

## **Appendix 6**

### **Draft Private Rental Deed**



Dated

2014

(1) The Mayor and Burgesses of the London Borough of Southwark

(2) [NAME OF PARTY 2]

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## Private Rental Deed

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relating to Unit [ ] [Plot [ ]] Aylesbury Estate Southwark [Address  
details to be amended]

## PARTICULARS

**Date**

**Council**

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

**Owner[s]**

[NAME OF PARTY 2] [(registered number [COMPANY NUMBER])] whose registered office is at][of] [ADDRESS].

***[This is to be the party that acquires the Sub-Plot Underlease for the Private Rental Units]***

***[DN: addressee details to be inserted]***

**Additional Overage**

has the same meaning given to it in the Principal Deed.

**Permitted Disposal**

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

- (a) sites for Service Installations required for a development of the Premises 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 Premises; and/or
- (e) easements or wayleaves;
- (f) heat and power plant;
- (g) mortgage or charge; and/or

(h) any Private Rental Use tenancy.

**Planning Agreement**

an agreement obligation or undertaking in respect of and affecting the Premises 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.

**Premises**

the premises known as [Unit [ ]][Plot [ ]]. Aylesbury Estate, Southwark. ***[DN: Address details to be modified on a plot specific basis]***

**Private Rental Use**

the first letting of the Premises on short term tenancies of no greater than ten years on the open market for private residential purposes.

**Private Rental Use Period**

the period of ten years from the date of the Principal Deed.

**Principal Deed**

a Development Partnership Agreement dated [DATE] made between (1) the Council and (2) Notting Hill Housing Trust.

**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.

**Service Installation**

ditches, sewers, drains, pipes, manholes, culverts, ponds, soakaways, channels, watercourses, conduits, pumping stations, balancing facilities, channels, pipes, outlets, main,

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.

**Services**

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

**Statute**

all or any of the following:

- (a) any Acts of Parliament and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws and permissions for the time being made under or deriving validity from any Act of Parliament;
- (b) any European directive or regulations and rules having the force of law in the United Kingdom; and
- (c) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over Private Rental Use.

**Step-In Agreement**

an agreement so named dated [     ] day of [     ]  
[     ] made between [     ]  
[     ] or such agreement as may  
be entered into in accordance with the Principal Deed after  
the date hereof.

**THIS DEED** is made on the date set out in the Particulars

**BETWEEN**

- (1) The Council; and
- (2) The Owner[s].

**BACKGROUND**

- (A) Pursuant to the Principal Deed, Notting Hill Housing Trust (being the developer of the Premises) has agreed with the Council that the Premises are not to be used other than for Private Rental Use for the Private Rental Use Period unless Additional Overage is paid to the Council;
- (B) This Deed requires the Owner to comply with the requirement for the Premises to be used for Private Rental Use.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

**1.1 In this Deed:**

- 1.1.1 the clause headings do not affect its interpretation;
- 1.1.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.1.3 references to any statute or statutory provision include references to:
  - 1.1.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
  - 1.1.3.2 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;
- 1.1.4 references to the Premises include any part of them;
- 1.1.5 "including" means "including, without limitation";
- 1.1.6 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the Council and all costs, damages, expenses, liabilities and losses incurred by the Council;

- 1.1.7 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each individually; and
  - 1.1.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed is to be unaffected.
- 1.2 The Particulars form part of this Deed and words and expressions set out in the Particulars are to be treated as defined terms in this Deed.
2. The parties to this Deed 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.
3. **OWNER'S COVENANT**
  - 3.1 The Owner[s] covenants [jointly and individually][***DN: wording in square brackets to be included where plural Owners only***] with the Council that the Owner for the Private Rental Period:
    - 3.1.1 subject to clause 7.3 and clause 3.1.2 will not use the Premises for any other use other than Private Rental Use and will indemnify the Council against all actions, claims, demands and proceedings taken or made against the Council and all costs, damages, expenses, liabilities and losses arising from their breach; and
    - 3.1.2 will not transfer or otherwise dispose of the Premises without ensuring that any transferee or other person to whom a disposal is made enters into a direct covenant with the Council on the terms of this Deed other than any Permitted Disposal.
  - 3.2 The Owner will not be liable for any breach of the requirements of clause 3.1 after it has transferred the whole of its interest in the Premises so long as it procures that its immediate successor in title enters into a deed of covenant with the Council on or before the date of such transfer on the same terms as this Deed.
  - 3.3 Neither the owner nor any person succeeding or deriving title therefrom shall be in breach of this Deed in the event that the terms of a Private Rental Use are required to be modified by Statute or are deemed modified by Statute.
4. **LAND REGISTRY APPLICATION**
  - 4.1 The Owner is to apply to the Land Registrar on form RX1 for a restriction to be entered onto the title number allocated to the Owner's legal interest in the

Premises in priority to any other interests and in the following Land Registry standard form:

"No disposition of the part of the registered estate shown edged red on the plan by the proprietor of the registered estate, or by the proprietor of any registered charge is to be registered without a certificate signed by The Mayor and Burgesses of the London Borough of Southwark of 160 Tooley Street London SE1 2QH or a conveyancer that the provisions of **clause 3.1** of this Deed have been complied with or that they do not apply to the disposition."

4.2 The Council are to take the necessary steps to release the restriction referred to at clause 5.1 above on request of the Owner where:

4.2.1 The Private Rental Use Period has expired; or

4.2.2 Additional Overage for the Premises has been determined in accordance with the provisions of the Development Partnership Agreement and has been paid to the Council;

4.2.3 Subject to and in accordance with any Step-In Agreement.

## 5. **NOTICES**

5.1 Any notice served under this Deed is to be:

5.1.1 In writing;

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

5.1.3 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.

5.2 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.

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

5.3.1 If delivered by hand, at the time of delivery;

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

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



6. **ASSIGNMENT**

- 6.1 The Council may at any time assign the benefit of this Deed, without the consent of the Owner to its successors in title to the Property.
- 6.2 The Owner may not assign the benefit of this Deed or hold it in trust for any other person and in accordance with the Principal Deed or a Step-In Agreement.

7. **OTHER**

- 7.1 The Owner may propose to the Council for its approval such approval not to be unreasonably withheld amendments to the form of this Deed required to facilitate conclusion of a Step-In Agreement.
- 7.2 Notwithstanding Additional Overage (if any) the Council shall not have a vendor's lien.
- 7.3 This Deed shall cease to be of any further force or effect on payment of the full amount of any Additional Overage payable in relation to the Premises in accordance with paragraph 5.6 of Part 1 of Schedule 4 to the Principal Deed whereupon the Owner shall have no further liability under the terms of this Deed and may apply to cancel the Restriction registered against the title to the Premises at the Land Registry and the Council will at the request of the Developer enter into a deed of release of the provisions of this Deed in such form proposed by the Developer and approved by the Council such approval not to be unreasonably withheld.

8. **ENFORCEMENT**

- 8.1 This Deed is to be governed by and interpreted in accordance with English law.
- 8.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

9. **EXECUTION**

The Council and the Owner have executed this Deed 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*

*Signature of director/secretary*

Signed as a deed by  
**[NAME OF COMPANY / LLP]**  
acting by two directors or  
one director and its secretary

*Signature of director*

*Signature of director/secretary*

Signed as a deed by  
**[NAME OF INDIVIDUAL]**

In the presence of:

*Signature of [individual]*

Witness Signature:

Witness Name:

Witness Address: