

THIS AGREEMENT is made by deed on

18<sup>th</sup> November

2011

BETWEEN:

THE COUNCIL

THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF HAMMERSMITH AND FULHAM of  
Town Hall King Street Hammersmith London W6 9JU

and

THE OWNER

BUILDING BETTER HEALTH (WHITE CITY)  
LIMITED (Company Registration Number: 05759401) of  
North Suite 1<sup>st</sup> Floor, Park Lorne, 111 Park Road, London  
NW8 7JL

and relates to land at **FORMER JANET ADEGOKE LEISURE CENTRE, 56  
BLOEMFONTEIN ROAD AND 1 SAWLEY ROAD, LONDON W12 7DH**

**1. BACKGROUND**

- 1.1 The Council is the local planning and highway authority for the area within which the Site is situated
- 1.2 The Council is registered at the Land Registry as proprietor of the Site with freehold title under title numbers 255343 and BGL76072
- 1.3 The Owner is registered at the Land Registry as proprietor of part of the Site with leasehold title under title number BGL62136
- 1.4 The Owner has submitted the Planning Application to the Council who consider that the Planning Permission subject to conditions could be granted and wishes to restrict and regulate the Development in accordance with the terms of this Agreement
- 1.5 The Council is the local planning authority by whom the planning obligations contained in this Agreement are enforceable

**OPERATIVE PROVISIONS**

**IT IS AGREED AS FOLLOWS:**

**2. DEFINITIONS**

In this Agreement the following expressions shall have the meanings indicated:

“Act”

The Town and Country Planning Act 1990  
as amended

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"Affordable Housing Layout Plan"	means the Plan attached to this Deed and showing for the purposes of identification only the location of the Shared Ownership Units and the Discount Market Sale Units
"Approved Registered Provider"	means Notting Hill Housing Trust Notting Hill Home Ownership Limited or a Registered Provider approved by the Council as being on the Council's list of preferred joint commissioning partners
"Assistant Director"	The Council's Assistant Director of Highways and Engineering or such other officer whose designation has been notified to the Owner in writing
"Average Earnings Index Linked"	means increased on each anniversary of this Deed by the amount of the percentage increase in the most recently published average earnings figure (calculated by reference to the Average Earnings Index produced by the Government's office for national statistics) in the period of 12 months after the date of this Deed and each subsequent period of 12 months after each anniversary of that date up to a maximum 5% increase in any one year
"Borough"	The London Borough of Hammersmith and Fulham



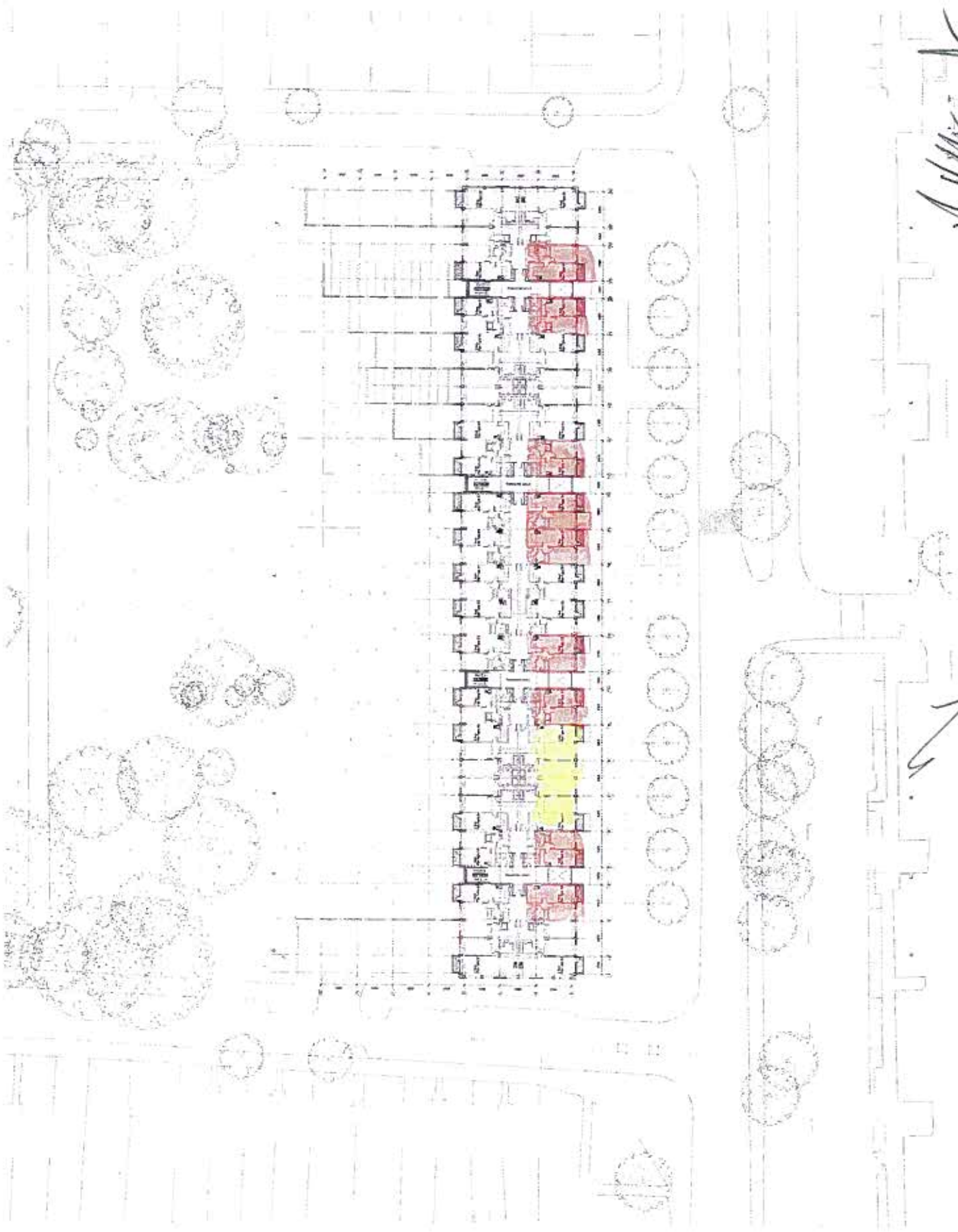




APPENDIX 1

Penoyre  
pasad@penoyre.com

2010-2011  
471-G-200  
8



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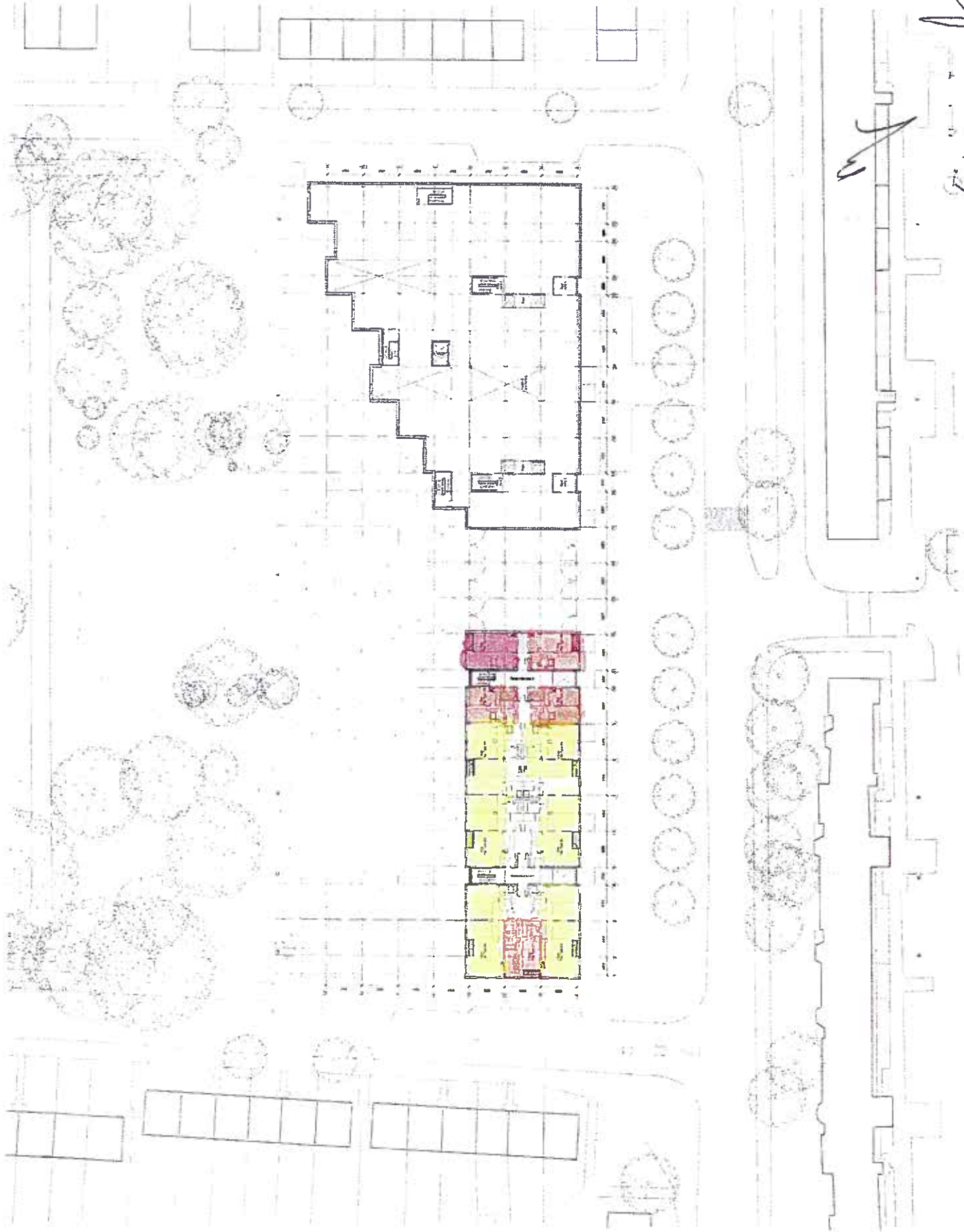




# APPENDIX 1

**Penoyre**

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Suite 200  
Edmonton, Alberta T6C 2K7  
Canada  
Tel: 780.441.1111  
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*Handwritten signature*  
4771-G-203  
B

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"Certificate of Substantial Completion"	The certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 5.31 and the phrase "Substantial Completion" and all other cognate phrases shall be construed accordingly
"Commencement of Development"	The date upon which any material operation in connection with the Development has begun to be carried out as that expression is defined in Section 56 of the Act but excluding works of site preparation and excavation
"Completion"	The issue to the Owner of a certificate of Practical Completion of the Development by the Development's architect engineer, project manager or contract administrator as the case may be
"Contribution"	The cost of the Highway Works the Council's Wormholt Park Works and the Owner's Wormholt Park Works not exceeding in aggregate the sum of £1,500,000 (One million five hundred thousand pounds) Indexed
"Council's Wormholt Park Works"	The part of the Wormholt Park Works to be carried out by the Council as set out in Part A of the Fourth Schedule hereto
"Deed of Covenant"	means a deed of covenant in relation to the Discount Market Sale Units in the form attached in the Schedule 6 to this Agreement
"Determining Surveyor"	means an independent person suitably

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qualified and jointly appointed by the Owner and the Council (which appointment may be terminated by either Party on reasonable notice whereupon a suitable replacement will be agreed between the Parties) acting (as expert not arbitrator) equally for each Party but at the Owner's expense to value a Discount Market Sale Unit on an Open Market Value basis pursuant to the provisions of Clause 5.15 of this Deed

"Development"

The development of the Site permitted by the Planning Permission

"Director"

The Council's Director of Community Services or such other officer whose designation has been notified to the Owner in writing

"DMS Units"

means the 42 1 bedroomed residential Discount Market Sale Units to be provided in the Development as shown on the Affordable Housing Layout Plan

"Discount Market Sale Purchaser"

means a person who either:-

- (a) has been a resident of the London Borough of Hammersmith & Fulham for the whole of the preceding 12 month period; or
- (b) is employed within the London Borough of Hammersmith & Fulham; or

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(c) has been formally offered and has formally accepted employment within the London Borough of Hammersmith & Fulham;

and, in each of the above cases:

- (i) has no ownership or part ownership in another residential property which he is able to occupy further in the United Kingdom or abroad (unless otherwise agreed by the Council); and
- (ii) satisfies the Discount Purchaser Financial Criterion for the relevant type of Discount Market Sale Unit

“Discount Market Sale Units”

means the DMS Units being a minimum size of approximately 38.6 square metres in size

“Discount Purchaser Financial Criterion”

means the criterion that total gross annual household income of the household of the applicant to purchase a Discount Market Sale Unit at the date of application for the relevant type of Discount Market Sale Unit does not exceed:-

- (a) in the case of 8 of the DMS Units of a minimum size of approximately 44.5 square metres £40,000 Average Earnings Index Linked
- (b) in the case of 13 of the DMS Units



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of a minimum size of approximately 38.6 square metres  
£40,000 Average Earnings Index  
Linked

- (c) in the case of 21 of the DMS Units of a minimum size of approximately 38.6 square metres  
£30,000 Average Earnings Index  
Linked;

or (in each case) such other sum as shall from time to time be agreed in writing between the Council and the Owner

“Discount Purchaser Nomination List”

means a written list to be provided by the Council to the Owner from time to time in accordance with the provisions of Clause 5.16 of this Deed

“Dwelling”

Any dwelling including a flat which has been created on the Site pursuant to the Planning Permission

“Equity Payment”

Payment of the sum equivalent to a percentage of the Open Market Value of the Discount Market Sale Unit which percentage is the difference between the Relevant Discounted Sale Price for any Discount Market Sale Unit and the Open Market Value of that unit where the Open Market Value is equivalent to 100%

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"Estimated Payment"	A sum equivalent to the anticipated total reasonable and proper costs of the Highway Works as reasonably estimated by the Assistant Director taking into account each of the elements specified in Clause 5.29
"Final Payment"	The payment defined in Clause 5.31 of this Agreement
"Head of Development Management"	The Council's Head of Development Management or such other officer whose designation has been notified to the Owner in writing
"Highway Works"	The works to be carried out by the Council as described in Schedule 3
"Indexed"	means adjusted in accordance with the Tender Price Index (the "TPI Index") by multiplying in each case the payment due by a fraction whose denominator shall be the last TPI Index monthly figure published before the date of this Agreement and whose numerator shall be the last published TPI Index monthly figure available before the date on which payment is due
"Market Housing"	The 103 Dwellings permitted to be constructed on the Site pursuant to the Planning Permission that are permitted to be sold on the open market and which are neither Shared Ownership Units nor Discount Market Sale Units
"Market Value"	The price which the Shared Ownership Unit would fetch if sold on the open

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market by a willing vendor upon the terms and conditions contained in a lease of any Shared Ownership Unit

"Occupation"

Occupation for the purposes permitted by the Planning Permission but excluding occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" and "Occupy" shall be construed accordingly

"Open Market Value"

The price which the Discount Market Sale Units would fetch if sold on the open market by a willing vendor as determined in accordance with Clauses 5.14 and 5.15

"Owner's Wormholt Park Works"

The part of the Wormholt Park Works to be carried out by the Owner as set out in Part B of the Fourth Schedule hereto up to £55,000 of the cost of which shall be counted as part of the Contribution

"Parking Permit"

A permit issued by the Council to a resident of the Borough to park a motor vehicle on the highway in the Borough

"Plan No. 1"

The plan attached to this Deed and showing for the purposes of identification only that part of the Highways Works comprising the upgrading of the footway around the entire Site

"Plan No. 2"

The plan attached to this Deed and showing for the purposes of identification only the Wormholt Park Works

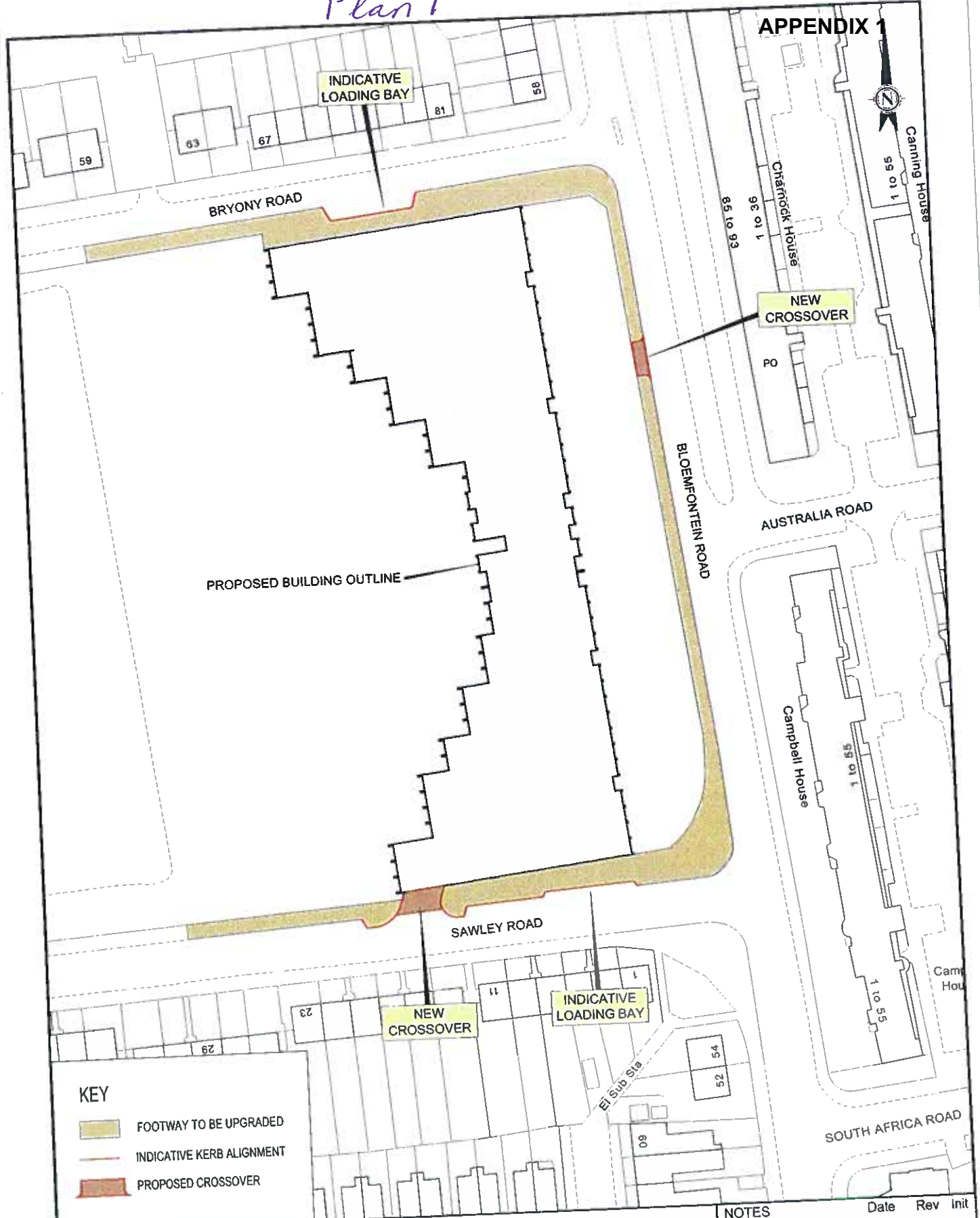
"Plan No. 3"

The plan attached to this Deed and



Plan 1

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**KEY**

	FOOTWAY TO BE UPGRADED
	INDICATIVE KERB ALIGNMENT
	PROPOSED CROSSOVER

**HAMMERSMITH & FULHAM COUNCIL**  
 Environment Services  
 Town Hall Extension, King Street  
 London W6 9JU  
 Tel. 020 8748 3020

Drawn <b>BJN</b>	Checked <b>HOR</b>	Approved <b>NB</b>
Scale <b>1 : 1000</b>	Original Sheet Size <b>A4</b>	
DWC No. <b>80213/43</b>	Revision <b>1</b>	Date <b>JUN.'09</b>

PROJECT  
**FORMER JANET ADEGOKE LEISURE CENTRE**  
**56 BLOEMFONTEIN RD & 1 SAWLEY RD**  
**HIGHWAY WORKS**

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NOTES

Date	Rev	Init

FS 32265

Produced by Highways & Engineering on the Land Survey Mapping System. This drawing is Copyright.

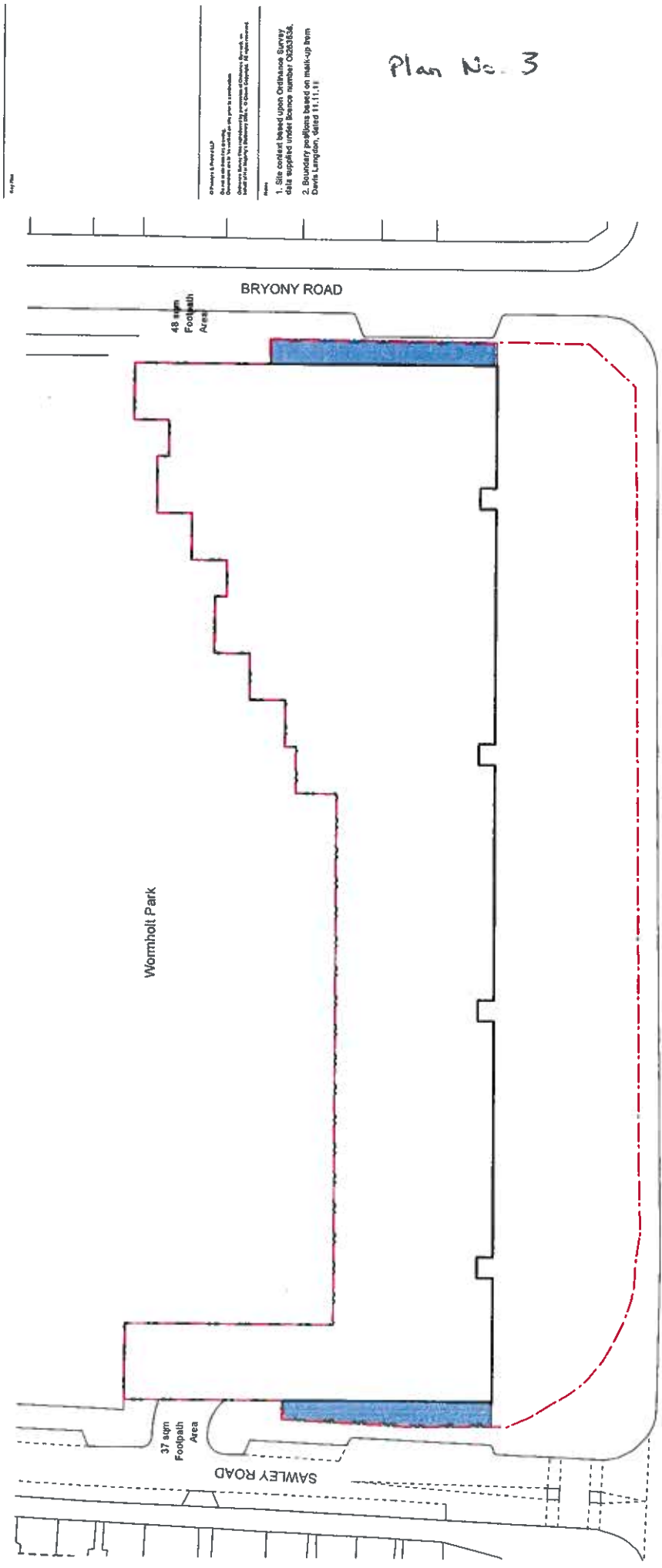
Plan 2



plan of park showing location of sports/games facilities and location of proposed building. Sketch - not to scale.

# Wormholt Park





Plan No. 3

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Notes

1. Site content based upon Ordnance Survey data supplied under licence number 100283504.
2. Boundary positions based on mark-up from Dave Langston, dated 11.11.11

**Penoyre & Prasad**

24-25, St. James Street  
 London EC1A 4BE  
 020 7493 6177  
 penoyre@psll.com

Client: Building Better Health  
 Project: JAC WINDO CITY Mixed Use Development  
 Drawing Title: Building Footprints & Future Public Highway  
 Drawing Number: 471-SC-022  
 Scheme: 11.11.11  
 Date: 11.11.11  
 Scale: 1:5000/A3  
 Revision: A

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**Legend**

- Ownership boundary
- Future Public Highway



*Handwritten signatures and initials.*



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showing for the purposes of identification only the Blue Land

"Planning Application"

An application for planning permission allocated statutory registration no. 2011/01744/FUL for redevelopment of the Site in the following manner: The erection of a part single storey, two and part seven storey building to provide a health centre (Class D1), retail (Class A1) on the ground floors; provision of a health care centre (D1) on part of the first floors; 170 residential units (Class C3) on the upper floors with underground car parking (116 spaces) and landscaping in accordance with approved drawings numbered: 471-PL-001A, 002A, 003A, 004B, 005A, 006A, 007A, 008A, 010A, 011A, 014A, 015A, 016A, 017A, 018A, 019A, 020A, 030,031, 032, 033, 034

"Planning Permission"

Planning permission granted pursuant to the Planning Application in the form of the draft set out in the Schedule 2 to this Agreement or in substantially the same form

"Practically Complete"

Complete save in minor respects so that the Development or part of the Development as the case may be can be used for the purpose and operate in the manner for which it was designed

"Practical Completion"

Completion save in minor respects so that the Development or part of the Development as the case may be can be used for the purpose and operate in the manner for which it was designed

"Registered Provider"

Any organisation registered with the Tenants Services Authority (or any successor body) as a provider of social housing in accordance with section 80 of the Housing and Regeneration Act 2008. This can include Housing Associations, Local Authorities and private companies.

"Relevant Discounted Sale Price"

means (at the date on which contracts are exchanged for the sale of any Discount Market Sale Unit)

(a) in relation to each of the 8 DMS Units referred to in limb (a) of the definition of Discount Purchaser Financial Criterion of a minimum size approximately of 44.5 square metres the lower of ONE HUNDRED AND FORTY THOUSAND POUNDS (£140,000) Average Earnings Index Linked or 70% of the Open Market Value of the Unit;

(b) in relation to each of the 13 DMS Units referred to in limb (b) of the definition of Discount Purchaser Financial Criterion of a minimum size approximately of 38.6 square metres the lower of ONE HUNDRED AND FORTY THOUSAND POUNDS (£140,000) Average Earnings Index Linked or 95% of the Open Market Value of the Unit;

(c) in relation to each of the 21 DMS

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Units referred to in limb (c) of the definition of Discount Purchaser Financial Criterion of a minimum size approximately of 38.6 square metres the lower of ONE HUNDRED AND FIVE THOUSAND POUNDS (£105,000) Average Earnings Index Linked or 70% of the Open Market Value of the Unit

“Shared Ownership Occupier”

A person who occupies a Dwelling within the Site which he/she is part renting and part purchasing under a shared ownership scheme

“Shared Ownership Units”

The 25 Dwellings within the Site occupied or intended to be occupied by a Shared Ownership Occupier as shown on the Affordable Housing Layout Plan and of which number 18 shall be 2 bedrooms in size and 7 will be 3 bedrooms in size

“Shared Ownership Unit Nominations Agreement”

An agreement substantially in the form annexed hereto at Schedule 5 entered into between the Registered Provider Owner at that time of the Shared Ownership Units and the Council containing procedures by which the Council and the Registered Provider Owner may nominate persons for occupation of the Shared Ownership Units through the Council’s housing allocation policy

“Site”

Land known as Former Janet Adegoke Leisure Centre, 56 Bloemfontein Road and 1 Sawley Road, London W12 7DH shown

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for the purposes of identification only edged red on the Site Plan

"Site Plan"

The plan annexed to this Agreement at Schedule 1

"Wheelchair Units"

A minimum of 24 Dwellings (being a mixture of Shared Ownership Units and Market Housing) which are capable of being adapted for wheelchair users in accordance with the Hammersmith and Fulham Wheelchair Property Design Guide 2005

"Working Day"

Any day (other than Saturday) on which banks are usually open for business in England & Wales

"Wormholt Park Assistant Director"

The Council's Assistant Director of Parks and Culture or such other officer whose designation has been notified to the Owner in writing

"Wormholt Park Works"

Together the Council's Wormholt Park Works and the Owner's Wormholt Park Works

"Wormholt Park Works Certificate of Substantial Completion"

The certificate to be issued on satisfactory completion of the Council's Wormholt Park Works in accordance with Clause 5.39

"Wormholt Park Works Estimated Payment"

A sum equivalent to the anticipated total reasonable and proper costs of the Council's Wormholt Park Works as reasonably estimate by the Wormholt Park Assistant Director taking into account each of the elements specified in Clause 5.37

“Wormholt Park Works Final Payment”                      The payment defined in Clause 5.39 of this Agreement

**3. INTERPRETATION**

- 3.1. Headings appearing in this Agreement are for ease of reference only and shall not affect its construction.
- 3.2. References to clauses sub clauses paragraphs sub paragraphs and schedules are references to those contained in this Agreement.
- 3.3. References to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order or delegated legislation amending re-enacting or made under or replacing the same.
- 3.4. Where the context permits, words importing the singular will include the plural and vice versa and words importing gender will include all other genders.
- 3.5. Any obligation of the Owner contained or implied in this Agreement which is or may be deemed to be an obligation of more than one person shall be a joint and several obligation on the part of those persons.
- 3.6. Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or the performance of any duty as local planning authority or in any other capacity.
- 3.7. No person shall be liable for breach of any provision contained in this Agreement after having parted with all interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to the liability of such person for any subsisting breach of this Agreement prior to the parting with such interest.
- 3.8. No waiver (whether express or implied) by the Council of any breach or default by the Owner or any person deriving title from them in complying with any provision of this Agreement shall constitute a continuing waiver or be taken to waive any subsequent breach by any party.

**4. STATUTORY AUTHORITY**



- 4.1. This Agreement is made under Section 106 of the Act, Section 16 Greater London Council (General Powers) Act 1974, Sections 38 and 278 of the Highways Act 1980, and Section 111 Local Government Act 1972.
- 4.2. Each covenant by the Owner in this Agreement is a planning obligation for the purposes of Section 106 of the Act enforceable by the Council against the Owner and any person deriving title in the Site or any part of it from the Owner.

## **5. THE OWNER'S COVENANTS**

The Owner covenants with the Council:

### **Council's Legal Expenses**

- 5.1 To pay the Council's reasonable legal expenses reasonably and properly incurred in the preparation of this Agreement.

### **Covenant as to Ownership**

- 5.2 That no person other than the parties to this Agreement has any interest in the Site for the purposes of Section 106 of the Act.

### **Duty to notify of Commencement of Development**

- 5.3 To notify the Head of Development Management in writing of the Commencement of the Development within 7 days of that Commencement.

### **Affordable Housing-Shared Ownership**

#### **Restriction on Transfer**

- 5.4:1 Following Commencement of the Development not to sell, transfer, lease or otherwise dispose of the Shared Ownership Units other than:
- (i) to an Approved Registered Provider;

- (ii) by way of lease of a Shared Ownership Unit to a Shared Ownership Occupier or assignment of such a lease or disposals of further tranches of equity in a Shared Ownership Unit to a Shared Ownership Occupier;
- (iii) by way of mortgage or financial charge

except that if:

- (a) the freehold or leasehold title to the Shared Ownership Units is vested in a Registered Provider and
- (b) the said Registered Provider grants a mortgage or financial charge over the Shared Ownership Units or any part of it to a building society, bank, insurance company or any bona fide financial institution, and
- (c) there has been a bona fide default by the said Registered Provider of the terms of such mortgage or financial charge, and
- (d) such mortgagee or chargee (or any manager (including an administrative receiver) appointed by such mortgagee or chargee) seeks to dispose of the Shared Ownership Units under the terms of that mortgage or charge

then, such mortgagee or chargee (or any manager (including an administrative receiver) appointed by such mortgagee or chargee) in respect of the Shared Ownership Units to which such mortgage or charge relates shall be free, so far as is necessary to enable it to realise its security, from the restriction in this clause 5.4:1, as will any subsequent purchaser (and its successors in title) from the said mortgagee or chargee and as will any persons deriving title therefrom (directly or indirectly).

5.4:2 A Shared Ownership Occupier who has acquired 100% of the equity in a Shared Ownership Unit shall be free from the restriction in clause 5.4:1 which shall thereafter cease to bind that Shared Ownership Unit

**Disposal of Equity in Shared Ownership Units**

5.5 The Owner covenants that on the initial letting of all the Shared Ownership Units the aggregate of the initial equity disposed of to the Shared Owner Occupiers of the Shared Ownership Units shall not exceed 50% of the total Market Value of all the

Shared Ownership Units (as ascertained by the Registered Provider acting reasonably and properly).

**Nominations Agreement**

- 5.6 The Owner covenants that no less than 9 months prior to the anticipated date of Practical Completion of the Shared Ownership Units there shall be in place a Shared Ownership Unit Nominations Agreement the parties acting reasonably in their endeavours to negotiate and enter into such Nominations Agreement.

**Wheelchair Units**

- 5.7 That the Owner shall construct at least 24 Dwellings in such a manner that they are capable of adaptation to Wheelchair Units and will (subject to marketing in accordance with clause 5.9) so adapt such of these Dwellings as can be sold as Wheelchair Units prior to Occupation of 50% of the Dwellings comprised in the Development
- 5.8 That the Owner shall use reasonable endeavours to market the Wheelchair Units to wheelchair users for a period commencing no later than the date being six months prior to Completion of the Market Housing and ending at Practical Completion of the last Dwelling comprised in the Development. For those Wheelchair Units which comprise Shared Ownership Units a joint marketing strategy with H & F Home buy shall be agreed no less than 6 months prior to Practical Completion of the relevant units.
- 5.9 That the marketing referred to in Clause 5.8 shall be conducted to ensure that the units are marketed to as wide an audience as possible through websites, publications and liaison with appropriate agencies. Amongst others the units shall be advertised:

on the accessible property website (<http://www.accessible-property.org.uk>) or equivalent national website

on [www.housingoptions.co.uk](http://www.housingoptions.co.uk)

on [www.thelittlehousecompany.co.uk](http://www.thelittlehousecompany.co.uk)

on [www.disabilitynow.org.uk](http://www.disabilitynow.org.uk)

in SAGA magazine or similar London periodical aimed at an older readership

in Age Concern's Fifty Plus magazine

in Disability Now magazine

in liaison with Hammersmith and Fulham Action on Disability

in liaison with the Council's Rehousing Options Team and the wheelchair register (Accessible Housing Register)

At Low Cost Home Ownership fairs and events

- 5.10 That the Owner shall submit to the Council details of the marketing undertaken pursuant to Clause 5.8 above supported by such evidence as the Council may reasonably require such information to include the date of first advertisement and first website posting of each Wheelchair Unit the date of release of any such unit which is not allocated to a wheelchair user household onto the wider market and the date on which an offer is made on any released unit
- 5.11 Each Wheelchair Unit shall be allocated one parking space of the appropriate dimensions marked out as a disabled parking space on the Site and each such disabled parking space shall be maintained as a disabled parking space for so long as the corresponding unit remains as wheelchair use

**Affordable Housing-Discount Market Sale**

- 5.12 The Owner shall not permit nor enable more than 50% of the Market Housing within the Development to be Occupied until 100% of the Discount Market Sale Units to be provided within the Development are Practically Complete
- 5.13 The Owner and the Council shall agree a marketing strategy for the Discount Market Sale Units pursuant to clause 5.8 prior to giving the notice required by clause 5.14. Marketing will be particularly directed at estates neighbouring the Site to offer local residents the opportunity to access low cost home ownership opportunities.
- 5.14 The Owner will give the Council at least 6 months prior written notice (to be served on the Director) of the date on which it anticipates that Practical Completion will take place in respect of any Discount Market Sale Unit and shall include within the said notice:-
- (a) a statement of the Open Market Value of the relevant unit; and
  - (b) a statement as to the size in square metres of the relevant unit

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5.15 In the event that the Council disputes the Open Market Value of any Discount Market Sale Unit as stated in a notice served pursuant to Clause 5.14 of this Deed it shall notify this to the Owner in writing within fifteen Working Days in which case:-

- (a) the Owner and the Council shall endeavour to agree the Open Market Value of the said unit within five Working Days; but if this does not happen then
- (b) the Determining Surveyor shall be appointed within five Working Days after notification of such dispute and be required to provide his assessment of the Open Market Value of the said unit within five Working Days after appointment and both Parties shall (save in the case of manifest error) accept the Determining Surveyor's assessment of Open Market Value as binding

PROVIDED ALWAYS that in the event that the Council does not dispute the Open Market Value stated by the Owner within fifteen Working Days after it receives a notice pursuant to Clause 5.15 of this Deed then the Council shall be deemed to have accepted the Open Market Value as stated in the notice

5.16 The Council will advertise the Discount Market Sale Units within five Working Days after the Open Market Value has been agreed or settled pursuant to clause 5.15 of this Deed. Those purchasers who are interested in buying a DMS Unit will contact the Owner by a deadline set by the Owner of at least 7 days who will invite them to view. Once the Owner has a list of people who wish to purchase they will send it to H&F Home-Buy who will prioritise the list in accordance with the Council's priorities and return it to the Registered Provider within 5 Working Days. The Registered Provider will then offer the DMS Units, in order, to the people on the shortlist.

5.17 The Owner shall use reasonable endeavours to sell the Discount Market Sale Unit for sale at the Relevant Discounted Sale Price to persons on the Discount Purchaser Nomination List PROVIDED ALWAYS that:-



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- (a) if within eight weeks prior to Practical Completion of that Discount Market Sale Unit contracts have not been exchanged for the sale and purchase of that Discount Market Sale Unit between the Owner and a nominee from the Discount Purchaser Nomination List ; or
- (b) if within four weeks prior to Practical Completion of that Discount Market Sale Unit the Discount Market Sale Purchaser indicates an unwillingness or inability to complete a contract for sale in respect of that Discount Market Sale Unit; or
- (c) if there are no suitable nominees on the Discount Purchaser Nomination List or the Council otherwise fails to keep the Discount Purchaser Nomination List up to date and the Owner using all reasonable endeavours is unable to sell to an alternative suitable nominee on the Discount Purchaser Nomination List at the Relevant Discounted Sale Price with completion of such sale taking place on the date of Practical Completion of the Discount Market Sale Unit; or
- (d) if the Council and the Owner are between them unable to sell to an alternative suitable nominee who is not on the Discount Purchaser Nomination List but otherwise fulfils the criteria for being a Discount Market Sale Purchaser with completion of such sale taking place on the date of Practical Completion of the Discount Market Sale Unit

then the Owner shall be free to sell that Discount Market Sale Unit to those applicants with a maximum household income set by the Regional Housing Board at the time of notification of the availability at the Relevant Discounted Sale Price

5.18 For the avoidance of doubt it is hereby agreed that the Council shall not be liable for any charges or expenses in relation to the Discount Market Sale Unit including stamp duty, service charges, parking charges or management charges

## APPENDIX 1

- 5.19 The first transfer of each Discount Market Sale Unit to an individual Occupier following Practical Completion of that Unit and every subsequent transfer of each Discount Market Sale Unit shall be subject to entry into the Deed of Covenant and the Open Market Value and the Relevant Discounted Sale Price of Discount Market Sale Unit shall be recorded in writing by the Council and the Owner. These sums shall be used to calculate the percentage figure against which the level of Equity Payment is calculated and shall thereafter be the figure against which the level of Equity Payment is calculated. That percentage figure shall be inserted at the beginning of the relevant Deed of Covenant within the definition of the equity payment for that unit and within the second schedule of the Deed of Covenant within the definition of equity payment
- 5.20 The terms of the Deed of Covenant will apply to each of the Discount Market Sale Units
- 5.21 No Discount Market Sale Unit shall be occupied other than as a Discount Market Sale Unit by a Discount Market Sale Purchaser save in accordance with the provisions of this Clauses 5.12 to 5.22 inclusive of this Deed.
- 5.22 In the event that an Equity Payment is made to the Council on a subsequent transfer of any Discount Market Sale Unit the Council shall not use that Equity Payment otherwise than towards the provision of affordable housing within the London Borough of Hammersmith and Fulham

### **Car Permit Free Provisions**

- 5.23 The Owner covenants with the Council that they shall not apply to the Council for a Parking Permit or knowingly suffer or permit any occupier of the Dwellings to apply for a Parking Permit and if such a Parking Permit is issued the Owner covenants on becoming aware of such issue to notify the Council's Head of Development Management in writing immediately thereafter and to use their reasonable endeavours to procure its surrender to the Council.
- 5.24 The Owner covenants with the Council that all material utilised for advertising or marketing of the Dwellings for letting or sale will make it clear to prospective lessors,

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- 5.19 The first transfer of each Discount Market Sale Unit to an individual Occupier following Practical Completion of that Unit and every subsequent transfer of each Discount Market Sale Unit shall be subject to entry into the Deed of Covenant and the Open Market Value and the Relevant Discounted Sale Price of Discount Market Sale Unit shall be recorded in writing by the Council and the Owner. These sums shall be used to calculate the percentage figure against which the level of Equity Payment is calculated and shall thereafter be the figure against which the level of Equity Payment is calculated. That percentage figure shall be inserted at the beginning of the relevant Deed of Covenant within the definition of the equity payment for that unit and within the second schedule of the Deed of Covenant within the definition of equity payment
- 5.20 The terms of the Deed of Covenant will apply to each of the Discount Market Sale Units
- 5.21 No Discount Market Sale Unit shall be occupied other than as a Discount Market Sale Unit by a Discount Market Sale Purchaser save in accordance with the provisions of this Clauses 5.12 to 5.22 inclusive of this Deed.
- 5.22 In the event that an Equity Payment is made to the Council on a subsequent transfer of any Discount Market Sale Unit the Council shall not use that Equity Payment otherwise than towards the provision of affordable housing within the London Borough of Hammersmith and Fulham

### **Car Permit Free Provisions**

- 5.23 The Owner covenants with the Council that they shall not apply to the Council for a Parking Permit or knowingly suffer or permit any occupier of the Dwellings to apply for a Parking Permit and if such a Parking Permit is issued the Owner covenants on becoming aware of such issue to notify the Council's Head of Development Management in writing immediately thereafter and to use their reasonable endeavours to procure its surrender to the Council.
- 5.24 The Owner covenants with the Council that all material utilised for advertising or marketing of the Dwellings for letting or sale will make it clear to prospective lessors,

tenants, licensees or occupiers that no Parking Permit will be issued by the Council for the Dwellings.

- 5.25 The Owner covenants with the Council that each lease, tenancy agreement, licence and any other instrument granting a right to occupy a Dwelling shall contain a statement that under this Agreement no occupier of the Dwelling will be entitled to apply for or hold a Parking Permit and if issued with such a Parking Permit such occupier shall surrender it to the Council within 7 days of written demand.
- 5.26 The Owner covenants with the Council to notify the Head of Development Management in writing, quoting 2011/01744/FUL of the full postal address of each Dwelling within 14 days of such address having been established.

**Highway Works**

- 5.27 Not to Occupy nor to permit Occupation of any part of the Development until the Estimated Payment has been made to the Council
- 5.28 To pay to the Council the Estimated Payment and the Final Payment (if any) as provided in the following Clauses 5.29 and 5.30 inclusive
- 5.29 To pay to the Council the reasonable and proper costs of carrying out the Highway Works, which shall comprise:
- 5.29:1 The total costs of any reasonably required alteration to statutory undertakers' plant and equipment necessitated by the Highway Works;
- 5.29:2 Any taxes payable by the Council in respect of the Highway Works;
- 5.29:3 The total costs reasonably incurred by the Council in designing, specifying, estimating the cost of, administering, inspecting and supervising the Highway Works;
- 5.29:4 The total material, plant and labour costs of carrying out the Highway Works; and
- 5.29:5 The total cost of street furniture and street infrastructure requiring alteration

- 5.30 To pay to the Council the reasonable and proper costs of carrying out the Highway Works as specified in Clause 5.29 above in the following manner:
- 5.30.1 Within 5 Working Days of Commencement of Development the sum of £20,000 (twenty thousand pounds) being the Assistant Director's reasonable estimate of the Council's expenses in respect of the following elements:
- (a) In preparing detailed design and layout drawings of the Highway Works;
  - (b) In estimating the cost of the civil works element of the Highway Works;
  - (c) Making enquiries of all statutory undertakers as to whether they have any apparatus which may be affected by the carrying out of the Highway Works; and
  - (d) Upon receipt of the statutory undertakers estimates, assessing the estimated cost of the Highway Works
- 5.30.2 Following Commencement of the Development and within 5 Working Days of receipt by the Owner of a request by the Council the Owner shall pay to the Council the Estimated Payment (which shall include an allowance for the sum paid to the Council pursuant to Clause 5.30.1)
- 5.31 If, at the completion of the Highway Works (evidenced by the issue by the Assistant Director of a Certificate of Substantial Completion) and provided that the total reasonable and proper actual costs of the Highway Works have been established, such costs shall have exceeded the Estimated Payment, the Owner shall within 20 Working Days of written demand pay to the Council the difference between the actual reasonable and proper total costs of the Highway Works and the Estimated Payment up to the level of the Contribution (the "Final Payment")
- 5.32 Upon the Council giving the Owner prior reasonable notice in writing of its intention to enter the Site for the purpose of carrying out all or part of the Highway Works, the Owner shall give to the Council all reasonable and necessary access to enter onto the Site to carry out the Highway Works



**Dedication and Adoption of Land**

- 5.33 Upon the issue of the Certificate of Substantial Completion the land on Bryony Road and Sawley Road coloured blue on Plan No. 3 ("the Blue Land") shall become a highway maintainable at the public expense and this Agreement shall be sufficient evidence of the Owner's dedication of the land as such
- 5.34 At all times up to and following the completion of the Highway Works the Owner shall ensure that the subsoil materials and other areas beneath the surface of the Blue Land are maintained in good condition and to the reasonable satisfaction of the Council

**Wormholt Park Works**

- 5.35 Not to Occupy nor to permit Occupation of any part of the Development until the payment pursuant to Clause 5.38.2 has been made to the Council
- 5.36 To pay to the Council the Wormholt Park Works Estimated Payment and the Wormholt Park Works Final Payment (if any) as provided in the following Clauses 5.37 and 5.38 inclusive but not to exceed the Contribution (less any sum paid as part of the Owner's Wormholt Park Works).
- 5.37 To pay to the Council the reasonable and proper costs of carrying out the Council's Wormholt Park Works, which shall comprise:
- 5.37.1 The total costs of any reasonably required alteration to statutory undertakers' plant and equipment necessitated by the Council's Wormholt Park Works;
- 5.37.2 Any taxes payable by the Council in respect of the Council's Wormholt Park Works;
- 5.37.3 The total costs reasonably incurred by the Council in designing, specifying, estimating the cost of, administering, inspecting and supervising the Council's Wormholt Park Works;

## APPENDIX 1

- 5.37.4 The total material, plant and labour costs of carrying out the Council's Wormholt Park Works; and
- 5.38 To pay to the Council the reasonable and proper costs of carrying out the Council's Wormholt Park Works as specified in Clause 5.37 above in the following manner:
- 5.38.1 To give to the Wormholt Park Assistant Director not less than 9 months prior notice of the anticipated date of Practical Completion of the Development
- 5.38.2 Immediately upon giving the notice referred to at clause 5.38.1 (above) to pay to the Council the sum of £200,000 (two hundred thousand pounds) being the Wormholt Park Assistant Director's reasonable estimate of the Council's expenses in respect of the following elements::
- (a) In preparing detailed design and layout drawings of the Council's Wormholt Park Works;
  - (b) In estimating the cost of the civil works element of the Council's Wormholt Park Works;
  - (c) Making enquiries of all statutory undertakers as to whether they have any apparatus which may be affected by the carrying out of the Council's Wormholt Park Works; and
  - (d) Upon receipt of the statutory undertakers estimates, assessing the estimated cost of the Council's Wormholt Park Works
- 5.38.3 Within 13 months of the giving the notice referred to at clause 5.38.1 (above) the Owner shall pay to the Council 50 percent of the Wormholt Park Works Estimated Payment (which shall include an allowance for the sum paid to the Council pursuant to Clause 5.38.2)
- 5.38.4 Within 22 months of the giving the notice referred to at clause 5.38.1 (above) the Owner shall pay to the Council the remainder of the Wormholt Park Works Estimated Payment

- 5.39 If, at the completion of the Council's Wormholt Park Works (evidenced by the issue by the Wormholt Park Assistant Director of a Wormholt Park Works Certificate of Substantial Completion) and provided that the total reasonable and proper actual costs of the Council's Wormholt Park Works have been established, such costs shall have exceeded the Wormholt Park Works Estimated Payment, the Owner shall within 20 Working Days of written demand pay to the Council the difference between the actual reasonable and proper total costs of the Council's Wormholt Park Works and the Wormholt Park Works Estimated Payment up to the level of the Contribution less any sum paid as part of the Owner's Wormholt Park Works (the "Wormholt Park Works Final Payment")
- 5.40 The Owner shall at its own expense carry out and complete the Owner's Wormholt Park Works to the Council's reasonable satisfaction as part of the Development

**Construction Training and Employment**

- 5.41 (a) The Owner covenants with the Council that as part of the tendering process for the first contract for any works associated with any part of the Development and throughout the period when the Development is under construction, it will co-operate and work closely with the Council to encourage employment training to job-seeking residents of the Borough.
- (b) The Owner covenants to require each contractor and each of its sub-contractors employed during the construction of the Development to use reasonable endeavours to:
- (i) ensure that work placements are provided for up to ten Borough residents, who are currently in construction training courses, which taken together shall be for a total period of not less than one hundred and twenty construction weeks. Such placements may include opportunities for apprentices, during the course of the construction of the Development in any of the following trades:
    - (A) carpentry and joinery;
    - (B) painting and decorating;
    - (C) plumbing;
    - (D) bricklaying;
    - (E) plastering; and

- (F) electrical installation
- (ii) recruit fifteen per cent of the workforce employed on the construction of the Development from residents of the Borough;
- (iii) employ each trainee on a contract of employment with provision for a reasonable release to college
- (c) The Owner covenants with the Council to monitor the work placements in Clause 5.41(b)(i) above and to monitor the workforce recruitment in Clause 5.41(b)(ii) above and the Owner covenants to provide details of all such monitoring to the Council
- (d) The Owner covenants with the Council to advise the Council on employment projections and skill levels required for employees after Completion of the Development

**6. THE COUNCIL'S COVENANTS**

- 6.1 As soon as reasonably practicable upon receipt of the Estimated Payment and having regard to the programme of works for the construction of the Development to commence the Highways Works and to complete them as expeditiously as possible
- 6.2 As soon as reasonably practicable upon receipt of the Wormholt Park Works Estimated Payment and having regard to the programme of works for the construction of the Development to commence the Council's Wormholt Park Works and to complete them as expeditiously as possible

**7. EFFECT OF AGREEMENT**

- 7.1 Save for the covenants given in Clauses 5.1, 5.2 and 5.3 which shall become binding on the date of this Agreement, the remaining covenants shall become binding on the Owner upon the Commencement of Development.
- 7.2 If the Planning Permission is quashed or is revoked or otherwise withdrawn or expires before the Commencement of Development or is superseded by any future or alternative planning permission this Agreement shall cease to have effect.



