

Appendix 5
Draft Legal Charge



EVERSHEDS

Dated

2014

- (1) Notting Hill Housing Trust
- (2) The Mayor and Burgesses of the London Borough of Southwark

Legal charge

relating to property known as [Plot []] Aylesbury Estate Southwark

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PARTICULARS

Date

Mortgagor

Notting Hill Housing Trust (registered number IP16558R) whose registered office is at Bruce Kenrick House 2 Killick Street London N1 9FL.

Mortgagee

The Mayor and Burgesses of the London Borough of Southwark of 160 Tooley Street London SE1 2QH

Lease

A lease dated [DATE] made between (1) the Mortgagee and the Mortgagor and (2) [NAME OF TENANT] together with any deeds and documents now or at any time after the date of this Legal Charge varying or supplemental or ancillary to that lease.

**Development
Agreement**

Partnership A development partnership agreement dated [DATE] made between (1) the Mortgagee and (2) the Mortgagor

Property

The leasehold property known as [Plot [] Aylesbury Estate forming part of the freehold land registered under the Title Numbers

Title Numbers

[TITLE NUMBER(S)].

THIS LEGAL CHARGE is made on the date set out in the Particulars

BETWEEN

- (1) the Mortgagor; and
- (2) the Mortgagee.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Defined terms

In this Legal Charge, the following words and expressions have the following meanings:

"1925 Act"

Law of Property Act 1925

"Charged Property"

the Property, debts, rights and undertaking charged to the Mortgagee by the Mortgagor by this Legal Charge and includes, where applicable, any property charged by any other security given to the Mortgagee by the Mortgagor

"Event of Default"

any of the events of default set out in **clause 5.1**

"Expenses"

all fees proper and reasonable legal and professional fees and unpaid interest and all other expenses and costs, on a full indemnity basis, together with Value Added Tax, incurred in connection with:

- (a) taking, perfecting, enforcing or exercising any power under this Legal Charge; or
- (b) any breach of any provision of and the protection, realisation or enforcement of this Legal Charge

"Insolvency Act"

Insolvency Act 1986

"Interest"

interest calculated in accordance with the Development Partnership Agreement and a

Secured Amount as per limb (i) of that definition as may be agreed from time to time between the parties and if not agreed in accordance with the usual practice of the Mortgagee from time to time both before and after judgment

"Letting"

any lease of the whole or any part of the Property and includes:

- (a) any underlease, sublease, tenancy or licence and any agreement for a lease, underlease, sublease, tenancy or licence; and
- (b) any agreement for the sharing of occupation of the Property.

"Permitted Disposal"

means a Planning Agreement or the disposal by way of a lease or otherwise of any interest in the Property (including without limitation contracts for) in respect of:-

- (a) sites for Service Installations required for a development of the Property to be a Relevant Authority; and/or
- (b) areas of open space to be adopted by a Relevant Authority or areas on which any community facility is required to be provided pursuant to a Planning Agreement which is necessary in order to implement a Planning Permission; and/or
- (c) land required to be disposed of to comply with a Planning Agreement which is necessary in order to implement a Planning Permission; and/or
- (d) land to be disposed of to a highway authority for the purpose of adoption of roads and footpaths and/or cycleways to be constructed on the

Property; and/or

- (e) any Unit or Units which have been constructed; and/or
- (f) easements or wayleaves; and/or
- (g) heat and power plant.

"Planning Agreement"

an agreement obligation or undertaking in respect of and affecting the Property to be made pursuant to any one or more of the following:-

- (a) section 106 of the 1990 Act;
- (b) section 38 and/or section 278 Highways Act 1980 and/or section 104 Water Industry Act 1991;
- (c) section 33 Local Government (Miscellaneous Provisions) Act 1982;
- (d) any agreement with the local water authority or other Relevant Authority as to the water supply to or drainage of surface water and effluent from the Property or any agreement with any Relevant Authority relating to any of the Services.

"Planning Permission"

any planning permission for development of the Property.

"Receiver"

any receiver or manager appointed by the Mortgagee under this Legal Charge or pursuant to any statute, including the 1925 Act but does not include an administrative receiver

"Relevant Authority"

any authority or body or company (whether public or otherwise) having jurisdiction in each instance in respect of the matter referred to or any aspect of it including, without prejudice to the generality of the foregoing, the highways authority, the planning authority, the drainage undertakings, the gas, water, electricity and

telecommunications suppliers and any other authority, body or company to whom the powers of such authority, body or company are delegated.

