

THIS UNDERTAKING is given the 19 day of November 2013

BY:

- (1) **PETER CLIFFORD BLUFF** of Barn Lodge, 159 Mansfield Road, Skegby, Sutton-in-Ashfield, Nottinghamshire, NG17 3NB ('the Owner')

## 1. DEFINITIONS

IN THIS UNDERTAKING the following words and phrases shall have the following meaning:-

- 1.1. "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Undertaking have the meaning ascribed to them in the Act unless a contrary intention appears
- 1.2. "Affordable Housing Units" means the Dwellings to be constructed on the Application Site and are designated as the Affordable Housing Units in any approval given to a Subsequent Application and which shall be provided by the Owner in accordance with the terms of Clause 6 and the Second Schedule
- 1.3. "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Undertaking and where this Undertaking requires any matter to be approved by the Council such approval shall not be unreasonably withheld or delayed
- 1.4. "the Application" means the Planning Application dated 24<sup>th</sup> December 2012 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2012/0556
- 1.5. "the Application Site" means the land for which planning permission is sought to carry out the Proposed Development and which is shown for the purposes of identification only edged red on the Plan
- 1.6. "the Appeal" means the appeal referred to in Clause 2.7 below.
- 1.7. "Dwelling(s)" means separate residential unit(s) and shall include both Affordable Housing Unit(s) and non-Affordable Housing Unit(s)
- 1.8. "Education Authority" means Nottinghamshire County Council or such other Local Government Authority or Public body as shall for the time being have the statutory duty to provide compulsory state education within the area of Sutton-in-Ashfield
- 1.9. "Education Need" means the provision of eight additional primary places at St Andrews Church of England Primary School necessitated by the Proposed Development

- 1.10. "Eligible Household(s)" means a person or household identified in accordance with the Registered Provider's selection criteria as being in need of affordable housing
- 1.11. "Intermediate Housing" means housing at prices and rents above those of social rent, but below market price or rental, and including shared equity/ownership products (e.g. Homebuy), or other low cost homes for sale and intermediate rent.
- 1.12. "non-Affordable Housing Units" means the Dwellings to be constructed on the Application Site which are to be offered for sale at 100 per cent of the then prevailing Open Market Value excluding the Affordable Housing Units
- 1.13. "the Obligations" means the planning obligations contained or referred to in the First and Second Schedules to this Undertaking
- 1.14. "Occupation" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and reference to "Occupied" and "Occupy" shall be construed accordingly
- 1.15. "Open Market Value" means the estimated price or premium for which the sale of the freehold estate or the grant of a long leasehold interest in land (not being a rack rented lease) for the use thereof specified in this Agreement should complete on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion
- 1.16. "the Plan" means the plan attached to this Undertaking
- 1.17. "the Planning Permission" means the grant of Planning Permission pursuant to the Appeal
- 1.18. "the Proposed Development" means a residential development for a maximum of thirty-seven Dwellings as more particularly described in the Application
- 1.19. "Registered Provider" means a provider of social housing for the time being entered on the register of providers of social housing maintained pursuant to Section 111 of the Housing and Regeneration Act 2008
- 1.20. "Social Rented Housing" means rented housing owned and managed by Registered Providers, for which guideline target rents are determined through the national rent regime or provided under equivalent rental arrangements agreed by the local authority or with the Homes and Communities Agency as a condition of grant funding
- 1.21. "a Subsequent Application" means any application for the approval of reserved matters following the issue of the Planning Permission

- 1.22. Any reference to any statutory body (other than the parties to this Undertaking) shall include any body to which (whether before or after the making of this Undertaking) the relevant powers or duties of that statutory body shall be transferred.

## **2. RECITALS**

### **WHEREAS:-**

- 2.1. The Owner is registered at H.M. Land Registry as the proprietor of the Application Site with title absolute under title number NT 215461
- 2.2. The Owner has submitted the Application
- 2.3. The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated
- 2.4. The Council's Local Plan Review adopted in November 2002 contains inter alia Policy HG6 (Public Open Space) and TR6 (Transport Provision) and the Council has adopted a Supplementary Planning Document entitled 'Affordable Housing' in July 2009
- 2.5. The Council resolved on 9<sup>th</sup> May 2013 to refuse consent for the Proposed Development in accordance with the Application
- 2.6. The Owner has on 2<sup>nd</sup> July 2013 lodged an appeal against the refusal of consent for the Proposed Development with the Planning Inspectorate to which has been allocated appeal number APP/W3005/A/13/2200723.
- 2.7. The Owner has agreed to give the Undertakings in the form of this Deed as a planning obligation to be taken into consideration by the Inspector determining the Appeal.