7.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

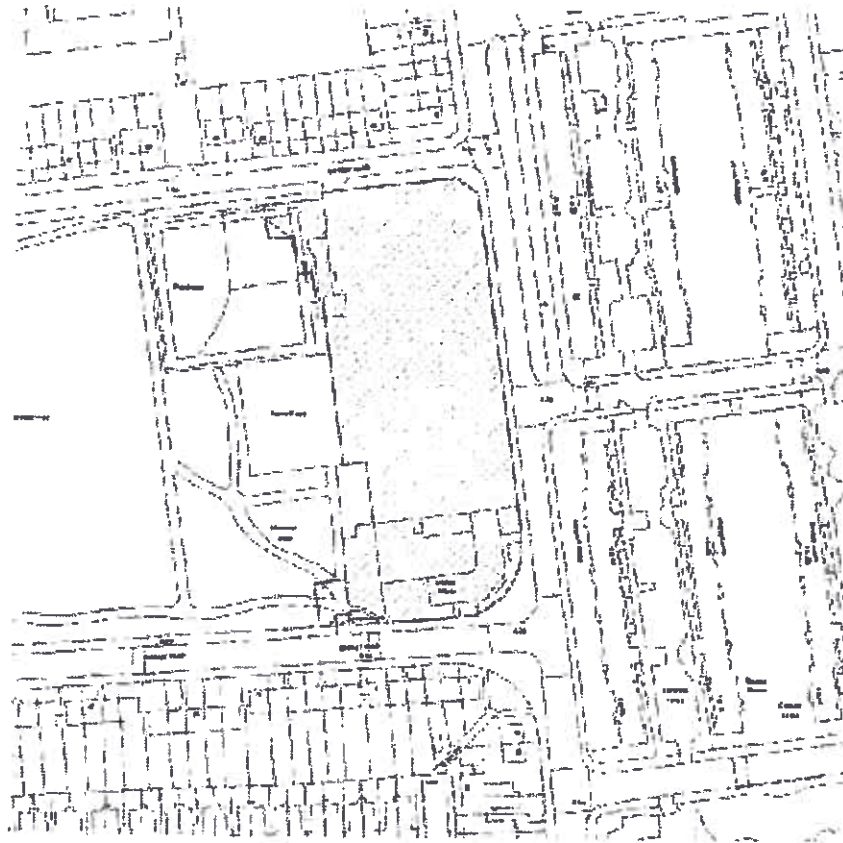
7.4 If this Agreement ceases to have effect the Council will forthwith upon request remove any notice of this Agreement from the Local Land Register and any other public register.

**8. CONTRIBUTION**

8.1 It is agreed and declared between the parties that the total liability of the Owner to make payments to the Council for the Highway Works and the Wormholt Park Works shall not exceed the amount of the Contribution

**SCHEDULE 1**

**SITE PLAN**



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**For identification purposes only - do not scale.**

**2007/04690/FUL**

**SQUARES INDICATE NEIGHBOURS NOTIFIED**

**SCHEDULE 2**

**DRAFT PLANNING PERMISSION**

London Borough of Hammersmith and Fulham

Development Management Service

3rd Floor, Hammersmith Town Hall Extension, King Street, London W6 9JU

Tel: 020 8753 1084

Fax: 020 8753 3423

Email: environment@lbhf.gov.uk

Web: www.lbhf.gov.uk

APPENDIX 1  
**h&f**  
putting residents first

Mr Alistair Macdonald  
70 Cowcross Street  
London  
EC1M 6EJ

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Applicant:  
Building Better Health (White City)  
C/o Agent

Application Reference: **2011/01744/FUL**

Registered on: **1st June 2011**

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**Town and Country Planning Act 1990  
Town and Country Planning General Regulations 1992**

**DRAFT FULL PLANNING PERMISSION**

**Location and Description:**

**Janet Adegoke Leisure Centre 56 Bloemfontein Road London W12 7DH**

Redevelopment of the site by the erection of a part single storey, part two and part seven storey building to provide a health care centre (Class D1), and retail (Class A1) on the ground floor; provision of a health care centre (Class D1) on the first floor; 170 flats (Class C3) on upper floors, together with underground car parking (116 spaces) and landscaping.

Drawing Nos: 471-PL-001A, 002A, 003A, 004B, 005A, 006A, 007A, 008A, 010A, 011A, 014A, 015A, 016A, 017A, 018A, 019A, 020B, 030, 031, 032, 033, 034.

**Particulars of Decision:**

**Full planning permission granted subject to the following condition(s):**

- 1) The development hereby permitted must be begun not later than the expiration of 3 years from the date of this permission.

Condition required to be imposed by section 91(1)(a) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).



Director of Environment  
Nigel Pallace

## APPENDIX 1

- 2) The building development shall not be erected otherwise than in accordance with the following detailed drawings: 471-PL-001A, 002A, 003A, 004B, 005A, 006A, 007A, 008A, 010A, 011A, 014A, 015A, 016A, 017A, 018A, 019A, 020B, 030, 031, 032, 033, 034.

In order to ensure full compliance with the planning application hereby approved and to prevent harm arising through deviations from the approved plans, in accordance with policies EN2 and EN8 of the Unitary Development Plan, as amended 2007.

- 3) The development shall not commence until the submission and approval in writing by the Council of details and samples of all materials to be used on the external faces of the building, and all surface treatments. No part of the development shall be used or occupied prior to the implementation of the approved details.

To ensure a satisfactory external relationship with its surroundings and to ensure satisfactory access for all people, in accordance with policies EN2 and EN8 of the Unitary Development Plan, as amended 2007, as well as the council's adopted Access for All SPD.

- 4) No changes shall be carried out to the external appearance of the building, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the approved drawings, prior to the submission and approval of a further planning application, provided that the proposed changes would, in the Council's opinion, materially affect the external appearance of the building

To ensure a satisfactory external appearance and to prevent harm to the amenities of the occupiers of neighbouring residential properties, in accordance with Policies EN2, EN8 and EN21 of the Unitary Development Plan, as amended 2007.

- 5) The ground floor commercial uses hereby permitted shall not include external roller shutters.

To ensure a satisfactory external appearance, in accordance with Policies EN2, EN8 and EN8D of the Unitary Development Plan, as amended 2007.

- 6) No plumbing, extract flues or pipes or boiler mass chimney, other than rainwater pipes shall be fixed on the Bloemfontein Road, Sawley Road or Bryony Road elevations of the building.

To ensure a satisfactory external appearance and to prevent harm to the street scene, in accordance with policies EN2 and EN8 of the Unitary Development Plan, as amended 2007.

- 7) The development shall not commence before details of the design and location of all external lighting and CCTV cameras in the open spaces have been submitted to and approved in writing by the council. Such details as approved shall be carried out prior to any use of the open spaces to which the details relate.



- 8) The development shall not commence prior to the submission and approval in writing by the Council of details in plan, section and elevation (at a scale not less than 1:20) and no part of the development shall be used or occupied prior to the implementation of the approved details.

(a) Details in plan, section and elevation of the Bloemfontein Road, Sawley Road, Bryony Road frontages, to include details of materials, fenestration, balconies, entrances, ground floor shopfront and glazing details, cladding and fenestration.

To ensure a satisfactory external appearance and to prevent harm to the street scene and conservation area in accordance with policies EN2 and EN8 of the Unitary Development Plan, as amended 2007.

- 9) The window glass of the shopfronts and rear elevations of the shop units must not be mirrored, painted or otherwise obscured.

To ensure a satisfactory external appearance to the Wormholt Park and to prevent harm to the street scene and conservation area in accordance with policies EN2, EN8 and EN8d of the Unitary Development Plan, as amended 2007.

- 10) The development shall not commence prior to the submission and approval in writing by the Council of full details of the proposed soft landscaping of the site, including planting schedules and details of the species. The approved scheme shall be implemented in the next winter planting season following completion of the building works, or before the occupation and use of any part of the buildings, whichever is the earlier.

To ensure a satisfactory external appearance and to prevent harm to the street scene, in accordance with policies EN2, EN8 and EN26 of the Unitary Development Plan, as amended 2007.

- 11) Any tree or shrub planted pursuant to condition 10 being removed or severely damaged, dying or becoming seriously diseased within 5 years of planting shall be replaced with a tree or shrub of similar size and species to that originally required to be planted.

To ensure a satisfactory provision for planting in accordance with policies EN2, EN8 and EN26 of the Unitary Development Plan, as amended 2007.

- 12) The development shall not commence before a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, has been submitted to and approved in writing by the council. The landscape management plan shall be carried out in accordance with the approved details.

## APPENDIX 1

To ensure that the development provides an attractive natural and visual environment in accordance with policies EN2, EN8 and EN29 of the Unitary Development Plan, as amended 2007.

- 13) The ground floor entrance doors hereby approved shall not be less than 1 metre wide and the threshold shall be at the same level to the pavement fronting the entrance(s).

To ensure adequate access for people with disabilities or mobility difficulties, in accordance with Policy EN11 of the Unitary Development Plan, as amended 2007.

- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any part of the development hereby permitted, without planning permission first being obtained.

To ensure that the visual impact of telecommunication equipment can be considered in accordance with policies EN2 and EN8 of the Unitary Development Plan, as amended 2007.

- 15) No customers shall be on the retail premises hereby permitted between 2200 hours - 0800 hours.

In order that noise disturbance which may be caused by customers leaving the premises is confined to those hours when ambient noise levels and general activity are sufficiently similar to that in the surrounding area, thereby ensuring that the use does not cause demonstrable harm to surrounding residents in compliance with policy EN21 of the Unitary Development Plan, as amended 2007.

- 16) The health care facility hereby approved shall only be used for the purpose of the provision of health services and for no other purpose, including any other purpose within Class D1 of the Town and Country Planning (Use Classes) Order 1987, or any other order replacing or re-enacting that order.

The use of the premises for other purposes, including other purposes within Class D1, could have a materially different impact on the amenities of the area and the Council would wish to have an opportunity to consider these matters in accordance with policies EN21 and TN8 of the Unitary Development Plan, as amended 2007.

- 17) No customers shall be on the health care premises hereby permitted between 2200 hours - 0800 hours on Monday to Saturday and 1800 hours and 1100 hours Sunday and Bank Holidays.

To ensure that the amenities of surrounding occupiers are not unduly affected by noise and other disturbance, in accordance with Policy EN21 of the Unitary Development Plan, as amended 2007.

- 18) In the event that the retail (Class A1) uses hereby approved is implemented, the ground floor accommodation shall be provided in the form of at least 2 separate units that shall not be amalgamated or occupied as larger units.

The use of the ground floorspace as a single shop unit or larger units could have a materially different impact on the amenities of the area and the Council would wish to have an opportunity to consider these matters in accordance with policies EN21 and SH1 of the Unitary Development Plan, as amended 2007.

- 19) Prior to the occupation of any of the residential units the whole of the parking accommodation shown on the approved drawing no. 471-PL-001A shall be provided. This shall thereafter be retained permanently for the accommodation of motor vehicles of the occupiers and users of the residential and commercial buildings on the application site and shall not be used for any other purpose. Allocation of the parking spaces shall be in accordance with details that must first be submitted to and approved in writing by the council.

To ensure the provision and permanent retention of the parking spaces so as to ensure that the development does not result in additional on-street parking stress detrimental to the amenity of surrounding residents, in accordance with policy TN8 and standard S18 of the UDP, as amended 2007.

- 20) Prior to the occupation of any of the residential units the 27 car parking spaces designed for wheelchair users shown on the approved drawing 471-PL-001A shall be provided, marked out and reserved for persons with disabilities. These facilities shall thereafter be permanently retained for this purpose.

To ensure the satisfactory provision and retention of car parking spaces for wheelchair users and so that the development does not result in additional on street car parking stress, detrimental to the amenity of surrounding residents, in accordance with policy TN15 and standards S18 and S19 of the Unitary Development Plan, as amended 2007.

- 21) The development shall not commence until details of the location and type of surface level cycle parking facilities for visitors, hard landscaping and disabled access drop-off to the health care centre to the front of the development have been submitted to and approved in writing by the council. The cycle facilities, hard landscaping and vehicular access shall be provided prior to the occupation or use of any part of the building and shall be permanently retained thereafter.

To ensure the adequate provision for cycle parking and access for all people and in the interest of visual amenity, in accordance with policies EN2, EN8, TN6 and standard S20.1 of the Unitary Development Plan, as amended 2007 and the Access for All SPD.

- 22) No deliveries, refuse collection and/or any other servicing activity for the health care centre or retail units shall take place between 20.00 hours and 07.00 hours the following day.

To ensure that the occupiers of neighbouring residential properties are not unduly affected by noise and disturbance contrary to policy EN21 of the Unitary Development Plan, as amended 2007.

- 23) The development shall not be occupied until details of the management of the car parking spaces, including access arrangements, surface treatments for pedestrian access and provision and monitoring of CCTV cameras, have been submitted to and approved in writing by the council. Such details as approved shall be carried out prior to any occupation or use of the building and thereafter be permanently retained.

To ensure a safe and secure environment for users of the development in accordance with policy EN10 of the Unitary Development Plan, as amended 2007.

- 24) No development shall commence until a desktop study, site investigation scheme, intrusive investigation and risk assessment have been submitted to and approved in writing by the Council. The desk study will identify all previous site uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors and any potentially unacceptable risks arising from contamination at the site. The site investigation scheme will provide information for an assessment of the risk to all receptors that may be affected, including those off site. The risk assessment will assess the degree and nature of any contamination on site and to assess the risks posed by any contamination to human health, controlled waters and the wider environment. A detailed method statement for any required remediation works will need to be submitted to, and approved in writing, by the Council. All works must be carried out by a competent person conforming to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004).

Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with Policies G0, G3, EN20A and EN21, of the UDP and CC4 of the emerging Core Strategy, and policy 5.21 of the London Plan 2011.

- 25) No development shall commence in any phase until any required remediation works have been completed and a validation report to verify these works has been submitted to, and approved in writing, by the Council unless otherwise authorised. If, during development, contamination not previously identified is found to be present at the site the Council is to be informed immediately and no further development (unless otherwise agreed in writing by the Council) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the Council. Any required remediation should be detailed and verified in an amendment to the remediation statement. All works must be carried out by a competent person conforming to CLR 11: Model Procedures for the Management of Land Contamination (DEFRA 2004).

Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with Policies G0, G3, EN20A and EN21, of the UDP and CC4 of the emerging Core Strategy, and policy 5.21 of the London Plan 2011.