"Secured Amounts"

all monies, obligations, liabilities whatsoever for principal, interest or otherwise which may now or at any time in the future be due, owing or incurred by the Mortgagor to the Mortgagee under the Development Partnership Agreement or any other agreement or arrangement between the Mortgagor and the Mortgagee payable in relation to the Property:

(a) whether:

(i) present or future, actual or contingent;

(ii) alone or jointly or severally with others;

(b) in whatever name or style; and

(c) together with all Expenses and Interest

"Security"

any legal charge, debenture, mortgage, pledge, hypothecation, lien, assignment or other form of security or trust arrangement granting any legal or equitable charge over the Charged Property, whether fixed or floating, or conferring priority of payment

"Services"

means the drainage of surface water and effluent and the supply of water, gas, electricity and telephone and telecommunications services and any other date.

"Service Installation"

ditches, sewers, drains, pipes, manholes, culverts, ponds, soakaways, channels, watercourses, conduits, pumping stations, balancing facilities, channels, pipes, outlets, mains, wire, cables, ducts, flues, poles,

ventilation shafts, electricity substations, gas governors and all other ancillary equipment and apparatus now or within the perpetuity period to be laid and used for the conduct of Services.

"Warranties"

the warranties given by the Mortgagor to the Mortgagee in **clause 8**

"Working Days"

means Monday to Friday inclusive excluding public holidays and the period between 23rd December and 2nd January inclusive.

1.2 Construction

In this Legal Charge:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Legal Charge and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
 - 1.2.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
- 1.2.4 references to the Mortgagee and the Mortgagor include their respective successors in title to this Legal Charge and, in the case of individuals, their personal representatives.
- 1.2.5 references to the Property and the Charged Property include any part of them;
- 1.2.6 references to this Legal Charge include any deeds and documents varying or supplemental or ancillary to this Legal Charge or entered into pursuant to the terms of this Legal Charge;

- 1.2.7 references to the powers of the Mortgagee or the Receiver are references to the respective powers, discretions and rights given to the Mortgagee or a Receiver under this Legal Charge, the 1925 Act, the Insolvency Act or otherwise given to or exercisable by the Mortgagee or the Receiver;
- 1.2.8 "including" means "including, without limitation";
- 1.2.9 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the Mortgagee or any Receiver and all proper and reasonable costs, damages, expenses, liabilities and losses incurred by the Mortgagee or any Receiver;
- 1.2.10 where two or more persons form a party to this Legal Charge, the obligations they undertake may be enforced against them all jointly or against each individually; and
- 1.2.11 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Legal Charge is to be unaffected.

1.3 Particulars

The Particulars form part of this Legal Charge and words and expressions set out in the Particulars are to be treated as defined terms in this Legal Charge.

1.4 Effect of this Legal Charge

This Legal Charge is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other security or guarantee which the Mortgagee may now or at any time after the date of this Legal Charge hold for or in respect of the Secured Amounts.

1.5 Contracts (Rights of Third Parties) Act 1999

The parties to this Legal Charge do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. CHARGE

2.1 Covenant to pay

The Mortgagor covenants with the Mortgagee to pay the Secured Amounts to the Mortgagee together with interest to and including the date of discharge within 10 Working Days of the due date for payment in accordance with the terms of the Development Partnership Agreement.

2.2 Charges

The Mortgagor with full title guarantee charges to the Mortgagee the Property by way of first fixed legal mortgage.

2.3 Continuing security

This Legal Charge is made for securing the payment and discharge of Secured Amounts. It is a continuing security and will not be discharged by any payment on account of the whole or any part of the Secured Amounts.

2.4 Release

If and when no further Secured Amounts are due to the Mortgagee and the Mortgagor has paid all Secured Amounts which have become due to the Mortgagee, the Mortgagee will at the request of the Mortgagor release the Charged Property from this Legal Charge.

2.5 Land Registry restriction

The Mortgagor is to apply to the Land Registrar on Land Registry form RX1 to enter a restriction on the register of the title number allocated to the Property by the Land Registry in the following Land Registry standard form:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [*date of this Legal Charge*] or a conveyancer."

3. COVENANTS

3.1 Restriction on further security

The Mortgagor is not to create or permit any further Security to be created in or over the Charged Property save in accordance with the Development Partnership Agreement.

3.2 Disposals of the Property

The Mortgagor is not to sell or otherwise dispose of the Property or any legal or equitable interest in the Property without the consent of the Mortgagee other than any Permitted Disposal which may be made without any consent and when made shall be free of this Legal Charge.

3.3 Insurance of the Property

The Mortgagor is to insure the buildings and fixed plant, machinery and fixtures forming part of the Property in accordance with the Development Partnership Agreement.

3.4 Repair and condition of the Property

The Mortgagor is to keep all buildings and fixed plant, machinery and fixtures forming part of the Property in a good state of repair and condition as is consistent with a well managed construction site.

3.5 Alterations

The Mortgagor is not without the prior written consent of the Mortgagee to carry out any development on the Property within the meaning of section 55 Town and Country Planning Act 1990 save as permitted pursuant to the Development Partnership Agreement.

3.6 Rights of access

The Mortgagor is to permit the Mortgagee and any Receiver to enter and remain on the Property with or without workmen, plant and materials to carry out any inspection, survey or valuation of the Property, to ascertain whether any breach of the covenants in this **clause 3** has occurred and to remedy, at the Mortgagor's cost, any breach of these covenants which has occurred.

3.7 Expenses

The Mortgagor is to pay all Expenses due to the Mortgagee within 10 Working Days of demand. If the Mortgagor does not do so, the Expenses will bear Interest from and including the date of demand to and including the date of actual payment.

4. VARIATION OF STATUTORY POWERS

4.1 Consolidation of mortgages

The restrictions on the consolidation of mortgages in section 93 of the 1925 Act do not apply to this Legal Charge.

4.2 Power of leasing

The restriction on the powers of the Mortgagee or the Receiver to grant Leases or to accept the surrender of Leases in sections 99 and 100 of the 1925 Act do not apply to this Legal Charge.

4.3 Power of sale

For the purposes only of section 101 of the 1925 Act, the Secured Amounts become due and the statutory power of sale and other powers of enforcement arise immediately following an Event of Default.

4.4 Exercise of power of sale

Section 103 of the 1925 Act does not apply to this Legal Charge and all moneys secured by this Legal Charge are immediately payable immediately following an Event of Default.

4.5 Protection for buyers

A buyer from, tenant or other person dealing with the Mortgagee or the Receiver will not be concerned to enquire whether any of the powers which they have exercised or purported to exercise have arisen or become exercisable.

4.6 Mortgagee's powers

The power of sale and the other powers conferred by the 1925 Act or otherwise are extended and varied to authorise the Mortgagee in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do under this Legal Charge.

5. EVENTS OF DEFAULT

5.1 This Legal Charge will become immediately enforceable and the powers of the Mortgagee and the Receiver exercisable in any of the following events:

5.1.1 the Mortgagor does not pay the Secured Amounts in accordance with this Legal Charge;

5.1.2 an Event of Default as defined in the Development Partnership Agreement.

6. APPOINTMENT OF RECEIVERS

6.1 Appointment of receivers

At any time after the Mortgagee's power of sale has become exercisable, the Mortgagee may appoint one or more than one Receiver in respect of the Charged Property.

6.2 Removal of restrictions on appointment

None of the restrictions imposed by the 1925 Act in relation to the appointment of receivers or to the giving of notice or otherwise will apply.

6.3 Joint and several powers

If more than one Receiver is appointed the Receiver may act jointly and severally or individually.

6.4 Additional or alternative receivers

The Mortgagee may remove the Receiver and appoint another Receiver and the Mortgagee may also appoint an alternative or additional Receiver.

6.5 Agent of the Mortgagor

The Receiver will, so far as the law permits, be the agent of the Mortgagor.

6.6 Mortgagor's liability

The Mortgagor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver.

6.7 Liability for default

The Mortgagee will not be responsible for any misconduct, negligence or default of the Receiver.

6.8 Continuation of powers following liquidation or bankruptcy

The powers of the Receiver will continue in full force and effect following the liquidation or bankruptcy of the Mortgagor.

6.9 Receiver's remuneration

The remuneration of the Receiver may be fixed by the Mortgagee but will be payable by the Mortgagor. The amount of the remuneration will form part of the Secured Amounts.

