

DEED dated 3 November 2008

BY:

NOTTING HILL HOME OWNERSHIP LIMITED (an Industrial and Provident Society registered under number IP23066R) whose registered office is at 1 Butterwick Hammersmith London W6 8DL ("the Developer")

RECITALS:

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Property is situated
- (B) The Developer owns the leasehold interest in the piece or parcel of land known as the basement, car park and ramp leading to the rear service yard, part of the ground floor and the whole of the first second and third floors of the building known as Standor House 272-286 London Road and 25 Raleigh Gardens Mitcham Surrey CR4 3NB ("the Property") pursuant to a lease granted for a term of 999 years from 18 October 2007 by West Norfolk Tomatoes Limited to the Developer. The Property is in the course of registration at the Land Registry. Three plans showing the Property edged in red are annexed.
- (C) The Developer applied to the Council by written application reference number 07/P3488 dated 9th November 2007 ("the Application") for permission for the Development
- (D) The Council refused to grant a planning permission pursuant to the Application by notice dated 16 July 2008
- (E) The Developer has appealed against the refusal under section 78 of the Act.

NOW THIS DEED WITNESSES as follows:

1 In this Deed the following expressions shall have the meanings given to them in this clause::

"Act"	The Town and Country Planning Act 1990 as amended from time to time or any subsequent re-enactment of that Act;
"Affordable Housing Criteria"	housing for any person or persons on a low or moderate income whose income is insufficient to enable them to afford to purchase or rent or Occupy a residential house or flat generally available on the open market within the administrative area of the Council;
"Affordable Housing Units"	nine flats comprising five 2-bed and four 1-bed shared ownership units forming part of the Development to be constructed on the Property that are available for sale and/or

letting by a Registered Social Landlord to persons meeting the Affordable Housing Criteria under a lease or leases and/or tenancy or tenancies which are in such a form or forms as shall render the Registered Social Landlord eligible to obtain Social Housing Grant from the Housing Corporation in respect of such lease or leases and/or tenancy or tenancies (and for the avoidance of doubt the Registered Social Landlord shall, in respect of each unit, be entitled to choose whether to grant a lease or a tenancy of that unit);

- "Appeal" the appeal against the refusal by the Council to grant a planning permission pursuant to the Application;
- "Borough" the area administered by the Council
- "Council" the Mayor and Burgesses of the London Borough of Merton of the Civic Centre London Road Morden Surrey SM4 5DX
- "Development" the development to be carried out on the Property in accordance with the Planning Permission comprising the conversion of the first floor and part of the second and third floors from offices to 16 self-contained flats and an extension of part of the fourth floor to contain an additional two flats;
- "Education Contribution" the sum which is the greater of
- (a) THREE THOUSAND ONE HUNDRED AND TWENTY POUNDS SEVENTY PENCE (£3,120.70); and
 - (b) THREE THOUSAND ONE HUNDRED AND TWENTY POUNDS SEVENTY PENCE (£3,120.70) increased by the percentage increase (if any) in the Index Figure between the Initial Index Month and the Final Index Month;
- payable by the Developer to the Council for improved or additional education provision in the Borough;
- "Final Index Figure" the month which is three months before the date of Implementation;
- "Head of Planning" the Council's Head of Planning and Public Protection or other duly authorised officer of the Council;

"Implementation"	the implementation of the Development by the carrying out of a Material Operation ("Implement" shall be construed accordingly and the date of such implementation shall be referred to as the "Implementation Date");
"Index"	the Index of Retail Prices published by the Office for National Statistics or any successor government department on whom the duties in connection with the Index may devolve (or any successor mechanism for calculating inflationary change to that index from time to time);
"Index Figure"	the "all items" index figure of the Index;
"Initial Index Month"	the month which is three months before the date of grant of the Planning Permission;
"London Boroughs"	means the London Boroughs of Croydon, Kingston, Lambeth, Merton, Richmond and Sutton and Wandsworth;
"Material Operation"	a material operation in relation to the Development as defined by Section 56 of the Act but excluding any works relating to Property demolition, clearance, Property security and environmental geo-technical or archaeological surveys and inspections or works;
"Market Residential Units"	the flats to be constructed on the Property which are not Affordable Housing Units;
"Occupation"	means Occupation for the purposes permitted by the Planning Permission but not including Occupation for construction fitting out decoration or security purposes (and the terms "Occupy" and "Occupied" shall be construed accordingly);
"Open Space Contribution"	<p>the sum which is the greater of</p> <p>(a) TWENTY TWO THOUSAND FIVE HUNDRED POUNDS (£22,500.00); and</p> <p>(b) TWENTY TWO THOUSAND FIVE HUNDRED POUNDS (£22,500.00) increased by the percentage increase (if any) in the Index Figure between the Initial Index Month and the Final Index Month;</p> <p>payable by the Developer to the Council for the Open Space Works;</p>