## **3. ENABLING POWERS**

The Owner gives this Undertaking under and pursuant to Section 106 of the Act.

## **4. PLANNING OBLIGATIONS**

- 4.1. The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations shall be binding and enforceable without time limit against the Owner and any persons deriving title from him in the manner specified in Section 106 of the Act.
- 4.2. The Council is the Authority entitled to enforce the Obligations.

## **5. CONDITIONALITY**

The Obligations are conditional upon the issue of the Planning Permission pursuant to the Appeal.

## **6. COVENANT**

The Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site shall be subject to the Obligations and that the Owner will at his own expense duly carry out and perform the Obligations

## **7. RESERVATIONS AND DECLARATIONS**

The Undertaking is given subject to the following matters:

- 7.1. Any reference to the Owner shall where the context so admits include their successors in title and assigns
- 7.2. Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa
- 7.3. No person shall be liable for breach of covenant contained in this Undertaking after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 7.4. If the Planning Permission having been granted shall expire before the Proposed Development is begun, or shall at any time be revoked, this Undertaking shall forthwith determine and cease to have effect
- 7.5. Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the one relating to the Proposed Development as specified in the Application) granted after the date of this Undertaking
- 7.6. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 7.7. The Undertaking is a Local Land Charge and shall be registered as such
- 7.8. The Obligations shall not be enforceable against:
  - 7.8.1. the buyers or occupiers of a single Dwelling erected on the Application Site pursuant to the Planning Permission; or
  - 7.8.2. a statutory undertaker after a transfer of the statutory apparatus and / or any land within the Application Site upon or in which the statutory apparatus is situated or is to be situated by the Owner to that statutory undertaker

**IN WITNESS** whereof the parties have executed this Undertaking as a Deed the day and year first before written

# FIRST SCHEDULE

## THE OBLIGATIONS

Prior to the first Occupation of any Dwelling forming part of the Proposed Development there shall be paid as a commuted sum to the Council:

1. For the improvement of existing open space and/or the provision of new open space and or the planting of community woodland within the administrative district of Ashfield in Nottinghamshire a sum calculated at the rate of TWO THOUSAND FIVE HUNDRED POUNDS (£2,500) for every unit of Occupation for which consent is given pursuant to a Subsequent Application ("**the POS Sum**") PROVIDED that if consent is given to more than one Subsequent Application the Owner shall elect in writing to the Council prior to making payment of such sum which consent is to be implemented and no other consent pursuant to a different Subsequent Application (whether granted before or after a Subsequent Application pursuant to which payment has already been made) shall thereafter be implemented unless the Owner shall first have paid to the Council any shortfall between the sum already paid to the Council and the sum due under the provisions of this First Schedule calculated with reference to the consent to the different Subsequent Application which the Owner then wishes to implement BUT FURTHER PROVIDED that nothing herein shall require the Council to make refund of any sum already paid
2. For improvement of transport in the vicinity of the Application Site a sum calculated at the rate of SIXTEEN THOUSAND POUNDS (£16,000.00) per Net Developable Hectare of the Application Site and pro rata and for any part of a hectare ("**the Transport Contribution**") PROVIDED that if consent is given to more than one Subsequent Application in respect of the same part of the Application Site the Owner shall elect in writing to the Council prior to making payment of such sum which consent is to be implemented and no other consent pursuant to a different Subsequent Application in respect of the same part of the Application Site (whether granted before or after a Subsequent Application pursuant to which payment has already been made) shall thereafter be implemented unless the Owner shall first have paid to the Council any shortfall between the sum already paid to the Council and the sum due under the provisions of this First Schedule calculated with reference to the consent to the different Subsequent Application which the Owner then wishes to implement BUT FURTHER PROVIDED that nothing herein shall require the Council to make refund of any sum already paid to and committed to be spent by the Council before the approval of the different Subsequent Application. The amounts so payable shall be calculated in respect of any area covered by a Subsequent Application by the Council (whose decision shall be

final) when approving the same and shall be notified in writing to the Owner or, if different, the person submitting the Subsequent Application.

3. As a contribution towards meeting the Education Need the sum of NINETY-ONE THOUSAND SIX HUNDRED AND FORTY POUNDS (£91,640.00) ("**the Education Contribution**")
4. Where any amount is payable pursuant to the provisions of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

$$(P \div A) \times B$$

Where:-

P = the amount payable pursuant to this First Schedule

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month in which Planning Permission is granted.

