the date when all Additional Consideration due to the Council has been paid by NH. The Council will do all such acts and things necessary at the request of NH to facilitate this.
- 2.3.3 The Council will also provide a release or cancellation (as may be required) of the Incumbrances within 10 Working Days of a written request to do so from NH or any successor in title in respect of:
- (i) each Initial Sale;
  - (ii) a sale or letting of any commercial units constructed at the Property;
  - (iii) disposal to a utility company of any land for the purpose of installing gas water electricity or communication media for the Property;
- 2.3.4 The Council will do all such acts and things necessary at the request of NH to facilitate the cancellation or the release (as the case may be) of the Incumbrances.

## **2.4 Registration**

NH covenants with the Council:

- 2.4.1 to register this Agreement at the Land Registry against the title number of the Property at the same time as it applies to register the Lease;
- 2.4.2 that at the same time as this Agreement or any copy of it is sent to the Land Registry for registering against the title number of the Property, NH will, on behalf and at the cost of the Council, make an application to the Land Registry on Form EX1 and Form EX1A, each signed by the Council and in the form required by the Council, applying for this Agreement to be designated as an Exempt Information Document by the Land Registry. The Council is to provide NH with the relevant documentation and the Land Registry fee within ten working days after the date of this Agreement; and
- 2.4.3 to provide to the Council official copies of the title to the Property showing the registration of this Agreement as soon as reasonably practicable after completion of NH's registration of the Lease.

### **3. ADDITIONAL CONSIDERATION**

#### **3.1 Sales Overage**

3.1.1 Additional Consideration in respect of Sales Overage will become payable in accordance with this paragraph 3.1

3.1.2 Where in any Quarterly Period during the Sales Overage Period the total Sales Revenue received by NH exceeds £417 per square foot of the Net Sales Area of each Residential Unit disposed of during that Quarterly Period then 50% of the amount received in excess of that sum shall be paid to the Council.

3.1.3 The Additional Consideration in respect of sales overage is to be calculated in accordance with the following formula:

$$AC = ((SR - (NSA \times 417)) \times 50\%)$$

Where in each Quarterly Period:

**AC = the Additional Consideration**

**SR = the total Sales Revenue for the Residential Units sold**

**NSA= the total Net Sales Area of the Residential Units sold**

**AND the following worked example illustrates how this is calculated:**

$$AC = ((£4,200,000 - (10,000 \times 417)) \times 50\% = £15,000$$

**3.1.4 Within twenty Working Days of the end of the first and each subsequent Quarterly Period NH shall send to the Head of Property of the Council an account with details of each Residential Unit sold during that Quarterly Period including the date of completion of the sale, the consideration for the sale, any Sales Incentive allowed, the Net Sales Area of that Residential Unit and any further details which the Council may reasonably request.**

**3.1.5 Within twenty Working Days of the submission of the account referred to in sub-paragraph 3.1.4 NH shall pay the Additional Consideration in respect of Sales Overage (if any) due in that Quarterly Period to the Council by way of telegraphic transfer direct to the Council's Bank**

## **3.2 Planning Overage**

**3.2.1 Additional Consideration in respect of Planning Overage will become payable in accordance with this paragraph 3.2**

**3.2.2 If during the Overage Period NH (or any of its successors in title) obtains planning permission which permits the construction at the Property (or at any part or parts thereof) of more than 650 Habitable Rooms per hectare then at the date which is three months and two Working Days after the planning permission is granted the Additional Consideration in respect of Planning Overage will become due unless prior to that date any party makes a Court Application, in which case the Additional Consideration will become due ten working days after any such Application has been finally disposed and the number of Habitable Rooms per hectare remains in excess of 650**

**3.2.3 Additional Consideration in respect of Planning Overage will be payable at the rate of £7,300 per Habitable Room for which planning permission has been granted above the threshold of 650 Habitable Rooms per hectare in accordance with the following formula:**

$$AC = (HR3 - (SA \times HR1)) \times HR2 - POV$$

**Where**

**AC = Additional Consideration**

**HR1 = threshold of habitable rooms per hectare = 650**

**HR2 = rate per habitable room = £7,300**

**HR3 = the total number of habitable rooms for which planning permission has been granted (using the most recent permission)**

**SA = Site Area (in accordance with the planning application pursuant to which the planning permission has been granted)**