"Open Space Works"	improvements to public open space(s) in the vicinity of the Property;
"Person or Persons"	an individual person who is 18 years or over and for the avoidance of doubt excludes a body or persons corporate or unincorporated
"Person or Persons with a South West Sub-Region Connection"	<ol style="list-style-type: none"> 1. a person or persons who immediately prior to taking up Occupation of an Affordable Housing Unit <ol style="list-style-type: none"> (i) was resident within the London Boroughs; or (ii) was employed within the London Boroughs; or (iii) had one or more parent children brothers or sisters resident in the London Boroughs or 2. a person or persons who were resident in the London Boroughs during at least six months in the period of twelve months expiring on the date on which the person takes up Occupation of an Affordable Housing Unit; or 3. a person or persons who were resident in the London Boroughs during at least three years in the period of five years expiring on the date on which the person takes up Occupation of an Affordable Housing Unit;
"Plan"	the plan annexed hereto marked Plan in the First Schedule;
"Planning Permission"	the notice of permission to be issued by the Council or the Secretary of State pursuant to the Application and/or Appeal and the date of grant of the Planning Permission shall be the date on which the notice is issued;
"Registered Social Landlord"	means any social landlord registered with the Housing Corporation under the Housing Act 1996 or if there shall no longer exist such organisations then any other organisation of a type as shall provide affordable housing (approved by the Council (such approval not to be unreasonably withheld or delayed));
"Secretary of State"	the Secretary of State for Communities and Local Government
"Schedule"	the schedule annexed hereto;

"Social Housing Grant"	capital grant provided by the Housing Corporation (or any successor body with a similar function) to fund Registered Social Landlords to develop social housing;
"Sustainable Transport Contribution"	<p>the sum which is the greater of</p> <p>(a) NINE THOUSAND POUNDS (£9,000); and</p> <p>(b) NINE THOUSAND POUNDS (£9,000) increased by the percentage increase (if any) in the Index Figure between the Initial Index Month and the Final Index Month;</p> <p>payable by the Developer to the Council for the provision of sustainable transport initiatives within the Borough</p>
"Working Day"	any day Monday to Friday inclusive which is not Christmas Day Good Friday or a statutory bank Holiday and "Working Days" shall be construed accordingly.

- 2 This Deed is made pursuant to Section 106 of the Act (and is a planning obligation for the purposes of that Section) and the Council is the local planning authority by which the provisions of this Deed are intended to be enforceable
- 3 No person shall be liable for any breach of the planning obligations contained in this Deed occurring after he has parted with his interest in the Property or the part in respect of which such breach occurs
- 4 This Deed shall come into effect only upon the grant of the Planning Permission PROVIDED ALSO THAT unless and until Implementation by the Developer nothing in this Deed shall oblige the Developer to comply with the undertaking on the Developer's part contained in clause 6 of this Deed
- 5 If the Planning Permission is quashed or is revoked or otherwise withdrawn or (without the consent of the Developer) is modified by any statutory procedure or expires before the Development has been implemented this Deed shall cease to have effect
- 6 The Developer covenants and undertakes for itself and its successors in title with the Council that the Developer will not carry out continue or procure the Development without performing and observing the obligations and other matters set out in the Schedule to this Deed
- 7 Both the positive and restrictive covenants and undertakings herein on the part of the Developer are entered into with the intent that the same shall be enforceable without limit of time not only against the Developer but also against successors in title and assigns and any person corporate or otherwise claiming through or under the

Developer an interest or estate created after the date hereof in the Property or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person

- 8 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force
- 9 This Deed is a Local Land Charge and shall be registered as such
- 10 Save where the context otherwise requires:
 - 10.1 references to any person shall include the successors in title of that party
 - 10.2 references to any person deriving title from the Developer shall only be bound by the planning obligations which are contained in this Deed to the extent that such person has a legal interest in the Property (or part of it) at the time when such obligations arise

EXECUTED AS A DEED and delivered on but not before the date of this Deed

SCHEDULE

(Restrictions and Obligations)

1. AFFORDABLE HOUSING

The Developer hereby covenants with the Council:

- 1.1 Not to cause or permit the Occupation for residential purposes of more than 50% of the Market Residential Units until the Affordable Housing Units have been constructed to a stage where they are ready to be Occupied
- 1.2 Not to cause or permit any lease or tenancy of any Affordable Housing Unit to be granted to any person or persons other than a Person or Persons with a South West Sub-Region Connection and who have a need for housing which satisfies the Affordable Housing Criteria
- 1.3 To ensure the Affordable Housing Units are available to be Occupied by persons meeting the Affordable Housing Criteria under a lease or leases and/or a tenancy or tenancies which are in such a form or forms as shall render the Registered Social Landlord eligible to obtain Social Housing Grant from the

Housing Corporation in respect of such lease or leases and/or tenancy or tenancies