B = the RPI figure for the month in which the relevant payment is made or (if earlier) falls due to be made

But so that if at any time B shall be less than A the amount payable pursuant to the relevant paragraphs as the case may be shall nevertheless be paid in full without reduction

*PROVIDED ALWAYS* that :

- (a) if such sum(s) or any part thereof shall not be paid before the actual first Occupation of any Dwelling forming part of the of the Proposed Development it shall carry interest at 8% per annum from the date of actual first Occupation until actual payment and no further Dwellings to be built upon the Application Site shall be occupied whilst such sum(s) or any part thereof (including interest as aforesaid) remains unpaid.
- (b) payment of the commuted sum(s) shall not in itself constitute commencement of the Proposed Development for the purposes of implementing the Planning Permission

## SECOND SCHEDULE

### AFFORDABLE HOUSING OBLIGATIONS

1. Subject to the provisions of this Schedule the Owner shall in every Subsequent Application make provision for not less than 10% of the total Dwellings to be provided pursuant to that Subsequent Application to be constructed as a Affordable Housing Units and if approval is given to that Subsequent Application any units designated as Affordable Housing Units in the approval shall be constructed in accordance with the plans submitted with the Subsequent Application and the Owner may not dispose of such units save in accordance with the following terms of this Schedule
2. All Affordable Housing Units shall:
  - 2.1. be built out to a standard capable of meeting the requirements of the Homes and Communities Agency (or any such superseding authority) and which are subsidised housing which meets the needs of Eligible Households at a cost low enough for them to afford, determined with regard to local incomes and local house prices, in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it); and
  - 2.2. be provided with a vehicular access foul and surface water sewers and water gas electricity and telecommunication service systems linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Proposed Development and connected ultimately to highways and sewers maintainable at the public expense.
3. The Owner shall not permit the first Occupation of more than 17 of the non-Affordable Housing Units to be built on the Application Site pursuant to the Application until the Affordable Housing Units to be erected on the Application Site have been transferred in accordance with clause 4 to a Registered Provider drawn from a list of Registered Providers approved in writing by the Council
4. The transfer(s) to the Registered Provider shall be in a form approved by the Council's Solicitor and on terms that will ensure that 75% of the Affordable Housing Units are made available as Social Rented Housing with the remaining Affordable Housing Units being provided by way of Intermediate Housing
5. Beginning not later than the date of Commencement of the Proposed Development the Owner shall enter into negotiations with a Registered Provider or Providers drawn from the Council's approved list or such other Registered Provider(s) as may be approved in writing by the Council for the transfer to that Registered Provider or Providers of the Affordable



Housing Units. The negotiations shall be pursued by the Owner in good faith and details shall be supplied to the Council upon written request.

6. Provided always that the Owner shall have complied with clause 5 in respect of the Application Site but no approved Registered Provider has been approved by the Council or no Registered Provider is willing to take a transfer of the Affordable Housing Units on the Application Site by the date when 50% of the non-Affordable Housing Units have been occupied the restrictions on transfer of the non-Affordable Housing Units contained in clause 3 may be varied by the Owner giving written notice to the Council that with effect from the date of such notice the provisions of clause 7 following shall apply instead of the said clause 3
7. From the date of a notice given pursuant to clause 6 the Owner may transfer the Affordable Housing Units to any Registered Provider and upon such terms as the Council acting reasonably may agree and upon the making of such a transfer the restrictions on occupation of the non-Affordable Housing Units on the Application Site shall cease
8. If not less than six months have elapsed from the giving of a notice pursuant to clause 6 and the Owner shall have been unable to transfer any of the Affordable Housing Units pursuant to clause 7 the Owner shall then be free to make first disposal of dispose of such units to
  - 8.1. a Registered Provider on such terms as may be agreed between the Owner and the Registered Provider; or
  - 8.2. the Council; or
  - 8.3. any other organisation or body whose principal business is the provision of affordable housing on such terms as may be agreed between the Owner and that body; or
  - 8.4. a person or persons approved by the Council as being on the housing register for the time being of the Council or in need of housing accommodation of the type which it is proposed to transfer to him and always provided that any transfer made pursuant to this sub-clause 8.4 is of the freehold interest and on the following terms:
    - 8.4.1. the maximum price payable to the Owner in respect of the sale of an Affordable Housing Unit shall not exceed 75% of the Open Market Value as certified by a Surveyor drawn from a list prepared by the Council or in default of preparing or maintaining such a list who practices within a 15 mile radius of the Application Site
    - 8.4.2. The transfer to a person specified in this sub-clause 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that
      - 8.4.2.1. no subsequent transfer shall take place within the said period of thirty years save a disposal of the freehold or leasehold interest in the Affordable Housing Unit at a

price or premium which does not exceed 75% of the Open Market Value of the said Unit at the date of disposal as certified by a Valuer or Surveyor in the manner described in 8.4.1, and