**POV = Previously Paid Overage**

**AND the following worked example illustrates how this is calculated:**

**Scheme produces a total of 1,100 Habitable Rooms ; the area of the site is 1.6 hectares**

$$AC = (1,100 - (1.6 \times 650)) \times £7,300 - £0 = £438,000$$

**3.2.4 NH will pay the Additional Consideration in respect of Planning Overage to the Council by way of telegraphic transfer to the Council's Bank within 10 Working Days of date on which it becomes due in accordance with paragraph 3.2.2**

### **3.3 Disposition Overage**

**3.3.1 Additional Consideration in respect of Disposition Overage will become payable in accordance with paragraphs 3.3.1 – 3.3.4 if within**

the Overage Period NH (which expression shall include any of its successors in title) makes a Disposition and the application of the formula below results in a positive figure

3.3.2 Where the Disposition referred to in paragraph 3.3.1 above is of the whole of the Property the Additional Consideration in respect of Disposition Overage is to be calculated in accordance with the following formula:

$$DO = (SP - (PP + PC) - POV) \times YDR\%$$

Where:

DO = the Additional Consideration

SP = the Sale Price

PP = the Purchase Price

PC = the Purchase Costs

POV = Previously Paid Overage

YDR = the relevant percentage to be applied which is as follows:

If the Disposition takes place in the first year of the Overage Period: 90%

If the Disposition takes place in the second year of the Overage Period: 80%

If the Disposition takes place in the third year of the Overage Period: 70%

If the Disposition takes place in the fourth year of the Overage Period: 60%

If the Disposition takes place in the fifth, sixth, seventh, eighth, ninth or tenth year of the Overage Period: 50%

AND the Worked Examples annexed as Annexure 3 illustrate how this is calculated

3.3.3 Where the Disposition referred to in paragraph 3.3.1 above is of part only of the Property, then a calculation using the formula set out below will be used based on the proportion which the area of the property being disposed of bears to the area of the whole of the Property AND the worked examples annexed as Annexure 4 illustrate how this is calculated

$$DO = (SP - (PP + \text{£}1,000,000^1 + PC) \times (HR1/HR2)) - POV \times YDR$$

Where:

DO = Disposition Overage

HR1 = the number of Habitable Rooms in the Residential Units for which planning permission has been granted (using the most recent permission at the date of the Disposition) on the property to be disposed of

HR2 = the number of Habitable Rooms in the Residential Units for which planning permission has been granted (using the most recent permission at the date of the Disposition) in total

SP = Sale price of land sold

PP = Purchase Price

PC = Purchase Costs

POV = Previously Paid Overage

A = Area of land sold (as a fraction of the total area of the site)

YDR = the relevant percentage to be applied which is as follows:

If the Disposition takes place in the first year of the Overage Period: 90%

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<sup>1</sup> £1,000,000 is added to reflect the cross subsidy required for the social rent units

If the Disposition takes place in the second year of the Overage Period: 80%

If the Disposition takes place in the third year of the Overage Period: 70%

If the Disposition takes place in the fourth year of the Overage Period: 60%

If the Disposition takes place in the fifth, sixth, seventh, eighth, ninth or tenth year of the Overage Period: 50%

3.3.4 Where the Disposition referred to in paragraph 3.3.1 above is not a Disposition on the open market or where the Disposition is part of the disposal of a portfolio of properties then the Sale Price will be the Market Value of the property being disposed of and the Market Value will be determined by an independent surveyor appointed and to act in accordance with paragraph 4

3.3.5 Additional Consideration in respect of Disposition Overage will become payable in accordance with paragraphs 3.3.5 – 3.3.7 if within the Overage Period any successor in title to NH makes a Disposition and the application of the formula set out in paragraph 3.3.2 results in a positive figure

AND the worked examples annexed as Annexure 5 illustrate how this is calculated

3.3.6 Where the Disposition referred to in paragraph 3.3.5 above is of part only of the property purchased by a successor in title, then a pro rata calculation using the formula set out in paragraph 3.3.3 will be used AND the worked examples annexed as Annexure 6 illustrate how this is calculated

3.3.7 Where the Disposition referred to in paragraph 3.3.5 above is not a Disposition on the open market or where the Disposition is a Disposition of any successor in title to NH or is part of the disposal of a portfolio of properties then the Sale Price will be the Market Value



of the property being disposed of and the Market Value will be determined by an independent surveyor appointed and to act in accordance with paragraph 4

