

**Appendix A – Proposed settlement agreement**



**DATED**

**2018**

**BETWEEN**

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**AND**

**HITCHIN TOWN HALL LIMITED**

**AND**

**HTH FINANCE LIMITED**

**AGREEMENT RELATING TO**

**NORTH HERTFORDSHIRE MUSEUM AND HITCHIN TOWN HALL**

THIS AGREEMENT is dated

2018

## PARTIES

- (1) **NORTH HERTFORDSHIRE DISTRICT COUNCIL** of Council Offices, Gernon Road, Letchworth Garden City SG6 3JF (**Council**)
- (2) **HITCHIN TOWN HALL LIMITED** a charity incorporated and registered in England and Wales with company number 07974116 whose registered office is at 2 Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire SG5 1JQ and whose registered Charity No. is 1148921 (**HTH Limited**)
- (3) **HTH FINANCE LIMITED** company number 10205544 whose registered office is 2 Croft Chambers, 11 Bancroft, Hitchin, Hertfordshire SG5 1JQ (**Financier**)

## BACKGROUND

- (A) The Dispute has arisen between the Council and HTH Limited.
- (B) HTH Limited is the proprietor of the Brand Street Property.
- (C) The Financier has the benefit of the Charge, the Development Agreement Charge and the Debentures.
- (D) Notwithstanding their differences the parties have agreed terms for settlement of the Dispute and wish to record those terms of settlement, on a binding basis, in this agreement.
- (E) Notwithstanding that the Town Hall Property was originally constructed by Hitchin Urban District Council for Hitchin Residents it is acknowledged that any income generated by the Council will be for the benefit of North Hertfordshire residents.
- (F) Insofar as this agreement relates to the settlement of the Development Agreement, the Council enters into it both on its own behalf and on behalf of the Trust pursuant to a decision of the Cabinet Sub-Committee (Council Charities) dated [XXX].

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

**Brand Street Property:** means the land and buildings sited thereon formerly known as 14/15 Brand Street and registered at the Land Registry under title number HD529274.

**Charge:** means the charge dated 12 September 2013 between HTH Limited and Social Investment Business Foundation the benefit of which is now vested in the Financier and with respect to security granted over the Brand Street Property referred at entry 2 and 3 of the charges register of title number HD529274 as at 23 June 2017 at 07:06:52.

**Community Purpose:** activities which a reasonable person might consider are being carried on for the benefit of the North Hertfordshire community provided that a

reasonable level of commercial use may be carried out in order to provide income to support those activities.

**Debentures:** means a debenture dated 15 October 2012 and a debenture incorporated in the Charge in each case over the assets of HTH Limited and between HTH Limited and Social Investment Business Foundation the benefit of which are now vested in the Financier.

**Development Agreement:** means the Development Agreement dated 9 September 2013 relating to North Hertfordshire Museum and Hitchin Town Hall between the Council and HTH Limited for the refurbishment and redevelopment of Hitchin Town Hall and adjacent property for the purposes of creating a District Wide Museum and improved community facility following which HTH Limited would have been granted a 125 year lease of the Town Hall Property.

**Development Agreement Charge:** means a charge by way of assignment of the interest of HTH Limited in the Development Agreement dated 15 October 2012 and between HTH Limited and Social Investment Business Foundation the benefit of which are now vested in the Financier.

**Domain Name:** means the domain name known as hitchintownhall.co.uk registered with Nominet.

**Dispute:** means the dispute between the Council and HTH Limited relating to a Development Agreement dated 9 September 2013.

**Hitchin Residents:** the inhabitants at any relevant time of the following electoral wards within Hitchin Hertfordshire, United Kingdom as they are constituted at the date of this agreement: Priory; Highbury; Walsworth; Bearton; and Oughton

**Loan Agreement:** means the loan made by the Council to HTH Limited via a letter stating 'to be repaid when funds available' dated XXXX

**Part 1 Conditions** means the conditions in Part 1 of the Standard Commercial Property Conditions (Third Edition) and Condition means any one of them.