6.10 General powers of a Receiver

A Receiver will have the power on behalf and at the cost of the Mortgagor:

- 6.10.1 to do or omit to do anything which the Mortgagor could do or omit to do in relation to the Property; and
- 6.10.2 to exercise all or any of the powers conferred on the Receiver or the Mortgagee under this Legal Charge or conferred upon receivers by the Insolvency Act, the 1925 Act or any other statutory provision (whether or not the Receiver was appointed pursuant to the relevant statutory provision).

6.11 Specific powers of a Receiver

Without limitation to the powers of the Receiver, the Receiver will have full power and discretion:

- 6.11.1 to take possession of and generally manage the Charged Property;
- 6.11.2 to carry out on the Property any new works or complete any unfinished works of building, reconstruction, maintenance, furnishing or equipment;
- 6.11.3 to purchase or acquire any land and purchase, acquire or grant any interest in or right over land;
- 6.11.4 to sell, charge, grant or accept surrenders of leases, licences to occupy or franchises or otherwise deal with and dispose of the Charged Property without restriction
- 6.11.5 to carry into effect and complete any transaction by executing deeds or documents in the name of or on behalf of the Mortgagor;
- 6.11.6 to take, continue or defend any proceedings, enter into any arrangement or compromise and, where appropriate, refer any dispute to arbitration or expert determination;
- 6.11.7 to remove, store, sell or otherwise deal with any fixtures and fittings;
- 6.11.8 to insure the Charged Property and any works and effect indemnity insurance or other similar insurance and obtain bonds and give indemnities and security to any bondsmen;
- 6.11.9 to employ advisers, consultants, managers, agents, workmen and others on such terms and for such remuneration as the Receiver in the Receiver's absolute determination thinks fit;
- 6.11.10 to purchase materials, tools, equipment, goods or supplies on such terms and at such price as the Receiver in the Receiver's absolute determination thinks fit;
- 6.11.11 to borrow moneys from the Mortgagee or others on the security of the Charged Property or otherwise on such terms as the Receiver may in the Receiver's absolute discretion think fit for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Charge or for any other purpose; and
- 6.11.12 to do any other acts which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation of the Charged Property.

6.12 Application of proceeds

Sections 109(6) and 109(8) of the 1925 Act will not apply to a Receiver appointed under this **clause 6**.

7. DISTRIBUTIONS

7.1 Subject to section 176A Insolvency Act, the net proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Amounts, be applied in or towards discharging in the following order of priority:

- 7.1.1 the costs, charges and expenses incurred and payments made by the Receiver in connection with or as a result of the exercise of the Receiver's powers and the costs, charges and expenses of and incidental to the Receiver's appointment;
- 7.1.2 the remuneration of the Receiver;
- 7.1.3 the Secured Amounts in such order as the Mortgagee may determine; and
- 7.1.4 the claims of those entitled to any surplus.

8. WARRANTIES

8.1 The Mortgagor warrants to the Mortgagee that:

- 8.1.1 neither the execution of this Legal Charge by the Mortgagor nor compliance with its terms will:
 - 8.1.1.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other obligation or duty to which the Mortgagor is bound; or
 - 8.1.1.2 cause any limitation on any of the powers of the Mortgagor or on the right or ability of the directors of the Mortgagor to exercise those powers to be exceeded;
- 8.1.2 all consents required by the Mortgagor for the execution, delivery, issue, validity or enforceability of this Legal Charge have been obtained and have not been withdrawn;
- 8.1.3 no person having any charge or other form of security over the Property or any other assets of the Mortgagor has enforced or given notice of its intention to enforce such security; and
- 8.1.4 no Event of Default has occurred or is continuing.

9. EXCLUSION OF LIABILITY

9.1 Liability for loss and damage

Neither the Mortgagee nor any Receiver will be liable to the Mortgagor for any loss or damage incurred by the Mortgagor arising out of the exercise of their respective powers or any attempt or failure to exercise those powers.

9.2 Mortgagor's indemnity

The Mortgagor agrees with the Mortgagee to indemnify the Mortgagee and any Receiver in respect of:

9.2.1 any exercise of the powers of the Mortgagee or the Receiver or any attempt or failure to exercise those powers; and

9.2.2 anything done or omitted to be done in the exercise or purported exercise of the powers under this Legal Charge or under any appointment duly made under the provisions of this Legal Charge.