3.3.8 If during the Overage Period NH (including for the avoidance of doubt its successors in title) makes one or more Dispositions to a company in which it has an interest (a "JV Company") which includes a company which is not within the Notting Hill Housing Group ("Third Party Member"), the Disposition Overage on the transfer of the Properties or part thereof to the JV Company will relate only to the proportion of the Sale Price paid or payable by the Third Party Member of the JV Company and the application of the formula below results in a positive figure

a) Whole Site

$$DO = (E\% \times (SP - (PP + PC) - POV) \times YDR$$

b) Part Disposal

$$DO = (E\% \times (SP - (PP + \pounds 1,000,000^2 + PC) \times (HR1/HR2)) - POV) \times YDR$$

Where:

E% = Equity sold

DO = the Additional Consideration

HR1 = the number of Habitable Rooms in the Residential Units for which planning permission has been granted (using the most recent permission at the date of the Disposition) on the property to be disposed of

HR2 = the number of Habitable Rooms in the Residential Units for which planning permission has been granted (using the most recent permission at the date of the Disposition) in total

SP = the Sale Price

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<sup>2</sup> £1,000,000 is added to reflect the cross subsidy required for the social units

**PP = the Purchase Price**

**PC = the Purchase Costs**

**POV = Previously Paid Overage**

**YDR = the relevant percentage to be applied which is as follows:**

**If the Disposition takes place in the first year of the Overage Period: 90%**

**If the Disposition takes place in the second year of the Overage Period: 80%**

**If the Disposition takes place in the third year of the Overage Period: 70%**

**If the Disposition takes place in the fourth year of the Overage Period: 60%**

**If the Disposition takes place in the fifth, sixth, seventh, eighth, ninth or tenth year of the Overage Period: 50%**

**AND the worked examples annexed as Annexure 7 illustrate how this is calculated**

**3.3.9 Additional Consideration in respect of Disposition Overage is to be paid by NH or its successor in title (as the case may be) to the Council by way of telegraphic transfer to the Council's Bank on or before 10 Working Days from the completion date of the Disposition or Dispositions.**

### **3.4 Change of Use Overage**

**3.4.1 Additional Consideration in respect of change of use overage will become payable if within the Overage Period NH (or any of its successors in title) obtains a planning permission for the development of the Property which permits a development where more than 20% of the development in terms of Gross Internal Area is for non-residential use (meaning any use other than C3(a) based on the**

Town and Country Planning (Use Classes) Order 1987 (as amended in 2005, 2006 and 2010) and including for the avoidance of doubt student accommodation) (alterations and variations agreed with the Council pursuant to this Agreement excepted) AND which will increase the value of the Property at the date of the grant of such planning permission to a sum which is more than the Purchase Price AND the period of three months and two Working Days has elapsed since the planning permission was granted and no Court Application has been made or, if a Court Application has been made it is finally disposed of and the permitted development includes more than 20% non-residential use ("the Relevant Date").

3.4.2 The Additional Consideration will be 50% of the increase in value calculated in accordance with the following formula:

$$AC = ((MV - PP) \times 50\%) - POV$$

Where:

AC = the Additional Consideration

MV = the Market Value of the Property calculated in accordance with paragraph 3.4.3

PP = the Purchase Price

POV = Previously Paid Overage

AND the following worked example illustrates how this is calculated:

$$MV = \text{£}10,000,000$$

$$AC = (\text{£}10,000,000 - \text{£}7,505,000) \times 50\% = \text{£}2,495,000 \times 50\% = \text{£}1,247,500 - \text{any POV}$$

3.4.3 The value of the Property at the date of the grant of the planning permission referred to in paragraph 3.4.1 above will be calculated by an independent surveyor such surveyor to be appointed within 21 Working Days of the grant of the planning permission referred to in paragraph 3.4.1. above in accordance with paragraph 4 of this Schedule on the basis of the Market Value of the Property with the

benefit of the planning permission referred to in paragraph 3.4.1 above

3.4.4 The Additional Consideration in respect of Change of Use Overage will be paid by NH to the Council by way of telegraphic transfer to the Council's Bank within 10 Working Days of the date of the independent surveyor's valuation or, if later, the Relevant Date