**Part 2 Conditions** means the conditions in Part 2 of the Standard Commercial Property Conditions (Third Edition) and Condition means any one of them.

**Project:** means the scheme for the refurbishment and redevelopment of Hitchin Town Hall and adjacent property for the purposes of creating a District Wide Museum and improved Town Hall both for community use.

**Protected Period:** means an ongoing rolling commitment of five years starting from the date of the Transfer Deed during which the Council undertakes to retain the ownership of the Brand Street Property and the Town Hall Property for the Community Purpose. This Protected Period shall apply until a date not earlier than five years from a Protected Period Review.

**Protected Period Review:** means a review by the Council of its undertaking in respect of the Protected Period as to the future ownership and use of the Brand Street Property and the Town Hall Property. The timing of any such review shall be at the sole discretion of the Council and the Council undertakes to consult the North Hertfordshire community as part of any such review.

**Protected Period Review Outcomes:** means the decision made by the Council following a Protected Period Review. If the Council decides to continue its commitment to retain the ownership of the Brand Street Property and the Town Hall Property for the Community Purpose then the Protected Period continues, subject to any further Protected Period Reviews. If the Council decides to consider alternative ownership or changing the use of the Brand Street Property and/or Town Hall Property, this shall terminate the Protected Period with effect from the date five years after the decision. During the period until the Protected Period terminates the Council shall consider any reasonable proposals put forward by Hitchin Residents and/or the North Hertfordshire community or part thereof for purchase or management of the Brand Street Property and/or Town Hall Property, provided any such proposal meets the statutory requirements governing the Council.

**Purchase Price:** £550,000

**Related Parties:** means and includes only:

- (a) a party's parent and subsidiaries
- (b) a party's directors, or secretary, principals or officers or any individual agents, or other representatives
- (c) A party to whom the benefit of this agreement has been assigned or transferred.

**Released Claims:** means all and/or any actions, claims, rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to the parties or to the law, and whether in law or equity, that it, its Related Parties or any of them ever had, may have or hereafter can, shall or may have against the other parties or any of its Related Parties arising out of or connected with:

- (a) the Dispute;
- (b) the underlying facts relating to the Dispute;
- (c) any agreement between or act by the parties or their Related Parties or any of them; and
- (d) any other matter arising out of or connected with the relationship between the Parties concerning the Dispute.

**Town Hall Property:** means the land and buildings sited thereon known as Town Hall, Grammar School Walk, Hitchin and registered at the Land Registry under title number HD488762.

**Transfer Deed:** means a form TR1 in the form of the draft at Annex 1

**Trust:** the Hitchin Town Hall Gymnasium and Workmans Hall Trust (registered charity number 233752) of which the Council is the sole trustee

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.3 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.4 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.5 A reference to **writing** or **written** does not include fax or e-mail.
- 1.6 Except where a contrary intention appears, a reference to a clause is a reference to a clause of this contract.
- 1.7 Clause and paragraph headings shall not affect the interpretation of this contract.
- 1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2 EFFECT OF THIS AGREEMENT**

The parties hereby agree that on completion of the transfer of the Brand Street Property to the Council, this agreement shall immediately be fully and effectively binding on them.

## **3 TERMS OF SETTLEMENT**

- 3.1 The parties agree that on the date of this agreement:-
- (a) The Council will pay the Purchase Price to HTH Limited.
  - (b) HTH Limited shall complete the Transfer Deed to transfer the Brand Street Property to the Council unencumbered and with vacant possession.
  - (c) HTH Limited shall redeem the charge to the Financier and the Financier shall release the Charge, the Development Agreement Charge and the Debentures.
  - (d) The Council undertakes to comply with the Protected Period, Protected Period Review and Protected Period Review Outcomes.
- 3.2 The parties hereby agree that the Development Agreement is terminated. For the avoidance of doubt HTH Limited and the Financier agree to release their rights under the Development Agreement and all parties agree to release the other parties from their obligations under the Development Agreement.