- 26) A minimum of 10% of the dwellings shall be capable of meeting the needs of wheelchair users and shall be designed and capable of adaptation, in accordance with the Council's Supplementary Planning Guidance (Access for All). The remainder of the dwellings shall be designed to conform to Lifetime Homes standards and shall be constructed accordingly.

To ensure a satisfactory provision of dwellings, meeting the needs of people with disabilities in accordance with the council's Supplementary Planning Guidance (Access for All) and Policy 3.8 of The London Plan, 2011.

- 27) The development shall not commence before details of the means by which wheelchair access is provided to the building, dwellings and open spaces, including the provision of parking spaces, have been submitted to and approved in writing by the council. Such details as approved shall be carried out prior to any use or occupation of the buildings or open spaces and thereafter permanently retained.

To ensure satisfactory access provision is made for people in wheelchairs in accordance with policy HO6 and TN4 of the adopted Unitary Development Plan, as amended 2007.

- 28) The development shall not commence before details of the refuse storage, including provision for the storage of recyclable materials, have been submitted to and approved in writing by the council. Such details as approved shall be implemented prior to the occupation of the development and thereafter permanently retained. All refuse/recycling generated by the development hereby approved shall be stored within the agreed areas. These areas shall be permanently retained for this use.

To ensure the satisfactory provision of refuse storage and recycling in accordance with policy EN17 of the Unitary Development Plan, as amended 2007.

- 29) The development shall not commence prior to the submission and approval in writing by the Council of a refuse management plan, and the details as approved shall be fully implemented prior to any occupation of the building and permanently thereafter retained.

To ensure the satisfactory provision of refuse storage and recycling in accordance with policy EN17 of the Unitary Development Plan, as amended 2007.

- 30) No development shall commence until a statement of how Secured by Design requirements are to be achieved has been submitted to and approved in writing by the council. The approved details shall be carried out before any use of that part of the development to which the approved details relate.



To ensure a safe and secure environment in accordance with policy EN10 of the Unitary Development Plan, as amended 2007.

- 31) Each Class A1 unit shall not commence trading until precise details of the mechanical ventilation (including hours of operation) and sound insulation for that particular unit have been submitted to and approved in writing by the Council, and such equipment as is approved has been fully installed and made operational. The machinery shall thereafter be retained in an operational manner acceptable to the council.
- In order to ensure that the mechanical ventilation does not give rise to conditions detrimental to the amenities of surrounding occupiers by reason of noise and disturbance and/or smell, contrary to Policy EN21 of the Unitary Development Plan, as amended 2007.
- 32) Prior to commencement of the development hereby approved, details shall be submitted to and approved in writing by the Council, of the sound insulation of the floor / ceiling / walls separating the commercial part(s) of the premises from dwellings. Details shall ensure that the sound insulation (DnT,w and L'nT,w ) and any other mitigation measures are sufficiently enhanced in order that the standard specified in BS 8233:1999 is achieved within noise sensitive premises and their external amenity areas. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- To ensure that the amenity of occupiers of the development site / adjacent dwellings / noise sensitive premises is not adversely affected by noise, in accordance with Policies EN20A, EN20B and EN21 of the Unitary Development Plan, as amended 2007.
- 33) Prior to the commencement of the development hereby approved, details shall be submitted to and approved in writing by the Council, of the noise and vibration levels of proposed commercial noise sources and building services plant including appropriate noise mitigation measures to ensure that the external noise level at the development site/ nearest and/ or most affected noise sensitive premises is 10dBA below background LA90, as assessed according to BS4142:1997, with all noise sources operating together and internal room and external amenity noise standards will be achieved in accordance with BS 8233:1999. The approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- To ensure that the adjoining occupiers are not unduly affected by noise and disturbance, in accordance with policy EN21 of the Unitary Development Plan, as amended 2007
- 34) The development shall not commence until a Construction Management Plan has been submitted to and approved in writing by the Council. The details shall include any

external illumination of the site during construction, contractors' method statements, waste classification and disposal procedures and locations, suitable site hoarding, dust and noise monitoring and control, provisions within the site to ensure that all vehicles associated with the construction works are properly washed and cleaned to prevent the passage of mud and dirt onto the highway, and other matters relating to traffic management to be agreed. All works shall be carried out in accordance with the approved plan.

To ensure no unacceptable adverse effect on the amenities of surrounding occupiers or the local highways, in accordance with Policies EN21 and TN15 of the Unitary Development Plan, as amended 2007.

- 35) The development shall not be occupied prior to the submission and approval in writing by the Council of a Strategic Travel Plan, which shall include information on how alternative methods of transport to and from the development, other than by car, will be encouraged by the applicants. No part of the development shall be used or occupied prior to the implementation of the Travel Plan in accordance with the approved details, and the Travel Plan shall thereafter continue to be fully implemented.

To ensure that the use does not generate an excessive number of car trips which would be contrary to the Council's policies of car restraint set down in Policy TN13 of the Unitary Development Plan, as amended 2007.

- 36) Prior to commencement of the development, details of anti-vibration measures shall be submitted to and approved in writing by the Council. The measures shall ensure that any machinery, plant/ equipment, extract/ ventilation system and ducting are mounted with proprietary anti-vibration isolators and fan motors are vibration isolated from the casing and adequately silenced. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

To ensure that the amenity of occupiers of surrounding premises is not adversely affected by vibration, in accordance with Policies EN20A, EN20B and EN21 of the Unitary Development Plan, as amended 2007.

- 37) No development shall commence until a fully detailed sustainability statement, incorporating an energy strategy, has been submitted to and approved in writing by the council. The approved details shall be carried out before any use of that part of the development to which the approved details relate.

To ensure an energy efficient development to help reduce its carbon dioxide emissions, in accordance with Policies 5.2, 5.3, 5.6 and 5.7 relating to energy demand, energy efficiency and renewable energy of The London Plan 2011.

- 38) The development hereby permitted shall not commence until a surface water drainage scheme, based on sustainable drainage principles, has been submitted to and approved in writing by the council. The scheme shall be implemented in accordance with the approved details prior to first occupation of the development hereby permitted, and thereafter permanently retained.

To prevent any increased risk of flooding and to ensure the satisfactory storage of/disposal of surface water from the site in accordance with Policy 5.13 of The London Plan 2011 and PPS25.

- 39) No water tanks, water tank enclosures or other structures shall be erected on the roofs of the building hereby permitted, without planning permission first being obtained.

The Council wishes to exercise future control over development which may detract from the appearance of the building and negatively impact on the street scene in accordance with policies EN2 and EN8 of the Unitary Development Plan, as amended 2007.

- 40) No development shall take place until a methodology has been submitted to and approved in writing by the Council of how television interference as a result of the development hereby approved would be remediated. Such methodology as approved shall be implemented as appropriate to remediate any television interference immediately upon its discovery.

To ensure that television interference caused by the development is remediated in accordance with Policy G3 of the Unitary Development Plan, as amended 2007.

- 41) Prior to commencement of the development hereby approved, details of external artificial lighting shall be submitted to and approved in writing by the Council. Details shall demonstrate that vertical illumination of neighbouring premises is a maximum of 10lux at ground floor and 5lux at first and higher floor levels. The recommendations of the Institution of Lighting Professionals in the 'Guidance Notes For The Reduction Of Light Pollution 2005' shall also be met with regard to glare and sky glow. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

To ensure that the amenity of occupiers of the development site / surrounding premises is not adversely affected by lighting, in accordance with Policies EN20C and EN21 of the Unitary Development Plan, as amended 2007.

- 42) No impact piling shall take place until a piling method statement (detailing the type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water or sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the Council in consultation with the relevant water or sewerage undertaker. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

The condition has been requested by Thames Water as the proposed works would be in close proximity to underground water and sewerage utility infrastructure; the condition is necessary to ensure that these are protected during construction, in accordance with policies 5.14 and 5.15 of The London Plan, 2011.

- 43) All balconies provided as part of the development shall have drained level access doorways.

In order to provide accessible space in accordance with policy 3.8 of the London Plan 2011, and the council's adopted Access for all adopted supplementary planning guidance.

- 44) The development shall not be occupied prior to details of the provision of electric charging points at basement level having been submitted to and approved in writing by the council. Such details as approved shall be implemented prior to any use of the car parking spaces to which the details relate.

To ensure the appropriate distribution of specialist parking through the development, in accordance with policy 6.13 of The London Plan, 2011 and policies TN4 and TN15 of the Unitary Development Plan, as amended 2007.

**Reason(s) for granting planning permission:**

- 1) 1. The proposed development would bring significant regeneration benefits to the area, both in terms of community uses and housing, and because it is a well designed building within a high quality public realm that relates well to Wormholt Park and to the surrounding area. The scheme would achieve a sustainable development in accordance with PPS1, which promotes efficient use of land through mixed use development, reducing the need to travel, and in accordance with the general policies of the development plan. The latter policies include policy GO of the UDP, which encourages sustainable development including, amongst other things, co-ordinated land use and transportation, conserving and enhancing environmental quality and biodiversity, ensuring a choice of housing accommodation, including for people on lower incomes and seeking an adequate range of facilities available to all members of the community. They also include UDP policy G3 which seeks to conserve, protect and enhance the quality, character and identity of the borough's built up and open environments and London Plan policies 3.4 and 4.2 which seeks to ensure that development proposals optimise the quantum of use, compatible with the local context.
2. The proposed development would bring forward much needed additional housing in accordance with London Plan policy 3.3. The mixture of market housing and affordable housing, in the form of intermediate shared ownership units, is considered acceptable having regard to development plan policies particularly London Plan policies 3.11 and 3.12. The former policy requires boroughs in setting overall targets for affordable housing provision in accordance with the requirements of The London Plan to take account of local and general assessments of need and the mayor's strategic target for affordable housing provision that 40% of provision should be affordable. Within that, local authorities should take into account the London-wide objective of 60% social rent and 40% intermediate units and the promotion of mixed and balanced communities. London Plan policy 3.12 states that boroughs should seek the maximum reasonable amount of affordable housing when negotiating on individual mixed-use schemes, having regard to matters including the need to encourage rather than restrain residential development and the need to promote mixed and balanced communities. The tenure mix is considered acceptable in this instance, particularly taking into account the assessment of local need, the existing tenure mix in the area and of bringing forward a balanced mixed use development with positive benefits for the area.
3. The housing brought forward by the development would be an appropriate mix, having regard to the objective of securing family and non-family units and special needs housing, in accordance with UDP policy H06. It would also respect the aims of policy H014 which requires compliance with the principles of sustainable waste management. The internal design and layout of the housing units is considered



acceptable, although not all of the one bed units would meet the minimum space required by standard S7A and London Plan policy 3.5. There is provision made for private amenity space, though none is required in the UDP, which would benefit the future occupiers. The context of the development, particularly, the close proximity of Wormholt Park is considered such that there would be adequate play space, (including new play area and equipment secured by S106) very close by, in accordance with policy 3.6 of The London Plan, which seeks to ensure that all children have safe access to good quality well-designed secure and stimulating play and informal recreational provision.

4. This mixed use development is considered appropriate and beneficial, having regard to UDP policies SH1 and CS2 and to London Plan policies 3.16, 3.2, and 3.17. The inclusion of shops within the scheme would accord with UDP policy SH1, which seeks to retain and improve accommodation suitable for 'A' class uses. The former Janet Adegoke swimming pool, which was closed around 2002, has been replaced off-site at the Phoenix High School (approximately 170m north of the application site) having been integrated with the fitness centre at the Phoenix High School and has become an important facility for local community. The need for social infrastructure and community facilities in the area and the need to improve the health of the local population and reduce health inequalities, in partnership with the London strategic health authority, primary care trusts and other organisations involved in delivering health services are to be addressed within this scheme, in accordance with the aim of London Plan policies 3.2, 3.16 and 3.17.

5. The development is considered to comply with UDP policies EN2, EN2B and EN8 and London Plan policy 3.5. The proposal is considered to represent an enhancement of the public realm and the development would be of a high quality design that would respect the local setting and provide a mix of integrated facilities and uses, responding to the needs of the local community. The character and appearance of the conservation area and its setting and views into and out of it would be preserved or enhanced.

6. The scheme properly addresses environmental issues. It is considered that UDP policy EN10, which requires a safe and secure environment, is complied with. The proposal, similarly, would accord with standard S5 and policy EN17 of the UDP in that it would incorporate suitable facilities for the storage and collection of segregated waste. UDP policies EN20A and EN20B would be complied with because the development would not cause any undue pollution, with no significant worsening of air quality nor undue noise. With controls in place, compliance with UDP policy EN21, which requires that development does not cause undue detriment to the amenities of neighbours, would be ensured.

7. Whilst the proposal would result in a modest encroachment into Wormholt Park, a portion of the development site would be used to replace the lost area. Furthermore, the development would introduce a new urban space adjacent to Bloemfontein Road and provide significant improvements to Wormholt Park, to be secured through a legal agreement. Accordingly, the proposal is considered to be acceptable having regard to UDP policies EN22, EN23, EN26, EN27 and EN29 which require that new developments make provision for open space, that tree planting is provided. The proposal would also have regard to London Plan policy 7.18, which seeks to ensure that the present and potential value of open space to communities is protected, enhanced and realised. UDP policy EN22 requires that any development on public open space only be permitted if development would preserve its openness. In this regard, the development was considered a departure from the development plan. However, because replacement land would be integrated into Wormholt Park, itself to be improved, the scheme is considered acceptable. The quality of the nature



conservation area would not be prejudiced within this proposal and ~~the~~ **APPENDIX 1** considered to be an area of significant or special nature conservation interest such that there would be demonstrable harm to wildlife value.

8. The impact of the proposal on the highway network and local parking conditions would be minimal, and the development is considered to accord with UDP policies TN4, TN6, TN13 and TN15 and standards S18, 19 and 20; which require development proposals to be assessed for their contribution to traffic generation and their impact on congestion, require proposals to be designed to facilitate ease of access by disabled people and require proposals to provide direct, convenient, safe and provide secure facilities for cyclists.

9. The impact of the proposed development upon adjoining occupiers is considered acceptable. In this regard, the proposal accords with UDP policy EN8, which requires developments to respect the principles of good neighbourliness, and with standard S13 with respect to preventing a significant loss of outlook or privacy to neighbouring occupiers and that no new roof terraces nor balconies be created, use of which might cause harm to the amenities of neighbours by reason of noise and disturbance.

#### **For your information:**

- 1) The applicant in consultation with Thames Water and the Council will aim to provide customers with an appropriate minimum water pressure and a flow rate where it leaves Thames Waters pipes.

#### **Waste Comments**

Thames Water requests that the applicant should incorporate within their proposal, protection to the property by installing for example, a non-return valve or other suitable device to avoid the risk of backflow at a later date, on the assumption that the sewerage network may surcharge to ground level during storm conditions.

**Surface Water Drainage** - With regard to surface water drainage it is the responsibility of a developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that storm flows are attenuated or regulated into the receiving public network through on or off site storage. When it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of Ground Water. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required.

Where a developer proposes to discharge groundwater into a public sewer, a groundwater discharge permit will be required. Groundwater discharges typically result from construction site dewatering, deep excavations, basement infiltration, borehole installation, testing and site remediation. Groundwater permit enquiries should be directed to Thames Water's Risk Management Team.

A Trade Effluent Consent will be required for any Effluent discharge other than a 'Domestic Discharge'. Any discharge without this consent is illegal and may result in prosecution. (Domestic usage for example includes - toilets, showers, washbasins, baths and canteens). Typical Trade Effluent processes include: - Laundrette/Laundry, PCB manufacture, photographic/printing, food preparation, abattoir, farm wastes, vehicle washing, metal plating/finishing, cattle market wash down, chemical

manufacture, treated cooling water and any other process which produces contaminated water. **APPENDIX 1**

Thames Water would recommend that petrol / oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of petrol / oil interceptors could result in oil-polluted discharges entering local watercourses.

Thames Water recommends the installation of a properly maintained fat trap on all catering establishments. We further recommend, in line with best practice for the disposal of Fats, Oils and Grease, the collection of waste oil by a contractor, particularly to recycle for the production of bio diesel. Failure to implement these recommendations may result in this and other properties suffering blocked drains, sewage flooding and pollution to local watercourses.

#### **Water Comments**

Thames Water recommends the following informative be attached to this planning permission. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.

#### **Supplementary Comments**

There is evidence of surcharging local sewers. Peak overall discharge to combined sewer should be no greater than historical by means of surface water retention. If this cannot be achieved a study is recommended.