3.4.5 NH agrees to inform the Council if it obtains a planning permission during the Overage Period for a development at the Property which is not substantially the same as the scheme details of which are set out in Clause 16.2.1 of this Agreement

### 3.5 Commercial Overage

3.5.1 Additional Consideration in respect of Commercial Overage will become payable if within the period of two years commencing on the date of completion of the Lease ('Commercial Overage Period') NH (or any of its successors in title) grants a lease or leases or an agreement for lease or an option to grant a lease of all or any of the Commercial Space

3.5.2 Additional Consideration in respect of Commercial Overage shall be calculated at the end of the Commercial Overage Period or, if earlier, following disposal of the total Commercial Space and payable within one month if application of the following formula results in a positive figure:

$$AC = ((VPSF \times GIA1) - (150 \times GIA2)) \times 50\%$$

Where :

AC = the Additional Consideration

VPSF = Capital Value per square foot of the Commercial Space which is the subject of the lease or leases or option or agreement for lease calculated by multiplying the rent per square foot by a yield rate to be determined by agreement between the parties and in the absence of agreement to be decided by reference to a third party expert appointed in accordance with paragraph 4 of this Schedule

**GIA1 = Gross Internal Area of the Commercial Space which is the subject of the lease or leases or option or agreement for lease**

**GIA2 = Gross Internal Area of the total Commercial Space**

**And the following worked examples illustrate how this is calculated:**

**Scenario 1 – All units totalling 9,630sqft of commercial space is let 6 months post PC with an average capital value of £210psqft.**

$$\begin{aligned} AC &= ((210 \times 9630) - (150 \times 9630)) \times 50\% \\ AC &= 2,022,300 - 1,444,500 \times 50\% \\ AC &= \text{£}288,900 \end{aligned}$$

**Scenario 2 – Half the units (4,815sqft) are let 6 months post PC with an average capital value of £210. The other half (4,815sqft) remain empty at 2 years post PC.**

$$\begin{aligned} AC &= ((210 \times 4815) - (150 \times 9630)) \times 50\% \\ AC &= 1,011,150 - 1,444,500 \times 50\% \\ AC &= \text{£}0 \end{aligned}$$

**3.5.3 NH shall pay the Additional Consideration in respect of Commercial Overage to the Council by way of telegraphic transfer to the Council's Bank within 10 Working Days of the date on which it becomes due**

### **3.6 Interest**

**If the Additional Consideration is not paid on the due date it will bear interest at the Contract Rate from and including the relevant due date to and including the date of actual payment**

### **3.7 Calculation of Additional Consideration**

**In calculating the Additional Consideration all calculations will be made to four decimal places**

## **4 Determination of Disputes**

**If any dispute arises between the Council and NH relating to or arising out of the calculation of or entitlement to the Additional**

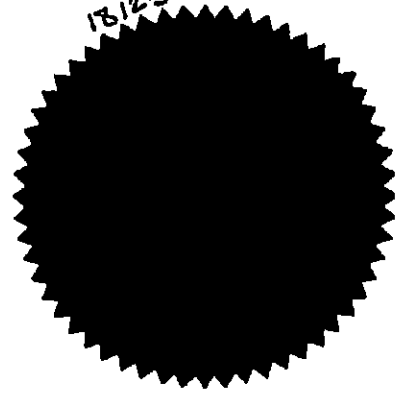
Consideration or any other matter arising under the provisions of this Schedule the Council or NH may give to the other written notice requiring the dispute to be determined by an independent surveyor to be appointed under the provisions of clause 21 of this Agreement

## **SCHEDULE 2**

### **Land Registry restriction**

No disposition of the registered estate by the proprietor of the registered estate, or the proprietor of any registered charge, is to be registered without a certificate signed by the London Borough of Southwark or its solicitors or Lewis Silkin Solicitors that either (i) the terms of paragraph 2.2 of Schedule 1 of an Agreement dated ***[date of this Agreement]*** made between the Mayor and Burgesses of the London Borough of Southwark (1) and Notting Hill Housing Ownership Limited (2) have been complied with; or (ii) that the disposition is an Exempt Disposal as defined in that Agreement

18/25



Executed as a deed by affixing )  
the Common Seal of NOTTING )  
HILL HOME OWNERSHIP )  
LIMITED in the presence of: )  
)

Authorised signatory *[Signature]*

Authorised signatory *[Signature]*