- 1.4 The Affordable Housing Units shall be built to meet the requirements of the Housing Corporation as incorporated and as relevant in their requirements known as The Schemework Development Standards 2003 Edition
- 1.5 The restrictions contained in sub-clauses 1.2 and 1.3 of this Schedule shall not be binding nor enforceable against any of the following or their successors in title
 - 1.5.1 The mortgagee of the Registered Social Landlord or any receiver or manager (including an administrative receiver) of such mortgagee or any persons deriving title under them or any party who has provided loan facilities to the Registered Social Landlord and who is a mortgagee in possession of the relevant unit in the event that the mortgagee of the Registered Social Landlord or any party who has provided loan facilities to the Registered Social Landlord seeks to dispose of the relevant Affordable Housing Unit pursuant to its power of sale exercised pursuant to default of the terms of the mortgage or loan as the case may be or any such receiver seeks to dispose of the relevant Affordable Housing Unit or any person deriving title therefrom;
 - 1.5.2 An occupant of an Affordable Housing Unit who has exercised a statutory right to acquire under the Housing Act 1996 or a right to buy under the Housing Act 1985 or has acquired an interest by way of a shared ownership lease or a low cost disposal or otherwise or any person (other than a Registered Social Landlord) deriving title under them ("Occupant");
 - 1.5.3 The mortgagee of an Occupant or any receiver of such mortgagee in the event that the mortgagee of an Occupant seeks to dispose of an Affordable Housing Unit pursuant to its power of sale exercise pursuant to default of the terms of the mortgage or any such receiver seeks to make a disposition or any persons deriving title under them;
- 1.6 In the event that the mortgagee of a Registered Social Landlord wishes to exercise its power of sale or such receiver wishes to dispose of the Affordable Housing Units or any part thereof such person shall first use all reasonable endeavours to sell the Affordable Housing Units to another Registered Social Landlord PROVIDED THAT if after a period of 3 months (having used all reasonable endeavours as aforesaid) such person shall not have sold the Affordable Housing Units to another Registered Social Landlord the mortgagee of the Registered Social Landlord or such receiver shall thenceforth be under no obligation to sell the Affordable Housing Units to a Registered Social

Landlord and shall be entitled to exercise its powers of sale or make a disposition as the case may be

2. OPEN SPACE CONTRIBUTION

The Developer covenants with the Council that it shall pay to the Council the Open Space Contribution on or before the date of Implementation

3. EDUCATION CONTRIBUTION

The Developer covenants with the Council that it shall pay to the Council the Education Contribution on or before the date of Implementation

4. SUSTAINABLE TRANSPORT CONTRIBUTION

The Developer covenants with the Council that it shall pay to the Council the Sustainable Transport Contribution on or before the date of Implementation

5. PAYMENT OF THE COUNCIL'S COSTS

The Developer hereby covenants with the Council that it shall pay the Council's reasonable and proper legal and other professional costs in respect of the monitoring of this Agreement in the sum of two thousand four hundred and eighty one pounds and four pence (£2,481.04)

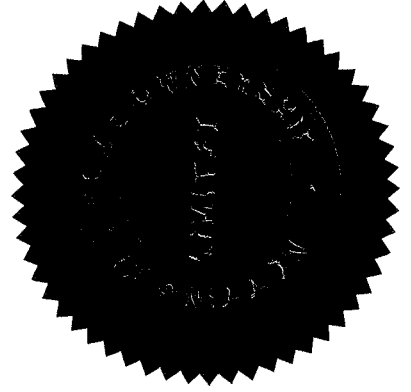
6. INTEREST IF PAYMENT NOT MADE ON DUE DATE

Where any payment which the Developer is obliged to pay to the Council pursuant to the provisions of this Agreement or some part thereof is not paid on the date on which it is due then (but without prejudice to any other right of the Council) interest at 4% above the base rate of Lloyds TSB Bank plc from time to time calculated on a daily basis shall be paid by the Developer to the Council on and in addition to the outstanding balance of the payment from the date on which the payment (or part thereof) became due to the date of actual receipt by the Council

7. NOTICE OF MATERIAL OPERATION

No Material Operation shall be carried out unless the Council has first been given not less than 10 Working Days notice by the Developer of the intention to carry out a Material Operation and such notice shall be in writing and addressed to the Head of Planning.

THE COMMON SEAL of)
NOTTING HILL HOME)
OWNERSHIP LIMITED)
was hereunto affixed in)
the presence of:)



Authorised Signatory

Secretary

DATED

200

THE DEVELOPER: NOTTING HILL HOME
OWNERSHIP LIMITED

**UNILATERAL SECTION 106
UNDERTAKING**

relating to
leasehold property at
Standor House,
272-286 London Road
and 25 Raleigh Gardens
Mitcham
Surrey CR4 3NB

Orrick Herrington & Sutcliffe
Tower 42, Level 35
25 Old Broad Street
London EC2N 1HQ

Date: 6 November 2008
Ref: JP/100009-2726