2)

The Environment Agency recommend that any above ground storage tank(s) (whether during construction phase or if they are required for the development) should be sited on an impervious base and surrounded by a suitable liquid tight bonded compound. They also advise that underground chemical, oil or fuel storage tanks should be constructed of material resistant to attack by the substance stored therein and protected against corrosion.

## **This decision notice is in draft only**

On behalf of the Director of Environment  
Duly authorised by the Council to sign this notice.

#### **Notes:**

This decision is a planning permission under Part III of the Town and Country Planning Act 1990 only. It must not be taken as implying that the Council will grant any other consent, permission or approval that may be necessary in connection with the development, whether under any other statutory powers or in any other capacity.

This planning permission should be read in conjunction with the legal agreement dated: 9th November 2011.

Refer to the Statement of Applicants' Rights and general information enclosed.

**SCHEDULE 3****HIGHWAY WORKS**

Improvements and alterations to the public highway and public footway at the Site which shall include all the works specified in paragraphs 2, 6, 7 and 8 of this Schedule 3 and may also include at the sole discretion of the Council all or part of the works referred to in the other paragraphs of this Schedule 3:

1. the upgrading of the footway around the entire Site shown for the purposes of identification only on the attached Plan No. 1;
2. provision of one loading bay on Sawley Road and provision of one loading bay on Bryony Road;
3. provision of new bus stop on Bloemfontein Road, subject to the successful introduction of the relevant bus route;
4. provision of new or upgraded pedestrian crossing to Bloemfontein Road;
5. provision, alteration or relocation of traffic calming measures associated with the Development;
6. provision of disabled parking bays;
7. provision of one new vehicle crossover on Sawley Road and provision of one new vehicle crossover on Bloemfontein Road;
8. reinstatement of redundant vehicle crossover to the footway on Bryony Road;
9. replacement and replanting of any street tree(s) to be removed with associated Highway Works; and
10. replacement of any street furniture to be removed with associated Highway Works; and

## APPENDIX 1

11. alteration (physical and legal) of any existing on-street parking spaces required to implement the Development.

The work involved in the construction of all the above improvements and alterations includes:-

1. general preliminaries;
2. alterations to statutory undertakers' pipes, cables, plant and equipment as necessary;
3. surface water drainage alterations as may be required for new gullies, manholes, connections and all pipework required;
4. provision and relocation of lighting columns and any other street furniture as necessary, and all associated electrical work;
5. provision of road markings and traffic signs both temporary and permanent, where necessary;
6. footway and carriageway works and alterations including embellished surfacing on approach to crossings; and
7. parking or waiting restrictions as required by the Council fronting the Development.

The Works shall be designed and constructed in accordance with the Department for Transport memoranda, standards and advice notes including the latest amendments thereof, or the Council's latest streetscape guidance, Streetsmart.

## APPENDIX 1

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4. provision and relocation of lighting columns and any other street furniture as necessary, and all associated electrical work;
5. provision of road markings and traffic signs both temporary and permanent, where necessary;
6. footway and carriageway works and alterations including embellished surfacing on approach to crossings; and
7. parking or waiting restrictions as required by the Council fronting the Development.

The Works shall be designed and constructed in accordance with the Department for Transport memoranda, standards and advice notes including the latest amendments thereof, or the Council's latest streetscape guidance, Streetsmart.



**SCHEDULE 4****WORMHOLT PARK WORKS**

Improvements and alterations to be carried out to Wormholt Park as shown indicatively on attached Plan No. 2 which may include at the sole discretion of the Council all or part of the works as follows:

**Part A: The Council's Wormholt Park Works**

1. improvements and expansion of the existing 6 to 12 year old play area in the south west corner of the park and the relocation of the toddlers 0 to 5 year old play area currently located on the north eastern side of the park to the south west corner of the park ;
2. relocation and improvement of tennis courts;
3. installation of a new wheel sport facility such as a skate/skateboard/BMX bicycle park;
- 4, improvements to the hard and soft landscaping of Wormholt Park;

**Part B: The Owner's Wormholt Park Works**

1. installation of new gates to Wormholt Park fronting Bloemfontein Road;
2. installation of lighting for the path to Wormholt Park as it passes beneath the main building within the Site.

**SCHEDULE 5**

DRAFT SHARED OWNERSHIP UNITS NOMINATIONS AGREEMENT

Dated \_\_\_\_\_ 2011

**Notting Hill Home Ownership Limited  
-and-  
Building Better health ( White City) Limited**

**- and -**

**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF HAMMERSMITH & FULHAM**

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**FIRST STEPS SHARED OWNERSHIP  
NOMINATION AGREEMENT**

On land known as Janet Adegoke Centre, 56 Bloemfontein Road and 1 Sawley  
Road London W12 7DH  
2011/01744/FUL

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## AGREEMENT

DATED

2011

## PARTIES

- (1) Notting Hill Home Ownership Limited ( Industrial and Provident Society No. IP23066R) whose registered offices is 1 Butterwick, Rear of Metro Building, Hammersmith, London W6 8DL  
("the Registered Provider" which expression shall where the context so admits include its successors in title and mortgagees)
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH & FULHAM** of Town Hall, King Street, Hammersmith, London W6 9JU ("the Council" which expression where the context so admits include its successors in title and assigns)

**Comment [J1]:** Check if NHHO are a separate entity from NHHG and registered address is still correct.

## RECITALS

- (A) The Council and Building Better Health (White City) Limited entered into an Agreement under Section 106 of the Town and Country Planning Act 1990 dated xx xxxx 2011 to facilitate and enable the provision of affordable housing on that land at Former Janet Adegoke Leisure Centre, 56 Bloemfontein Road and 1 Sawly Road, London W12 7DH shown edged red on the Plan annexed hereto ("the Land") together with vehicular access and landscaping ("the Development").
- (B) The Development has commenced.
- (C) The Private Registered Provider and the Council have agreed that the Units

**Comment [J2]:** Date to be inserted

**Comment [J3]:** HCA have recently changed the name they use for housing associations.

described in clause 1.13 which are constructed on the Land are to be sold under Intermediate Housing Leases to persons falling within priority groups whose needs and resources meet certain agreed criteria.

(D)

**IT IS AGREED AS FOLLOWS:**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 "Accommodation Suitability Criteria"**

means the accommodation suitability criteria set out in Schedule 1;

**1.2 "Day"**

means a working day excluding Saturdays Sundays Bank Holidays, Council and Registered Provider special holidays

**1.3 "h&f Home Buy"**

means the organisation, or any successor organisation, that is the principal delegated agent of the Zone Agent, Metropolitan Home Ownership or any successor organisation, and is responsible for all low cost home ownership products in the area of the London Borough of Hammersmith & Fulham.

**1.4 "Homes and Communities Agency"**

means the Homes and Communities Agency of of Palestra, 197 Blackfriars Road, London SE1 8AA or its statutory successor;

**1.5 "Index"**

The Office for National Statistics Average weekly Earnings Index.

**1.6 "Minimum Selection Criteria"**

means the minimum selection criteria set out in Schedule 1;

1.7 **“Nominee”**

means a proposed purchaser of a Unit who has been accepted by the Council as a nominee in accordance with the nomination list procedure set out in Appendices 1-4;

1.8 **“ First Steps Shared Ownership”**

A dwelling funded by the Homes and Communities Agency for part buy part rent sold to an eligible purchaser by way of a shared ownership lease.

1.9 **“ Private Registered Provider” (PRP)**

Any organisation registered with the Tenant Services Authority as a provider of social housing in accordance with Section 80 of the Housing and Regeneration Act 2008 . This can include Housing Associations, Local Authorities and private companies. The term is often abbreviated to “Registered Provider”.

1.10 **“Resale”**

means an assignment of a Shared Ownership Lease by a leaseholder of a Unit but shall not include the assignment of a Shared Ownership Lease where the leaseholder has stair cased to 100% or where the Registered Provider does not have the right to nominate a person to take an assignment of a Shared Ownership Lease

1.11 **Schedule 1**

means the schedule marked Schedule 1 annexed to this Agreement

1.12 **“ Shared Ownership Lease”**

means a lease based upon the Homes and Communities Agency’s (or



successors) sample lease for shared ownership housing or such other shared ownership lease

1.13 **Unit**

means one of the Units constructed in the Development which is allocated for sale under a Shared Ownership Lease by the RP pursuant to the terms of this Agreement comprising:

18 x 2 bed flats

7 x 3 bed flats

1.14 **“Practical Completion”**

means when the Units are substantially completed and are ready for occupation

1.15 **“Zone Agent”**

means the organisation appointed by the Homes and Communities Agency to provide a one stop shop service for assessing the eligibility for and the marketing of low cost home ownership schemes within the geographical zone to which it has been appointed .

**2 CO-OPERATION**

In entering into this Agreement the parties agree to:

2.13 co-operate and at all times to act in good faith towards each other; and

2.14 do all acts matters deeds or things reasonably required by the other party to better facilitate the disposal of any particular Unit

### 3 MARKETING

3.1 The PRP will agree a marketing plan with h&f HomeBuy at least 9 months prior to practical completion. Marketing will be particularly directed at social housing estates neighbouring the development to offer local residents the opportunity to access low cost home ownership options.

3.2 The PRP will contact h&f Home Buy 6 months prior to Practical Completion with details of properties which have been allocated to First Steps Shared Ownership nominees. The standard Property Detail pro-forma (see Appendix 4) should be used, one for each set of flats with the same bedroom size, income band and floor level.

3.3 h&f Home Buy will invite qualifying applicants to apply to be considered for the new development and to notify the applicants of a deadline for responses to be received. The invitation is to include reference to the need to meet the eligibility criteria, including the income bands. The invitation to applicants will be issued no later than 7 working days after the completed pro-formas have been received, or a later date if agreed by both h&f Home Buy and the PRP.

For details of the process to follow, including pro-formas see Appendices 1-4

3.4 If 4 weeks prior to Practical Completion, none of the Council's nominees have exchanged contracts for a specific shared ownership unit the PRP shall be free to nominate to those applicants meeting the eligibility criteria for London (employed people with a local connection ie working or living in the area and serving a community in the area or nearby with a maximum household income set by the Regional Housing Board at the time of notification of the availability of the units by the PRP to H&F HomeBuy)

#### 4 SELECTION OF NOMINEES

4.1 The PRP agrees that nominees should have an annual income of between £19,000 and the maximum set by the Regional Housing Board at the time of notification of the availability of the units by the PRP to h&f HomeBuy) and that preference will be given to those on lower incomes within this income range. The minimum income criteria can be disregarded in cases where h&f HomeBuy is able to make a nomination of a household with sufficient capital to enable a lower income to be used e.g. a pensioner with savings (see Schedule 1).

The specific details of the units to be sold and the affordability criteria for each is detailed below:

a) 18 two bed units will be sold so as to be affordable to a household with a gross annual income of the maximum set by the Regional Housing Board at the time of notification of the availability of the units by the PRP to h&f HomeBuy or less per year. In addition the total housing costs ( mortgage, rent on unsold equity and service charges) should come to no more than 40% of net income, where net income is assumed to be 70% of gross income.

**Comment [14]:** I have not been able to find person size or maximum income thresholds for any of the shared ownership units.

b) 7 three bed units unit will be sold so as to be affordable to a household with a gross annual income of the maximum set by the Regional Housing Board at the time of notification of the availability of the units by the PRP to h&f HomeBuy or less per year. In addition the total housing costs ( mortgage, rent on unsold equity and service charges) should come to no more than 40% of net income, where net income is assumed to be 70% of gross income.

4.2 Affordability will be based on no more than 40% of net income being spent on household costs (ie rent on unsold equity, mortgage costs and service charges). Net income will be 70% of gross income. All income thresholds are to increase from the date of the S106 Agreement in accordance with any increases in the

Index from year to year.

4.3 The PRP agrees to follow the Council's priorities for Rehousing as laid out in Appendix 1

## 5 NOMINATION LISTS

Throughout the course of the development programme for the Development and the marketing of the Units for sale, PRP and the Council shall respectively observe and comply with the procedures and requirements set out in Appendices 1-4 relating to the approval of Nominees by the Council

## 6 RESALES

6.13 The Council may nominate persons for a Resale provided that:-

6.13.1 PRP is satisfied that the Nominee can afford to buy a Shared Ownership Lease and satisfies the Minimum Selection Criteria and Accommodation Suitability Criteria. The criteria for resales and the minimum earning requirement will vary depending on the value of the share being sold by the leasehold.

6.13.2 h&f Home Buy undertake to invite qualifying applicants to register their interest in the property, including eligibility criteria, who to contact and deadline for responses within 10 working days of being notified of the details of the vacancy . After this the usual h&f Home Buy procedures of shortlisting & prioritisation will be followed.

6.14 If RP is not satisfied that the Nominees meet the requirements in clause 6.13.1 or the Council fails to nominate successfully within 1 calendar month

following the date of receipt of the notification of availability of the property as set out in clause 6.1.2 then in either event PRP will be free to allocate the Resale as it shall decide, save that it must notify H&F HomeBuy if the name and address of the proposed purchaser and H&F HomeBuy must confirm that the sale can progress, this confirmation not to be unreasonably withheld.

6.15 At the end of every monthly period (commencing with the date of this Agreement) PRP will send the Council a schedule setting out details of all completed Resales and other sales in the relevant monthly period and whether or not the Resale was to a Nominee

## **7 EXCLUSIONS**

7.1 The obligations in this Agreement shall not be binding upon:

7.1.1 any person to whom PRP grants a Shared Ownership or any other Intermediate Housing Lease or any successor in title to any such person; or

7.1.2 any mortgagee of any Tenant or person to whom RP grants a Shared Ownership Lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver;

7.1.3 any person whom by virtue of the terms of a Shared Ownership Lease is granted or has transferred to such a person either a reversionary interest or a new lease pursuant to the terms of a Shared Ownership Lease of such Unit; or

7.2 The obligations in this Agreement shall not be binding on any mortgagee of PRP in respect of the said Land or any part of the said Land when exercising a power of sale or upon any receiver appointed by such mortgagee over the same

or a person who is a successor in title to or derives title through or under any such mortgagee or receiver appointed by such mortgagee with the intent that such mortgagee receiver or successor in title shall be entitled to sell let charge or otherwise deal with the said Land or the relevant part of the said land free from the provisions of this Agreement

**8 TERM OF AGREEMENT**

This Agreement shall expire on the thirtieth anniversary of the date the last Unit in the Development is allocated for sale under a Shared Ownership Lease by PRP

**9 UNLAWFUL DISCRIMINATION**

9.1 PRP shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment of that Act

9.2 PRP shall take all reasonable steps to secure that all employees or agents of PRP and all sub-contractors employed in the performance of this Agreement do not unlawfully discriminate as set out in clause 9.1

**10 DISPUTE RESOLUTION**

In the case of dispute or difference on any matter under this Deed or as to the construction of this Deed any such dispute or difference shall be referred to a single arbitrator to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory re-enactment or modification for the time being in force

**11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**



**APPENDIX 1**

No provisions of this Deed shall be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999 and all third party rights as may be implied by law or deemed to be enforceable by the Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permitted by law

DRAFT

**SCHEDULE 1****Nominations Procedure****See also appendices 1-4****MINIMUM SELECTION CRITERIA**

Both the following must be met:

- The applicant's income or financial situation should be appropriate for the interest in the Unit proposed to be purchased and
- The applicant is purchasing an equitable interest in residential property for the first time . If the applicant is a previous home owner but does not have the means to purchase suitable accommodation in the borough they are still able to purchase a property via the Intermediate route. An applicant with substantial equity shall be considered if the social circumstances justify it or the applicant's existing home is subject to a compulsory purchase order or threat of a compulsory purchase order promoted by the Council

**ACCOMMODATION SUITABILITY CRITERIA**

The criteria to be applied, so far as is practicable, in matching the household of the applicant for a Shared Ownership Lease with the Unit available is:

- 1) Couples & single parents with one or more children will be offered accommodation which provides one bedroom for the parent(s) and one bedroom for each child and in circumstances where there is no suitable applicant for three or four bedroom accommodation they may be offered an additional bedroom. If in line with the Council's allocation policy for social rented properties and/or in line with the allocations policy in use by Notting Hill Housing Group children may be able to share bedrooms.
- 2) Couples and single parents with one or more children will have priority over

applicant(s) without children in respect of two bedroom accommodation.

- 3) Where the nominee is a social housing tenant and will be leaving a larger property they will be allowed and given priority for an additional bedroom above their assessed housing need, so long as there is still a net gain to social housing of at least one bedroom (ie if a pensioner couple leave a 4 bed council or housing association flat they would be entitled to a 2 bed shared ownership property).

## Appendix 1

### How does the council decide who should be shortlisted for a New Build Home Buy property?

When a New Build Home Buy property becomes available we alert all the people registered with h&f Home Buy via email. Once the property has been viewed and firm expressions of interest made by those people who are interested in moving to the property the council are sent a list of these people by the developing Housing Association or their agents from which we create a prioritised shortlist.

Because more people express an interest in low cost home ownership than we have available properties the council has to prioritise which people will be given the opportunity to purchase.

The council has followed government and local priorities when deciding who will be prioritised for Home Buy properties.

Priority is given in the order listed below:

- P1\*** Social housing tenants (secure council & assured housing association tenants) with preference given to those who live within the boundaries of LB Hammersmith and Fulham (LBHF) (as defined by First Steps London)
- P1\*** Serving MoD Personnel (as defined by First Steps London)
- P2** Applicants to whom the LBHF have accepted a duty to provide accommodation under the homelessness legislation. Includes those people placed in temporary accommodation.
- P3** Applicants who have a recognised disability. For more information please contact a Customer Relations Advisor on 020 8753 6464.
- P4.1** Key Workers as defined by LBH&F's Key Worker Allocations Quota
- P4.2** Applicants who are registered on the council's housing register for socially rented accommodation, or who have submitted an application which is under assessment. Where all circumstances are equal, *prioritisation within this band will follow LBH&F's*

**P5** Applicants who live or work in Hammersmith & Fulham and who do not fall into any other priority category.

**R** Applicants with incomes over £60,000. These applicants may register with h&f Home Buy but will only be eligible at the discretion of the Home buy Service Manager for resale properties where the required income is over £60,000. Customers in this category will be considered for developments where maximum income limit is that of the London Plan (currently £64,000)

Within each category we prioritise those people who have the lowest incomes needed to purchase the property above those with higher incomes unless there is a clear need for the property.

\* dependent on funding stream of development

Please be advised that LBH&F reserves the right to change the prioritisation model at anytime without notice

## Appendix 2

The nomination process for a new development.

(See Appendix 3 for flowchart)

2.1 The developing RP will contact h&f Home Buy 6 months prior to completion date with details of properties which have been allocated to First Steps Shared Ownership nominees. The standard Property Detail pro-forma (see Appendix 4) should be used, one for each set of flats with the same bedroom size, income band and floor level.

2.2 h&f Home Buy to invite qualifying applicants to apply to be considered for new development and to notify the applicants of a deadline for responses to be received, along with eligibility criteria ( including income bands) & contact details for the RP. The invitation to applicants will be issued no later than 7 working days after the completed pro-formas have been received, or a later date if agreed by both h&f Home Buy and RP.

2.3 Qualifying applicant(s) are invited to view property by the RP and further financial appraisal is to be undertaken of those people who registered a firm interest in the property . h&f Home Buy will then be sent a list of these people by the RP.

h&f Home Buy will order the list in accordance with Council priorities & return it to the RP within a deadline to be set depending on the size of the scheme. For this development the deadline will be following a minimum of 4 working days and a maximum of 7 working days.

**List sent to h&f Home Buy by RP**

- Full name of applicant
- Their Job Title
- Complete address.
- Telephone number
- The income amount told them by the customer
- The savings amount told them by the customer
- Details of any outstanding debts or financial obligations
- Unit to be purchased, equity share and price

**From h&f Home Buy to RP**

- h&f Home Buy registration number
- Prioritised position
- Full name
- Full address
- Whether they are a keyworker
- Whether they are a social housing tenant
- Income amount stated on the application
- Savings amount stated on the application
- Debt amount stated on the application
- Permanently employed Y/N
- Number of people stated on the application and household composition
- Telephone number

- Email address

Note: RPs must send the list of interested people who have viewed the property to the general h&f Home Buy email box at h&fhomebuy@lbhf.gov.uk, and not to individual officers.

2.4 The RP uses the prioritised shortlist to contact the interested parties in the prioritised order, arrange interviews if they are required, and then offer the property(ies) .

2.5 h&f Home Buy are to be informed on the progress of nominees purchasing property by the RPs. The Association will, having taken into account the Council's priorities as set out in Appendix 1, by notice in writing, offer a tenancy of a Unit to the Shared Ownership Occupier and such Shared Ownership Occupier shall have three days from the date of receipt of the Notice in which to accept such offer in writing.

2.6 The RP must advise the Council on completion dates for successful applicants. Where successful applicants are Council or RP tenants, the RP should advise the applicant that they should sign a Tenancy Termination Form & that the applicant should check that the rent is up to date on the property they are vacating.

1. RP will on exchange of contracts, inform h&f Home Buy forthwith in writing with the details of the estimated and confirmed completion date .
2. Should the property vacated be in the ownership of the Council or an RP operating in LBHF h&f Home Buy will:

2.1 for a Council property ensure that the relevant area housing office is informed of the completion date and the proposed date of vacation of the property



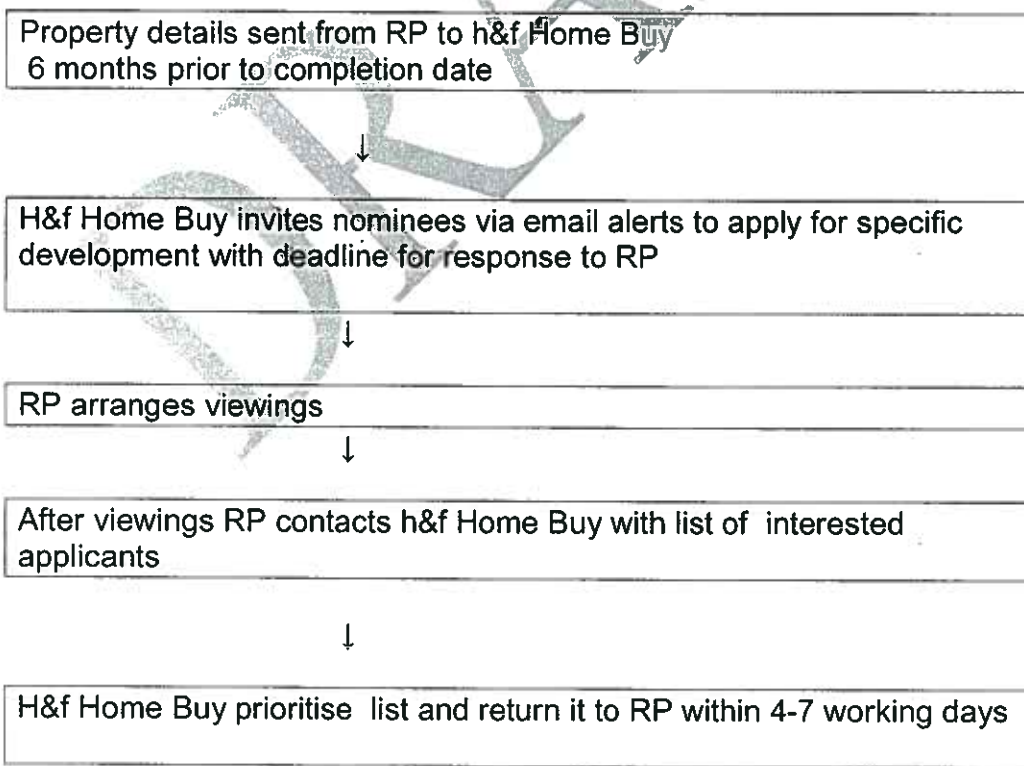
2.2 for property owned by an RP update their nominations records

2.3 arrange for the Nominees name to be removed from the Council's Housing Register

2.4 For property owned by an RP ensure that the Council is able to make a nomination to the resultant void

3. At the end of completion of all Units within the scheme, RP will send the h&f Home Buy Service Manager a summary list of all applicants and details of the Units allocated to them

Appendix 3  
First Steps Shared Ownership Nominations Process



Top shortlisted applicant is made formal offer , if s/he does not accept in writing within 3 working days the RP passes on to the next person on the shortlist



RP passes result to h&f Home Buy so that register can be updated

#### Appendix 4

Cover sheet, property information and completion sheets for Nomination requests for First Steps Shared Ownership:



#### Request for First Steps Shared Ownership nominations

Thank you for requesting nominations for your First Steps Shared Ownership development.

In order for h&f Home Buy to market your properties effectively to our clients you should:

1. Complete the pro forma sheet attached and send any relevant information regarding the development. Floor plans should be included
2. Attend a meeting with a member of the team to discuss the scheme and arrange a date to view the development.
3. Advise h&f Home Buy of any marketing you will be conducting in-house
4. Send to h&f Home Buy a list of any interested parties you have already logged who have shown an interest in your development
5. Provide full pricing information on each unit for sale
6. Provide your affordability percentage calculator

Email this information to - [h&fHome-Buy@lbhf.gov.uk](mailto:h&fHome-Buy@lbhf.gov.uk)

<b>h&amp;f HomeBuy</b>	<b>To be completed and sent back no less than</b>
<b>First Steps Shared Ownership Marketing Proforma</b>	
	<b>6 months prior to completion</b>
<b>Development marketing name</b>	
<b>Block name and address</b>	
<b>Sales Manager</b>	
<b>Contact details</b>	
<b>Line Manager</b>	
<b>Contact details</b>	
<b>Details for clients to contact RP</b>	
<b>Date handover expected</b>	
<b>Key worker properties</b>	
<b>Full market value 1 bed</b>	
<b>Full market value 2 bed</b>	
<b>Full market value 3 bed</b>	
<b>Minimum share</b>	
<b>Minimum income</b>	
<b>Maximum income</b>	
<b>Rent percentage</b>	
<b>Parking available</b>	
<b>In house marketing that will be carried</b>	

out	
Floor plans enclosed	
Viewing dates	
List of interested clients enclosed	
Affordability calculator enclosed	

IN WITNESS whereof RP has set its hand to this deed and the Council has caused its Common Seal to be hereunto affixed the day and year first before written

The COMMON SEAL of )  
 THE COUNCIL OF )  
 THE LONDON BOROUGH OF )  
 HAMMERSMITH & FULHAM is )  
 hereunto affixed in the presence of: )

Authorised Officer

EXECUTED as a DEED by affixing )  
 the COMMON SEAL of [RP] )  
 in the presence of )

Authorised Signatory

Authorised Signatory

**SCHEDULE 6**

DATED [        ] 201[    ]

- (1) Building Better Health (White City) Limited
- (2) [The Transferee]
- (3) The Mayor and Burgesses of the London Borough of  
Hammersmith and Fulham

**DEED OF COVENANT**

**Relating to**

**[full address of the Property]**

**THIS DEED** is made on

200[ ]

**BETWEEN**

- (1) BUILDING BETTER HEALTH (WHITE CITY) LIMITED (*the Transferor*) of North Suite, 1<sup>st</sup> Floor, Park Lorne, 111 Park Road, London NW8 7JL
- (2) [The Transferee] (*the Transferee*) of [address]; and
- (3) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF Hammersmith and Fulham (*the Council*) of Town Hall, King Street, London W6 9JU

**1 Recitals**

- 1.1 The Council is the local planning authority for the purposes of this Deed for the area within which the Property is situated and by whom the obligations in an agreement made between the Council and Building Better Health (White City) Limited and dated [13<sup>th</sup> November 2011] ("the Agreement") in this Deed are enforceable
- 1.2 The Transferor is the registered proprietor at HM Land Registry of the Property with title absolute under title number [ ]
- 1.3 By a transfer of even date the Transferee is entitled to be registered at HM Land Registry with title absolute of the Property pursuant to an agreement with the Transferor for the sale and purchase of the Property dated [ ] and made between the same parties as are parties hereto
- 1.4 The Transferor and the Transferee are required to enter into this Deed by the Council under the Agreement which imposes obligations as to the identity of potential owners and occupiers and limitations on the sale price of Discount Market Sale Units (as such units are defined in the Agreement)



## 2 Definitions

In this Deed, the following words shall have the following meanings:-

***Agreement***

means the Section 106 Agreement entered into by the Council and the Transferor dated [ ] 18<sup>th</sup> November 2011

***Availability Notice***

means a written notice from the Transferee served on the Council (marked for the attention of the Director of Community Services or such other officer as is nominated by the Council from time to time) indicating the Transferee's intention to dispose of the Property and including the information in paragraph 1 of the Third Schedule

***Council's Home Buy Unit***

means the organisation that is the principal delegated agent of the Zone Agent, Metropolitan Home Ownership, and is responsible for all low cost home ownership products in the area of the London Borough of Hammersmith & Fulham or any successor organisation

***Deed of Release***

means a deed in the form attached as the Second Schedule to this deed

***Determining Surveyor***

means an independent person suitably qualified and jointly appointed by the Transferee and the Council (which appointment may be terminated by either Party on reasonable notice whereupon a suitable replacement will be agreed between the Parties) acting (as expert not arbitrator) equally for each Party but at the Transferee's expense to value the Property on an Open Market Value basis pursuant to the provisions of paragraphs 3.1(i) and 3.1(ii) of the Third Schedule of this Deed

***Development***

means the development of the Site permitted by the planning permission granted pursuant to the planning application allocated statutory registration no: 2011/01744/FUL

***Discount Purchaser Nomination List***

means a written list to be provided by the Council to the Transferee from time to time in accordance with the provisions of paragraph 4.4 of the Third Schedule of this Deed

***Disposal***

means

- (a) any freehold transfer of the Property or
- (b) the grant or transfer of any Lease or Tenancy of the Property or any part of it for a term in excess of 21 years

and "Dispose" "Dispossee" and "Disposed" shall be construed accordingly

***Equity Payment***

means [        ]% of Open Market Value

***H & F Homebuy Register*** means a register compiled and managed by the Council's Home Buy Unit listing those people who have expressed an interest in purchasing intermediate housing

***Open Market Value***

means the best price at which the sale of an interest in property would have been completed unconditionally for cash consideration on the date of valuation assuming:-

- (a) a willing seller;

- (b) that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, for the agreement of the price and terms and for the completion of the sale;
- (c) that the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the date of valuation;
- (d) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
- (e) that both parties to the transaction had acted knowledgeably prudently and without compulsion

as agreed between the Council and the Transferee (or failing their agreement as certified by a suitably qualified expert whose appointment is agreed between them)

***Property***

means the property known as [full address of the unit] as shown edged red on the attached plan

***Relevant Discounted Sale Price***

means the sum equivalent to [ ]% of the Open Market Value (being 100% of the Open Market Value less the Equity Payment)

***Transferee***

means [name of the purchaser of the unit] of [address] and their successors in title to the Property and where the context so admits the term "Transferee" shall include their mortgagee and their personal representatives

***Transferor***

means Building Better Health (White City) Limited of North Suite, 1<sup>st</sup> Floor, Park Lorne, 111 Park Road, London NW8 7JL and its successors in title to the Property

***Working Days***

means any day (other than Saturday) on which banks are usually open for business in England & Wales

***Zone Agent***

means the organisation appointed by the Housing Corporation to provide a one stop shop service for assessing the eligibility for and the marketing of low cost home ownership schemes within the geographical zone to which it has been appointed .