- 3.3 The Council hereby agrees to write off in full, including any accrued interest, the sum owed by HTH Limited to the Council in respect of the Loan Agreement.
- 3.4 The Council acknowledges that HTH Limited do not control the Domain Name and that the Council have no claim over the Domain Name, the website or any content displayed.
- 3.5 The parties hereby agree to issue an agreed press statement within five days of the signing of this agreement as set out in Annex 'C'.
- 3.6 The parties hereby agree that this agreement is in full and final settlement of the Released Claims.

#### **4 RELEASE**

This agreement is in full and final settlement of, and each party hereby releases and forever discharges the Released Claims.

#### **5 VAT**

- 5.1 Each amount stated to be payable by the Council to HTH Limited under or pursuant to this agreement is exclusive of VAT (if any).
- 5.2 If at any time Her Majesty's Revenue and Customs (HMRC) levies a charge against HTH Limited in respect of VAT connected with works undertaken on the Brand Street Property then the Council agrees to pay to HTH Limited a sum equivalent to that VAT on demand.

#### **6**

- 6.1 The Part 1 Conditions are incorporated in this contract so far as they:
- 6.1.1 apply to a sale by private treaty;
  - 6.1.2 relate to freehold property;
  - 6.1.3 are not inconsistent with the other clauses in this contract; and
  - 6.1.4 have not been modified or excluded by any of the other clauses in this contract.
- 6.2 The Part 2 Conditions are not incorporated into this contract.

#### **7 AGREEMENT NOT TO TAKE PROCEEDINGS ETC**

- 7.1 Each party agrees, on behalf of itself and on behalf of its Related Parties not to sue, commence, prosecute, finance or cause to be commenced or prosecuted against the other parties or their Related Parties any action, suit or other proceeding concerning the Released Claims, in this jurisdiction or any other either directly or indirectly via third parties. In respect of any third party litigation in relation to the Project each party agrees that it will not actively encourage or engage other third parties to pursue litigation and each party shall be limited to supplying documents and/or witness statements in response to a request from the third parties' legal representatives..

- 7.2 Clause 4 and Clause 7.1 shall not apply to, and the Released Claims shall not include, any claims in respect of any breach of this agreement or prevent or restrict the participation of any party in any public examination or enquiry.

## **8 COSTS**

The parties shall each bear their own legal costs in relation to the Dispute and this agreement.

## **9 WARRANTIES AND AUTHORITY**

- 9.1 Save as referred to in this agreement, each party warrants and represents that it has not sold, transferred, assigned or otherwise disposed of its interest in the Released Claims.

- 9.2 Each party warrants and represents to the others with respect to itself that it has the full right, power and authority to execute, deliver and perform this agreement.

## **10 INDEMNITIES**

- 10.1 Each party hereby indemnifies, and shall keep indemnified, the other parties against all costs and damages (including the entire legal expenses of the parties) incurred in all future actions, claims and proceedings in respect of any of the Released Claims which it or its Related Parties or any of them may bring against the other party or its Related Parties or any of them.

## **11 NO ADMISSION**

This agreement is entered into in connection with the compromise of disputed matters. It is not, and shall not be represented or construed by the parties as, an admission of liability or wrongdoing on the part of any party to this agreement or any other person or entity.

## **12 SEVERABILITY**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

## **13 ENTIRE AGREEMENT**

- 13.1 This agreement and the documents annexed to it constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 13.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **14 NO CONFIDENTIALITY**

13.1 The parties hereby agree that there shall be no confidentiality obligation in respect of this agreement.

13.2 The parties hereby agree that this Agreement shall not prevent or restrict the participation of any party in any public examination or enquiry relating to the Project.

## **15 GOVERNING LAW**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## **16 JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

## **17 CHARITIES ACT 2011**

The land to be transferred pursuant to this agreement is held by Hitchin Town Hall Limited, a non-exempt charity, and the transfer will not be one falling within section 117(3) of the Charities Act 2011, so that the restrictions on disposition imposed by sections 117-121 of that Act apply to the land.

## **18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties agree that the terms of this agreement are not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

## **19 CO-OPERATION**

The parties shall deliver or cause to be delivered such instruments and other documents at such times and places as are reasonably necessary, and shall take any other action reasonably requested by the other party for the purpose of putting this agreement into effect.

## **20 VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **21 TRUST**

The parties acknowledge that the liability of the Council under this agreement or otherwise in respect of the Trust is limited to the assets of the Trust from time to time.

This agreement has been entered into on the date stated at the beginning of it.



Executed by affixing the common seal of **NORTH HERTFORDSHIRE DISTRICT COUNCIL** in the presence of:

.....  
Authorised Signatory

Signed as a deed by **HITCHIN TOWN HALL LIMITED** acting by two Directors:

.....  
Director

.....  
Director

Signed as a deed by **HTH FINANCE LIMITED** acting by two Directors:

.....  
Director

.....  
Director

HM Land Registry  
Transfer of whole of registered title(s)

# TR1

**Any parts of the form that are not typed should be completed in black ink and in block capitals.**

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Remember to date this deed with the day of completion, but not before it has been signed and witnessed.

Give full name(s) of all the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of all the persons to be shown as registered proprietors.

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

1	Title number(s) of the property: HD529274
2	Property: Land at North Hertfordshire Museum, Brand Street, Hitchin, SG5 1JE
3	Date:
4	<p>Transferor: Hitchin Town Hall Ltd</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 07974116</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
5	<p>Transferee for entry in the register:</p> <p>North Hertfordshire District Council</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
6	<p>Transferee's intended address(es) for service for entry in the register:</p> <p>Council Offices, Gernon Road, Letchworth, Hertfordshire, SG6 3JF</p>
7	The transferor transfers the property to the transferee

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
  - in the first box, or
  - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to [Joint property ownership](#) and [practice guide 24. private trusts of land](#) for further guidance. These are both available on the GOV.UK website.

insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

8 Consideration

- The transferor has received from the transferee for the property the following sum (in words and figures):

Five hundred and fifty thousand pounds (£550,000)

- The transfer is not for money or anything that has a monetary value

- Insert other receipt as appropriate:

9 The transferor transfers with

- full title guarantee  
 limited title guarantee

10 Declaration of trust. The transferee is more than one person and

- they are to hold the property on trust for themselves as joint tenants  
 they are to hold the property on trust for themselves as tenants in common in equal shares  
 they are to hold the property on trust:

11 Additional provisions

11.1 The land transferred is held by Hitchin Town Hall Limited, a non-exempt charity, and this transfer is not one falling within section 117(3) of the Charities Act 2011 so that the restrictions on disposition imposed by sections 117-121 of that Act apply to the land.

11.2 The directors of Hitchin Town Hall Limited being the persons who have the general control and management or its administration, certify that they have power under its trusts to effect this disposition and that they have complied with the provisions of the said sections 117-121 so far as applicable to this disposition.

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 10 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to [Joint property ownership](#) and [practice guide 24: private trusts of land](#) for further guidance.

Remember to date this deed in panel 3.

## 12 Execution

Executed as a deed by  
**HITCHIN TOWN HALL LIMITED**  
acting by two directors or a  
director and the company secretary

.....  
Director

.....  
Director/Secretary

Executed as a deed by  
affixing the seal of **NORTH  
HERTFORDSHIRE DISTRICT  
COUNCIL** in the presence of:

.....  
Authorised Signatory

### WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

## **ANNEX B – Agreed Press Release**

To be agreed.