10. POWERS

10.1 Execution of documents

The Receiver will have power, either in the name of the Mortgagor or in the name of the Receiver, to execute documents and do all acts or things which may be necessary under this Legal Charge or in exercise of the Receiver's powers.

10.2 Time for compliance

The Mortgagee may from time to time waive or authorise, on such terms and conditions, if any, as it deems expedient, any breach or proposed breach by the Mortgagor of the Mortgagor's obligations or conditions contained in this Legal Charge without prejudice to the Mortgagee's rights and remedies in respect of any subsequent breach of them.

10.3 Other indebtedness

The Mortgagor authorises the Mortgagee to receive from the holder of any prior or subsequent charge details of the state of account between such holder and the Mortgagor.

10.4 No liability as mortgagee in possession

Entry into possession of the Property, for whatever reason, will not render the Mortgagee or any Receiver liable to account as mortgagee in possession.

10.5 Independence of Legal Charge

This Legal Charge is entered into as an entirely separate document to any other arrangement which might be entered into from time to time between the Mortgagee and the Mortgagor or the Mortgagee and any other person. Irrespective of the validity or enforceability of any such other arrangement the Mortgagor and the Mortgagee declare that, and it is intended that, this Legal Charge will remain as a valid security and in full force and effect in any event.

10.6 Power to open new account

If the Mortgagee receives notice of a subsequent mortgage or charge relating to the Property, it will be entitled to close any account and to open a new account in respect of the closed account. If the Mortgagee does not open such new account, it will be treated as if it had done so at the time when it received such notice and:

10.6.1 no monies credited to the new account after the date of such notice will be appropriated towards, or have the effect of discharging, the monies owing to the Mortgagee upon the closed account; and

10.6.2 the opening of any new account by the Mortgagee will not prejudice any right or remedy of the Mortgagee arising as a result of a default by the Mortgagor.

10.7 Consolidation of accounts

The Mortgagee may at any time after this Legal Charge has become enforceable and without notice to the Mortgagor combine or consolidate all or any of the Mortgagor's then existing accounts with, and liabilities to, the Mortgagee and set off or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the liabilities of the Mortgagor to the Mortgagee on any other account or in any other respects. The Mortgagee is to notify the Mortgagor in writing that such a transfer has been made.

10.8 Use and disposal of chattels

If the Mortgagee or the Receiver obtains possession of the Property, the Mortgagee or the Receiver may use and remove, store or sell any chattels on the Property without being under any liability to the Mortgagor other than to account for the net proceeds of the sale. All expenses and liabilities incurred by the Mortgagee or the Receiver in connection with the removal, storage and sale of the chattels will form part of the Secured Amounts.

10.9 Severance of fixtures

Upon any sale or other disposition in exercise of the powers contained or implied by this Legal Charge the Mortgagee or any Receiver may sever any fixtures from the Property and sell them apart from the Property without taking possession of the Property and apply the net proceeds of such sale in or towards satisfaction of the Secured Amounts.

11. NOTICES

11.1 Form of notices

Any notice served under this Legal Charge is to be:

11.1.1 in writing;

11.1.2 signed by an officer of the party serving the notice or by its solicitors;

11.1.3 delivered by hand, first class post, pre-paid or recorded delivery or fax at the address of the party on whom it is served set out above or such other address which they may notify in writing to the other parties at any time.

11.2 Time of receipt

If a notice is received after 4.00 pm on a working day, or on a day which is not a working day, it is to be treated as having been received on the next working day.

11.3 Deemed receipt

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

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

11.3.2 if sent by post, on the second working day after posting; or

11.3.3 if sent by fax, at the time of transmission.

12. LAW AND JURISDICTION

12.1 Governing law

This Legal Charge is to be governed by and interpreted in accordance with English law.

12.2 Jurisdiction

The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Legal Charge. This clause operates for the benefit of the Mortgagee who retains the right to sue the Mortgagor and enforce any judgment against the Mortgagor in the courts of any competent jurisdiction.

13. EXECUTION

The Mortgagee and the Mortgagor have executed this Legal Charge as a deed and it is delivered on the date set out in the Particulars.

EXECUTED as a deed by affixing)
the common seal of)
The Mayor and Burgesses of the London)
Borough of Southwark)
In the presence of:)

Authorised Signatory

SIGNED as a deed by)
Notting Hill Housing Trust)
acting by a director and its secretary)
or two directors)

Director

Director / Secretary