**3 Transferee's Covenants**

Subject to clause 8 hereof unless the Council expressly agrees in writing to the contrary the Transferee for itself and its successor in title to the Property and each and every part thereof HEREBY COVENANTS with the Transferor and the Council as follows:-

- 3.1 The Transferee shall not sublet the Property
- 3.2 The Transferee shall not enter into a contract to Dispose of the Property unless the Transferee shall have first served an Availability Notice on the Council in respect of the Property
- 3.3 In the event that
  - 3.3.1 the Council requires the Transferee to do so not to Dispose of the Property until it has entered into a Deed of Release and covenanted to pay the Equity Payment to the Council upon legal completion of that disposal PROVIDED ALWAYS that in the event that the Council has not responded in writing to an

## APPENDIX 1

Availability Notice within 10 Working Days after receipt of the same then it shall be deemed not to require the Transferee to enter into a Deed of Release

3.3.2 the Transferee executes a Deed of Release then the Council and the Transferor shall use reasonable endeavours to execute the Deed of Release within 10 Working Days after each of them receives the said Deed of Release and the Council and the Transferor will take all appropriate steps to remove the restriction referred to in Clause 4 below from the charges register of the Property

3.4 In the event that the Council does not require it to enter into a Deed of Release pursuant to Clause 3.2 of this Deed

3.4.1 the Transferee shall not Dispose of the Property otherwise than in accordance with the provisions of the Third Schedule hereto; and

3.4.2 the total consideration payable upon a Disposal of the Property by a Transferee to a Disposee shall not exceed the Open Market Value of the Property less the amount of the Equity Payment as defined in and calculated pursuant to the Agreement; and

3.4.3 the Transferee shall not Dispose of the Property without first procuring that (in the case of a purchaser or lessees) such Disposee enters into a Further Deed of Covenant in the form of deed contained in the First Schedule to this Deed

**4 The Restriction**

- 4.1 The Transferor and the Transferee and the Council hereby apply to the Chief Land Registrar for the following Restriction to be entered in the Register of the title to the Property:-

"No disposition of the registered estate (other than a charge or a disposal by the proprietor of any registered charge over the Property pursuant to its legal power of sale) by the proprietor of the registered estate is to be registered without a certificate signed by the Transferor or his conveyancer and the Council that the provisions of Clause 3 of a Deed dated [ ] 200[ ] between Building Better Health (White City) Limited (1) and [Transferee] (2) and The Mayor and Burgesses of the London Borough of Hammersmith and Fulham (3) have been complied with"

- 4.2 The Council and the Transferor covenant to use reasonable endeavours to provide a signed certificate within 10 Working Days of being requested so to do

**5 Release of the Transferee's covenants**

- 5.1 In the event that the Transferee wishes to have the covenants in Clause 3 above released then:-

5.1.1 the Transferee may apply at any time to the Council in writing to make the Equity Payment (as defined in the Agreement) for the Property; and

5.1.2 in the event that the Council accepts the application (which is a matter wholly for the Council's discretion):-

- (a) the Transferee making the application shall make the Equity Payment to the Council; and



(b) the Council and the Transferor shall release in writing the Transferee and any subsequent disponees from the covenants at Clause 3 above and the Council and the Transferor will take all appropriate steps to remove the restriction referred to in Clause 4 above from the charges register of the Property

5.2 The Transferee hereby agrees to meet the reasonable costs of the Council and the Transferor in releasing the Transferee from the covenants in Clause 3 of this Deed but in the event that the release is at the Council's request then all parties shall bear their own costs

**6 Satisfaction of the requirements under the Agreement**

The Transferee is required to enter into this covenant by the Transferor and the Council in order to meet the requirements of Clauses 5.19 and 5.20 of the Agreement

**7 Severability**

If any term, condition or provision contained in this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Deed

**8. Mortgagees**

The terms of the Deed of Covenant will apply to and bind the Property and any mortgagee of any interest in the Property save to the following extent :

8.1.1 In the event that the Transferee defaults on any mortgage taken out to assist the purchase of the Property and the mortgagee needs to exercise its power of sale to realise its security on the Property the mortgagee shall be free to dispose of the Property free of the provisions of this Deed PROVIDED that:

8.1.1.1 if the sale takes place prior to [insert date three years after date of initial sale] the mortgagee shall pay to the council a sum equal to a minimum of the amount of 50% of the Equity Payment. If the sale price of the Property is lower than the amount of the original loan the mortgagee shall be entitled to retain a sum representing a proportion of the Equity Payment up to a maximum of 50% but it shall only be entitled to retain such sum as represents the difference between the sale price and the original loan (or sum equivalent to 50% of the Equity Payment if less) and shall pay the remainder of the Equity Payment to the Council.

8.1.1.2 if the sale takes place after [insert date three years after date of initial sale] the mortgagee shall pay to the Council a sum equivalent to the whole of the Equity Payment

8.1.1.3 any payment due under clauses 8.1.1.1 and 8.1.1.2 shall be made to the Council no later than twenty-one days after the date of completion of the sale of the Property

**9. Notices**

Any notice required to be served under this Deed shall be sufficiently served on the Council if sent by registered post or delivered by hand to [insert address] marked for the attention of [insert post title] and on the Transferee if sent by registered post or left for him at the Property addressed to him such notices shall be deemed to have been served if sent by registered post on the third working day after sending and if delivered by hand on the day of delivery

**THE FIRST SCHEDULE**  
**Further Deed of Covenant**

THIS DEED OF COVENANT is made the \_\_\_\_\_ day of \_\_\_\_\_ 200[ ]

BETWEEN :-

- (1) [the disposee] of [address] or whose registered office is at [address] ("the Covenantor")
- (2) Building Better Health (White City) Limited of North Suite, 1<sup>st</sup> Floor, Park Lorne, 111 Park Road, London NW8 7JL [or relevant successor in title] and
- (3) The Mayor and Burgesses of the London Borough of Hammersmith and Fulham of Town Hall (together "the Covenantee")

NOW THIS DEED WITNESSES as follows:-

**1 RECITALS**

This deed is entered into pursuant to the obligations to do so contained in Clause 5.19 of a deed dated / \_\_\_\_\_ / and made between Building Better Health (White City) Limited (1) / \_\_\_\_\_ / (2) The Mayor and Burgesses of the London Borough of Hammersmith and Fulham (3) ("the Deed")

**2 DEFINITIONS**

For the purposes of this Deed of Covenant a deed of release shall mean a deed in the form attached as the Appendix to this Deed

**3 COVENANTS**

**APPENDIX 1**

The Covenantor jointly and severally covenants with each of the named parties herein as Covenantee as a separate covenant to each of them (and enforceable as such) that the Covenantor will at all times after the date of this deed or until a Deed of Release is given by the Disposee (having the same meaning as in the Deed) will observe and perform the covenants and obligations contained in Clause 3 of the Deed as if the Covenantor had been original Covenantor under such Clause

This document has been executed as a deed and is delivered and takes effect at the date stated at the beginning of it.

THE COMMON SEAL of **THE MAYOR** )  
**BURGESSES OF THE LONDON** )  
**BOROUGH OF HAMMERSMITH AND** )  
**FULHAM** was hereunto affixed to this )  
deed in the presence of: )

Duly Authorised Signatory

THE COMMON SEAL of )  
**BUILDING BETTER HEALTH (WHITE CITY)** )  
**LIMITED** )  
was hereunto affixed to this )  
deed in the presence of: )

Director/Secretary

Director/Secretary

Executed as a Deed by )

[THE COVENANTOR] )

in the presence of: )

Director / Secretary

Director / Secretary

**THE SECOND SCHEDULE**

**Deed of Release**

**Dated**

201[ ]

**THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF HAMMERSMITH AND FULHAM**

**and**

**BUILDING BETTER HEALTH (WHITE CITY)  
LIMITED**

**and**

**[THE TRANSFEREE]**

**DEED OF RELEASE**

**in relation to**

**THIS DEED** is dated 200[ ]

**PARTIES**

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH & FULHAM of Town Hall, King Street, London W6 9JU (*the Council*)
- (2) BUILDING BETTER HEALTH (WHITE CITY) LIMITED of North Suite, 1<sup>st</sup> Floor, Park Lorne, 111 Park Road, London NW8 7TL (*the Transferor*)



(3) [THE TRANSFEREE] of [ ] (*the Transferee*)

**AGREED TERMS**

**1 Interpretation**

1.1 The definitions and rules of interpretation set out in this clause apply to this Deed.

**“Covenants”**

means the covenants contained in clause 3 of the Original Deed

**“Equity Payment”**

means [ ] % of Open Market Value

**“Original Deed”**

means the deed of covenant dated [ ] and made between (1) The Transferor (2) The Transferee and (3) The Council

**“Property”**

means the property known as [*full address of the unit*] and comprised in title number [*insert title number*]

**“Restriction”**

means the restriction contained in clause 4 of the Original Deed

1.2 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause or, or Schedule to, this Deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.

1.3 Clause, schedule and paragraph headings do not affect the interpretation of this Deed.

- 1.4 Where the Council or the Transferor or the Transferee is for the time being two or more individuals the terms “Council” and “Transferor” and “Transferee” include the plural number and obligations expressed or implied to be made by or with such a party are deemed to be made by such individuals jointly and severally.
- 1.5 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.6 A reference to a “person” includes an individual, corporate or unincorporated body.

**2 Release**

- 2.1 Where this Deed of Release is entered into pursuant to Clause 5.1 of the Original Deed then in consideration of the Equity Payment paid by the Transferee to the Council (receipt of which the Council acknowledges) the Council and the Transferor respectively release with full title guarantee the Property and each and every part of it from the Covenants to the intent that the Covenants are extinguished with effect from the date of this Deed
- 2.2 Where this Deed of Release is entered into pursuant to Clause 3.3 of the Original Deed the Council and the Transferor shall upon payment of the Equity Payment respectively release with full title guarantee the Property and each and every part of it from the Covenants to the intent that the Covenants are extinguished with effect from the date of this Deed

**3 Cancellation of registrations**

The Council and the Transferor agree to within thirty (30) days of the date of this Deed apply to the Land Registry for cancellation of Entry [ ] of the Charges Register of the register of title of the Property and removal of the Restriction from Entry [ ] of the Charges Register of the register of title of the Property.

**4 [Consent of Mortgagee**

The Mortgagee consents to the release of the Covenants and consents to the cancellation of the registrations referred to in clause 6.]

**5 Continuing effect**

5.1 Nothing in this Deed shall waive any breach by any party of its respective obligations contained in the Original Deed which may have occurred before the date of this Deed.

5.2 Except for the release contained in clause 2 the Original Deed shall remain in full force and effect.

**6 Contracts (Rights of Third Parties) Act 1999**

Any person who is not a party to this Deed may not enforce any of its terms under the Contract (Rights of Third Parties) Act 1999.

This document has been executed as a deed and is delivered and takes effect at the date stated at the beginning of it.

THE COMMON SEAL of THE MAYOR )  
BURGESSES OF THE LONDON )  
BOROUGH OF HAMMERSMITH AND )  
FULHAM was hereunto affixed to this )  
deed in the presence of: )

Duly Authorised Signatory

THE COMMON SEAL of )  
**BUILDING BETTER HEALTH (WHITE CITY)** )  
**LIMITED** )  
was hereunto affixed to this )  
deed in the presence of: )

Director/Secretary

Director/Secretary

Executed as a Deed by )  
  **[THE TRANSFEREE]** )  
in the presence of: )

Director / Secretary

Director / Secretary

**THE THIRD SCHEDULE****Provisions Applicable to a Resale**

The second, and each subsequent, transfer of the Property will be subject to the following procedures :

- 1 The Transferee shall serve the Availability Notice on the Council's Home Buy Unit:
  - 1.1 of the intention to sell the Property detailing its address and type and specifying:
  - 1.2 the open market value of the Property as certified by a member of the Royal Institute of Chartered Surveyors;
  - 1.3 two viewing dates, with one on a weekend day, each at times not before 10 am and not after 9 pm, that shall be at least 15 Working Days after the date of service of the Availability Notice;
  - 1.4 that the Transferee requires the Council to indicate whether there are eligible applicants on the H & F Homebuy Register within five Working Days after the Council receives the Availability Notice.
- 2 The Council shall notify the Transferee whether there are eligible applicants on the H & F Homebuy Register within five Working Days after receipt of the Availability Notice. In the event that there are no eligible applicants on the H & F Homebuy Register the Council will confirm in writing that the Transferee is free to sell the property to anyone at the Relevant Discounted Sale Price.
- 3 In the event that the Council disputes the Open Market Value of the Property, it shall notify this to the Transferee in writing within fifteen Working Days in which case:-

3.1 the Transferee and the Council shall endeavour to agree the Open Market Value of the Property within five Working Days but if this does not happen then either:-

- (i) the Determining Surveyor appointed to act for the Council and the Transferor in relation to disputes concerning the Open Market Value of the Discount Market Sale Units the subject of the Agreement shall be required to provide his assessment of the Open Market Value of the Property within 5 Working Days after being requested to do so; or
- (ii) in the event that the Transferee notifies the Council that he wishes to appoint a different Determining Surveyor then the new Determining Surveyor shall be appointed and within 5 Working Days after notification of such dispute shall be required to provide his assessment of the Open Market Value of the Property within 5 Working Days after being requested to do so and both parties shall (save in the case of manifest error) accept the Determining Surveyor's assessment of Open Market Value as binding
- (iii) PROVIDED ALWAYS that in the event that the Council does not dispute the Open Market Value stated by the Transferee within 15 Working Days after it receives the Availability Notice pursuant to Clause 1.1 then the Council shall be deemed to have accepted the Open Market Value as stated in the Availability Notice

3.2 On the date on which the Open Market Value of the Property is determined in accordance with this paragraph 3, the Transferee shall offer two additional viewing dates with one on a weekend day, each not before 10am and not after 9pm, that shall be at least ten Working Days after the date of on which the Open Market Value of the Property is determined



## APPENDIX 1

- 4 Within two Working Days of the date on which the Open Market Value of the Property is established and subject to the Transferee providing two viewing dates as required by this deed, the Council (acting through the appropriate officer or unit which at the time of this deed is the Council's Home Buy Unit) shall:
  - 4.1 notify all eligible persons on the H & F Homebuy Register of the availability of the Property, the Transferee's contact details and the two viewing dates provided by the Transferee
  - 4.2 require potential purchasers from the H & F Homebuy Register to respond to notice given in paragraph 4.1 above within five Working Days after receipt to express to the Council's Home Buy Unit an interest in viewing the Property and their preferred viewing date in writing or by e-mail
  - 4.3 require the potential purchasers of the Property to notify the Council within three Working Days of viewing the Property of their interest in purchasing the Property
  - 4.4 as soon as reasonably practicable, and in any event within six Working Days after the last of the dates on which potential purchasers were invited to view the Property supply the Transferee with the Discount Purchaser Nomination List (being a prioritised shortlist of eligible purchasers) .
5. The Transferee shall use reasonable endeavours to sell the Property to one of the Council's nominated potential purchasers and shall comply with the timescales stated in this Deed (save otherwise agreed with the Council) PROVIDED ALWAYS that:
  - 5.1 the Transferee shall not be obliged to offer the Property for sale to more than two persons from the Council's prioritised shortlist of potential purchasers; and
  - 5.2 in the event that
    - 5.2.1 the Council does not notify the Transferee that there are eligible applicants on the H & F Homebuy Register within five Working Day after it receives the Availability Notice pursuant to paragraph 1 of his schedule; or
    - 5.2.2 there are no people who express an interest in purchasing the Property; or

5.2.3 there are no potential purchasers nominated by the Council; or

5.2.4 no nominated potential purchaser has entered into a contract for the purchase of the Property within twenty Working Days after being formally offered the opportunity to do so; or

5.2.5 the Council does not perform its obligations pursuant to this Deed within the timescales set out (save as specifically agreed in writing between the Transferee and the Council);

then the Transferee shall be free to sell the Property to anyone at the Relevant Discounted Sale Price

6. The Transferee and the new purchaser shall inform the Council's Home Buy Unit of the name of the purchaser within 21 days after the date of the legal transfer of the Property.

This document has been executed as a deed and is delivered and takes effect at the date stated at the beginning of it.

THE COMMON SEAL of THE MAYOR )  
BURGESSES OF THE LONDON )  
BOROUGH OF HAMMERSMITH AND )  
FULHAM was hereunto affixed to this )  
deed in the presence of: )

Duly Authorised Signatory

THE COMMON SEAL of )  
BUILDING BETTER HEALTH (WHITE CITY) )  
LIMITED )  
was hereunto affixed to this )

deed in the presence of: )

Director/Secretary

Director/Secretary

Executed as a Deed by )

**[THE TRANSFEREE]** )

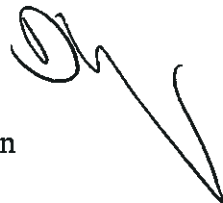
in the presence of: )

Director / Secretary

Director / Secretary

IN WITNESS of which the parties have executed but not delivered this Deed until the date first shown above.

THE COMMON SEAL OF THE COUNCIL OF )  
THE LONDON BOROUGH OF HAMMERSMITH )  
AND FULHAM was affixed )  
in the presence of:- )




The Officer duly authorised on behalf of the Council

Seal No. 13/.....574

Executed as a DEED by )  
BUILDING BETTER HEALTH )  
(WHITE CITY) LIMITED )  
in the presence of: )

Russell Gates  
17 TURNERS CLOSE  
SOUTHWATER  
MORSHAM  
WEST SUSSEX

Authorised Signatory: 

Authorised Signatory: 

**APPENDIX 1**

Dated 18<sup>th</sup> November 2011

THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF  
HAMMERSMITH AND FULHAM

AND

BUILDING BETTER HEALTH (WHITE  
CITY) LIMITED

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**AGREEMENT**

Relating to the development of  
**FORMER JANET ADEGOKE LEISURE  
CENTRE, 56 BLOEMFONTEIN ROAD AND 1  
SAWLEY ROAD, LONDON W12 7DH**

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Michael Cogher  
Assistant Director  
Legal & Democratic Services  
Town Hall King Street  
Hammersmith  
London W6 9JU

Ref: HLR/E00026.62