- 8.4.2.2. no letting of the Affordable Housing Unit shall take place within the said period except at a rental not exceeding 75% of the market rental income for a property of that type as certified by a Valuer or Surveyor in the manner above described
- 8.4.3. The transfer to a person specified in this clause 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that the transferee and any future transferees of the Affordable Housing Unit will procure a direct covenant from each successive transferee in favour of the Council to observe and perform all of the covenants specified in this sub-clauses 8.4 and all of its sub-sub-clauses and sub-sub-sub-clauses
- 8.4.4. The transfer to a person specified in this sub-clause 8.4 shall contain a covenant binding on the transferee and all subsequent transferees for a period of thirty years from the date of the first transfer by the Owner that the transferee and any future transferees of the Affordable Housing Unit will on each transfer of the Affordable Housing Unit apply to the Chief Land Registrar for the following Restriction to be entered in the Register of the title in the property:-  
"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by the applicant for registration or his conveyancer that provisions of paragraph 8.4 of the Second Schedule an Undertaking dated [19 Nov 2013 ] and made under Section 106 of the Town and Country Planning Act 1990 by Philip Clifford Bluff have been complied with"
- 8.4.5. Nothing in the Transfer shall operate to restrict delay limit or prevent the immediate occupation or disposal of any Affordable Housing Units to or by a person and those living with him where such occupation or disposal arises as a result of a Court Order or any other statutory provision or presumption or will or intestacy but subject always to the strict compliance by any transferee of the legal estate with the provisions of

this sub-clause 8.4 before any further disposal for value of the legal estate takes place

9. If not less than twelve months have elapsed from the giving of a notice pursuant to clause 6 the Owner may dispose of the freehold interest in any of the Affordable Housing Units to any person (whether or not that person qualifies with the requirements of sub-clause 8.4) provided that the transfer to him complies in all respects with the requirements of the said sub-clause 8.4, its sub-sub-clauses and sub-sub-sub-clauses
10. If at any stage the Owner and the Council so agree any of the Affordable Housing Units may be sold in the open market without restriction and the Owner shall be entitled to retain the proceeds of sale therefrom save that the Owner shall pay to the Council not later than 14 days from the date of the legal completion of the relevant sale a sum equal to 40% of the agreed value of the Unit inclusive of standard fixtures and fittings but disregarding the value of any additions made thereto or extras included by the Owner as part of the sale and always provided that
  - 10.1. Any sums paid to the Council pursuant to clause 10 shall be held by them in an interest bearing account and shall be applied solely for the purpose of providing affordable housing be it for rental shared ownership or discounted market sale within the District of Ashfield
  - 10.2. If any of the sums paid to the Council for the purpose of providing affordable housing have not been spent within 5 years of the date of the last such payment then those such sums shall be repaid together with interest to the person who paid the sums to the Council and where there is more than one such person the sums paid by each shall be clearly identifiable whether held in the same account or not
11. The covenants within this Schedule are not intended to bind:
  - 11.1. any person owning the freehold or leasehold of an individual Affordable Housing Unit including any mortgagee of any such person save where an Affordable Housing Unit is acquired by such person pursuant to the provisions of paragraphs 8 and 9 above in which case the restrictions in paragraphs 8 and 9 shall apply; or
  - 11.2. a tenant of an individual Affordable Housing Unit exercising a right to buy or right to acquire pursuant to any statutory right to acquire;
  - 11.3. any mortgagee in possession exercising a power of sale under their mortgage or any purchaser from or successor to such mortgagee or any receiver appointed by such mortgagee in possession
  - 11.4. any successor in title to a person to an Affordable Housing Unit which has ceased to be bound by the covenants of this Schedule by virtue any of sub-paragraphs 11.1, 11.2 or 11.3 above.

**EXECUTED AS A DEED** by the said

**PHILIP CLIFFORD BLUFF**

in the presence of

Witness' signature:

Name (in block capitals):

Address:



