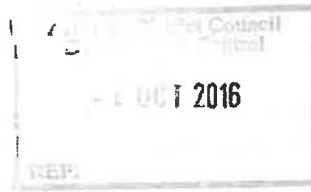


# FREETHS



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**T M TRUSTEES LIMITED**

Relating to  
**Land at North Street, Huthwaite**

Ref: 1921/SZG/2026177/1  
Direct Tel: +44 (0)845 050 3625  
Email: [stephanie.gozney@freeths.co.uk](mailto:stephanie.gozney@freeths.co.uk)  
Dated: August 2016  
Draft No: 1

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**THIS DEED OF UNDERTAKING** is dated

14 September

2016

and is given by

**The Owner**

**T M TRUSTEES LIMITED**

Company Number: 03094287

Registered Office: 22 Clarendon Street Nottingham NG1  
5HQ

**TO**

**The Council**

**ASHFIELD DISTRICT COUNCIL**

of Urban Road, Kirkby in Ashfield Nottingham NG17 8DA

### **BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated
- (B) The Owner is registered at the Land Registry with title absolute for the Site free from encumbrances
- (C) The Planning Application has been made on behalf of the Owner
- (D) By notice dated 22 January 2016 the Council refused to grant planning permission for the Development for the reasons set out in its decision notice and the Appeal has been submitted under section 78 of the Act
- (E) This Undertaking is given with the intention that it shall secure and regulate the provision of Affordable Housing as part of the Development in the event that the Appeal Permission is granted following determination of the Appeal and provided that the Inspector determines that all of the obligations herein are appropriate and necessary in connection with the Development and in accordance with planning policy and law

### **1. DEFINITIONS**

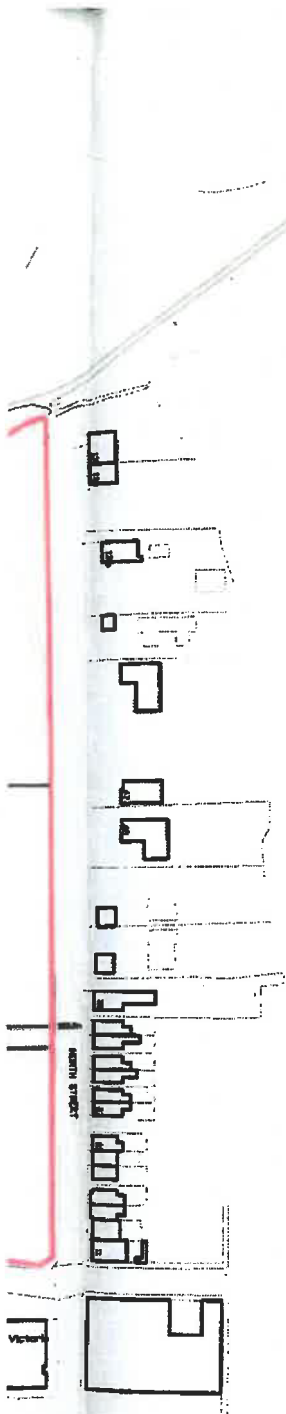
In this Undertaking the following words and phrases have the meanings shown opposite

Act	the Town and Country Planning Act 1990 as amended
Affordable Dwellings	means 10% (ten per cent) of the total number of Dwellings to be constructed as part of the Development as Affordable Housing in accordance with the Affordable Housing Scheme
Affordable Housing	has the same meaning given to it in Annex 2 of the National Planning Policy Framework March 2012 or its successor policy guidance

Affordable Housing Contribution	the financial contribution towards Affordable Housing which may be payable pursuant to Schedule 1 and which shall be calculated in accordance with the Council's Supplementary Planning Guidance Affordable Housing adopted 2009
Affordable Housing Scheme	a scheme to be submitted to the Council in accordance with the provisions of Part 1 of Schedule 2 and approved in writing by the Council detailing the numbers locations specifications standards and mix of and method and programme for securing the provision of the Affordable Housing which scheme shall involve a Registered Provider approved by the Council and who has appropriate local management and maintenance arrangements
Affordable Rented Units	units of Affordable Housing which are let by local authorities or private registered providers of social housing to households who are eligible for social rented housing subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges where applicable)
Affordable Units	means those Dwellings to be provided as Affordable Housing in accordance with the Affordable Housing Scheme, individually referred to as an "Affordable Unit"
Appeal	the appeal submitted by the Developer against the Council's decision to refuse planning permission for the Development pursuant to the Application and allocated reference number APP/W3005/W/16/3153990
Appeal Permission	the planning permission (if granted) issued by the Secretary of State for the Development pursuant to the determination of the Appeal
Application	the planning application submitted to the Council for the Development and allocated reference V/2015/0264
Chargee	any mortgagee or chargee of a Registered Provider who has the benefit of a charge over the

Commencement of the Development	<p>Site or part of the Site (including any mortgagee or chargee of a Registered Provider as landowner) and the successors in title to such mortgagees or chargees or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or pursuant to the security held by that mortgagee or chargee</p> <p>the beginning of the Development by the carrying out of an operation referred to in Section 56 (4) (a) – (d) of the Act save that for the purposes of this Undertaking the term is not to include operations in connection with site clearance, demolition, archaeological investigation, for the purposes of assessing contamination, remedial action in respect of any contamination, or of assessing the need for any diversion and laying of services and the erection of means of enclosure for the purposes of site security and / or the display of advertisements and the expression “Commence”, “Commenced” and “Commencement Date” are to be construed accordingly</p>
the Development	the development of the Site for up to 90 Dwellings with all matters reserved
Dwelling	means any dwelling forming part of the Development to be constructed pursuant to the Planning Permission for the purpose of residential occupation
Homes and Communities Agency	a body corporate set up under section 1 of the Housing and Regeneration Act 2008 or any successor body
Intermediate Housing	means Affordable Housing for sale and rent provided at a cost above social rent but below market levels and may include Shared Ownership Housing
Occupation	means the beneficial occupation of any Dwelling forming part of the Development for the purposes permitted by the Planning Permission other than (i) any purpose in relation to the carrying out of the

<p>Open Market Dwelling the Plan Registered Provider</p>	<p>Development or (ii) by personnel engaged in the construction, fitting out or decoration of the Development or (iii) occupation for marketing or display or (iv) occupation in relation to security operations; and "Occupy" and "Occupied" and "Occupier" shall be construed accordingly means any Dwelling which is not an Affordable Unit the plan annexed hereto</p>
<p>Rented Affordable Housing</p>	<p>means a provider of social housing registered with the Homes and Communities Agency pursuant to the Housing and Regeneration Act 2008 shall mean those Affordable Units to be provided as Affordable Rented Units or Social Rented Units in accordance with the approved Affordable Housing Scheme</p>
<p>Shared Ownership Housing</p>	<p>means those Affordable Units that are to be sold through a shared ownership lease on Shared Ownership Terms and subject to the Shared Ownership Rent individually referred to as a "Shared Ownership Housing Unit"</p>
<p>Shared Ownership Rent</p>	<p>means the rent payable to be calculated as a percentage of the unsold equity for the relevant Shared Ownership Housing Unit on the open market such percentage being the inverse percentage from 100% relative to the percentage purchased, with the rent payable calculated at no more than 2.75% of the value of the unsold equity in the Shared Ownership Housing Unit</p>
<p>Shared Ownership Terms</p>	<p>means terms of Disposal as shared equity or shared ownership contained in model shared ownership leases published by the Homes and Communities Agency for use from May 2013 (as updated from time to time) whereby a Registered Provider sells shares in the equity of a Shared Ownership Housing Unit to an individual who pays Shared Ownership Rent upon the remainder</p>
<p>Social Rented Housing</p>	<p>Affordable Housing which is owned by local authorities or Registered Providers for which</p>

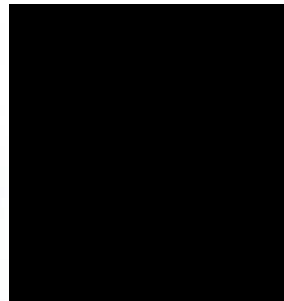


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Do not scale off drawings.  
All dimensions to be checked on site.

Revision	Drawn	Comments	Date



STATUS PLANNING



landscape and-architecture - urban design - environmental planning

<b>Offices Office</b> Healy & Wilson, Hockley Grove Wharf 101 Leath, Newark NG24 4JL T: 01636 793 182	<b>London Office</b> James House, 189 St. Pauls Churchyard, London, EC4A 3DF T: 0203 902770	<b>Southern Office</b> Falcon Mill Farm, Woolham Road, Faversham RO15 7JH T: 01793 589145
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www.influence-ola.co.uk

**PROJECT**

Land on North Street - Huthwaite

**CLIENT**

Freeths

**TITLE**

Location Plan

SCALE 1:2500 DATE 11/06/14

DRAWN GTP CHECKED MP

JOB NO: N0213	DWG NO: (08)002	REV NO:	ORIGINAL SIZE A4
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the Site guideline target rents are determined through the national rent regime  
the land the subject of the Planning Application shown on the Plan for the purposes of identification only outlined red comprising all the land within the title registered at the Land Registry under Title Number NT265952

Staircase means to acquire an additional share or shares of the equity of a Shared Ownership Housing Unit and "Staircased" shall be construed accordingly

## **2. FORMAL PROVISIONS**

This undertaking is

- 2.1. given by the Owner to the Council
- 2.2. given pursuant to and for the purposes of Section 106 of the 1990 Act
- 2.3. given with intent to bind the owners of the freehold interest in the Site and successors in title
- 2.4. enforceable by the Council as the local planning authority
- 2.5. executed by the Owner as a deed

## **3. CONDITIONS PRECEDENT**

The covenant by the Owner in Clause 4 is conditional and shall not take effect until the later of the following two dates:

- 3.1. the date written notification of the Planning Permission is issued; and
- 3.2. the date of Commencement of the Development

but if the Planning Permission is at any time revoked before Commencement of the Development then the covenant on the part of the Owner will cease to have effect

## **4. OWNER'S COVENANTS**

The Owner covenants that with the Council to comply with its obligations in Schedule 1

## **5. DECLARATIONS**

The Owner declares:

- 5.1. the liability of T M Trustees Limited hereunder shall not be personal and shall be limited to the extent of the assets of the Elite Retirement Account re: C Pate, Elite Retirement Account re: K Woodward, Elite Retirement Account re: R J Woods, Elite



Retirement Account re: G J Makin, Elite Retirement Account re: M D Shotton, in its possession from time to time and all such liability shall cease when the said T M Trustees Limited ceases to be trustees of the said scheme

- 5.2. for the purposes of avoiding doubt, nothing in this deed is intended to prohibit or restrict or limit the right of any person to develop the Site in accordance with any planning permission (other than the Planning Permission) granted after the date of this deed
- 5.3. the Owner enters into this deed of obligation on the basis that it will not be enforced against any person after they have parted with all interest in the Site or the part in respect of which the enforcement occurs except in respect of any liability arising prior to such disposal
- 5.4. this deed is a Local Land Charge and may be registered as such by the Council
- 5.5. It is not the intention of the Owner that any of the terms of this deed can be enforced by a third party as defined in Section 1 (1) of the Contracts (Rights of Third Parties) Act 1999
- 5.6. If any provision in this Undertaking shall in whole or in part be held to be invalid or unenforceable under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Undertaking and the enforceability of the remainder of this Undertaking shall not be affected
- 5.7. The provisions of this Undertaking shall not be enforceable against:
  - 5.7.1. successors in title to the Owner as owner or Occupier of the Open Market Dwellings on the Site and any mortgagee or chargee or receiver or administrative receiver appointed by any of them in respect of any such Open Market Dwelling and their respective successors in title; and/or
  - 5.7.2. Owners or Occupiers of the Shared Ownership Housing Units who have Staircased to 100% equity and their successors in title to the relevant Shared Ownership Housing Unit; and/or
  - 5.7.3. Owners or Occupiers of any other Affordable Unit who have acquired 100% of the relevant Affordable Unit under a statutory right to acquire; and/or
  - 5.7.4. any mortgagee or chargee of any Shared Ownership Housing Unit or receiver or administrative receiver appointed by any of them in the event of default under a mortgage or charge obtained by an individual to enable purchase of a Shared Ownership Housing unit for their own personal occupation and any successors in title to such mortgagee or chargee to include any purchaser from such a mortgagee or chargee and their successors in title; and/or

- 5.7.5. any mortgagee or Chargee of any Affordable Unit(s) or a receiver or administrative receiver appointed by any of them provided that they have complied with the provisions as to disposal set out in clause 5.8 below; and/or
  - 5.7.6. any utility company or statutory undertaker which holds or acquires an interest in the Site for the purposes of their statutory functions in connection with the provision of services to the Site or otherwise.
- 5.8. A Chargee pursuant to any default under the terms of its mortgage or charge may dispose of the Site free from the provisions of this Undertaking provided that:
- 5.8.1. it has first given the Council not less than three months written notice of its intention to dispose of its interest in the Site;
  - 5.8.2. it has used reasonable endeavours to dispose of its interest in the Site to a Registered Provider(s) subject to the terms of this Undertaking and for an appropriate price PROVIDED however that nothing in this Undertaking shall require or be deemed to require a Chargee (or any receiver or administrative receiver appointed thereby) to dispose of its interest in the Site or any part thereof at a price which is less than that necessary to redeem the mortgage or charge then outstanding; and
  - 5.8.3. together with written notice given under clause 5.8.1 it has provided evidence to the Council of its reasonable endeavours to dispose of its interest in the Site to a Registered Provider(s) subject to the terms of this Undertaking and for an appropriate price

Executed as a Deed by the Owner on the date stated at the beginning of it

**SCHEDULE 1**  
**AFFORDABLE HOUSING**

The Owner covenants with the Council as follows:

1. Prior to the Commencement of Development to submit and secure the approval of the Council for the Affordable Housing Scheme which shall secure the provision of no less than 10% of the Dwellings as Affordable Housing of which 60% shall be provided as Rented Affordable Housing and the balance shall be provided as Intermediate Housing or as may otherwise be agreed between the parties and which shall detail the following:
  - 1.1. the intended Registered Provider for the Affordable Housing
  - 1.2. the housing types location size and tenure for each of the Affordable Units
  - 1.3. the programme for construction of the Affordable Units
2. Where the Affordable Housing Scheme proposes the provision of Intermediate Housing other than by way of Shared Ownership Housing then the Affordable Housing Scheme shall include details of how the relevant Affordable Units will be provided and the mechanism to ensure that they remain affordable and the Owner shall, if so required by the Council, enter into a supplemental obligation pursuant to section 106 of the Act to ensure that those Intermediate Housing Units will remain as affordable
3. To implement the Affordable Housing Scheme as approved
4. The Owner shall:
  - 4.1. not Commence Development or any phase of the Development prior to approval of the Affordable Housing Scheme;
  - 4.2. not Occupy or cause or permit the Occupation of more than 40% of the Open Market Dwellings unless construction of the Affordable Units has commenced;
  - 4.3. not Occupy or cause or permit the Occupation of more than 75% of the Open Market Dwellings unless the Affordable Units have been constructed in accordance with the approved Affordable Housing Scheme and are capable of Occupation;
  - 4.4. subject to the provisions of paragraphs 6 to 11:
    - 4.4.1. transfer the Affordable Units to a Registered Provider prior to Occupation of more than 75% of the Open Market Dwellings;
    - 4.4.2. not Occupy or cause or permit the Occupation of more than 75% of the Open Market Dwellings unless the Affordable Units have been transferred to a Registered Provider;

- 4.4.3. not Occupy or cause or permit the Occupation of the Affordable Units other than as Affordable Housing in accordance with the Affordable Housing Scheme unless otherwise agreed in writing with the Council.
5. To use reasonable endeavours to ensure that any transfer of the Affordable Units to the Registered Provider contains the following provisions:
- 5.1. the grant of all rights (so far as they are within the control of and can be granted by the Owner) of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Units to be constructed on the Site;
- 5.2. a reservation of all rights (so far as they are within the control of and can be granted by the Owner) of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Dwellings on the Site; and
- 5.3. the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any Open Market Dwelling.
6. No later than three months from the date of approval of the Affordable Housing Scheme to enter into negotiations with a Registered Provider (the details of which shall be submitted to and approved in writing by the Council) for the transfer to that Registered Provider of a freehold or long leasehold (no less than 99 years) interest in the land on which the Affordable Units are to be constructed
7. If despite the Owner using its reasonable endeavours over a period of no less than two months from the commencement of negotiations pursuant to paragraph 6 the Registered Provider is not prepared to enter into a binding contract for the purchase of the land on which the Affordable Units are or are to be constructed then the Owner shall provide to the Council all relevant correspondence demonstrating that the Owner has used reasonable endeavours over the period of at least two months to procure that the Registered Provider takes a transfer of that land on appropriate terms
8. Following confirmation from the Council (not to be unreasonably withheld or delayed) that it is satisfied with the information provided pursuant to paragraph 7 above then the Owner shall use its reasonable endeavours to enter into a binding contract for the transfer of a freehold or long leasehold (no less than 99 years) interest in the land on which the Affordable Units are to be constructed with a second Registered Provider (the details of which shall be approved by the Council)
9. If despite the Owner using its reasonable endeavours over a period of no less than two months from the date of notification from the Council pursuant to paragraph 8 above the

Registered Provider identified pursuant to paragraph 8 above is not prepared to enter into a binding contract for the purchase of the land on which the Affordable Units are or are to be constructed then the Owner shall provide all relevant correspondence demonstrating that it has used reasonable endeavours to procure that the second Registered Provider takes a transfer of that land on appropriate terms

10. Following confirmation from the Council (not to be unreasonably withheld or delayed) that it is satisfied with the information provided by the Owner pursuant to paragraph 9 above it shall
  - 10.1. seek to renegotiate the Affordable Housing Scheme with the Council to secure terms which may be acceptable to a Registered Provider (taking account of the information provided to the Council pursuant to paragraphs 7 and 9 above) which may include a variation of the tenure mix for the Affordable Units; and
  - 10.2. use its reasonable endeavours to enter into a binding contract for the transfer of a freehold or long leasehold (no less than 99 years) interest in the land on which the Affordable Units are or are to be constructed pursuant to the Affordable Housing Scheme as varied pursuant to paragraph 10.1 above with a Registered Provider approved by the Council (such approval not to be unreasonably withheld or delayed) which for the avoidance of doubt may include one of the Registered Providers to whom an offer has already been made
  
11. If despite the Owner using its reasonable endeavours over a period of no less than two months commencing on the Council's approval of the renegotiated Affordable Housing Scheme the Registered Provider identified pursuant to paragraph 10.2 above is not prepared to enter into a binding contract for the purchase of the land on which the Affordable Dwellings are or are to be constructed then the Owner shall provide all relevant correspondence demonstrating that it has used reasonable endeavours to procure that the Registered Provider takes a transfer of that land on appropriate terms
  
12. Following confirmation from the Council that it is satisfied with the information provided by the Owner pursuant to paragraph 11 above (not to be unreasonably withheld or delayed) the Owner shall within 56 days of such confirmation pay to the Council the Affordable Housing Contribution towards the provision of Affordable Housing in and around Huthwaite and for no other purpose whatsoever PROVIDED ALWAYS THAT the Affordable Housing Contribution (if payable pursuant to this paragraph 12) shall be paid to the Council prior to Occupation of 85% of the Open Market Dwellings

13. The obligations in this Schedule for the provision of Affordable Dwellings as part of the Development shall cease upon payment of the Affordable Housing Contribution to the Council
14. To ensure the Affordable Housing provided pursuant to the terms of this Undertaking is at all times managed by a Registered Provider
15. Not to permit suffer cause or allow the Occupation of any Affordable Unit save as in accordance with paragraphs 16 to 19 below
16. The Social Rented Units shall be let at no more than the HCA's target rents
17. The Affordable Rent Units shall be let at no more than 80% of the local market rent
18. Any Shared Ownership Housing provided shall not be used other than for the purposes of providing shared ownership leasehold accommodation to persons in need of Affordable Housing and should not be disposed of other than in accordance with the Shared Ownership Terms and for no more than the Shared Ownership Rent on the equity share held by the Registered Provider
19. Should the purchaser of a Shared Ownership Housing Unit subsequently choose to exercise the right to Staircase then the Shared Ownership Rent shall decrease pro rata by reference to the percentage of the additional equity in the Shared Ownership Housing unit which is purchased each and every time the Occupier exercises such right to Staircase
20. The Owner covenants that in the event of any purchaser of a Shared Ownership Housing Unit exercising his right to Staircase under the Shared Ownership Terms and to acquire a greater equitable share of the relevant Shared Ownership Housing Unit then any sale proceeds received (after deduction of mortgage redemption and legal and administrative costs) will be used in accordance with Homes and Communities Agency Regulations for the provision of Affordable Housing within the administrative area of the Council with preference given to provision in or around Huthwaite

**SIGNED as a DEED by  
T M TRUSTEES LIMITED**

- \* acting by two Directors
- \* or one Director and the Company Secretary
- \* or one Director in the presence of:

Witness' Name:  
Witness' Address:

\*delete the options not used

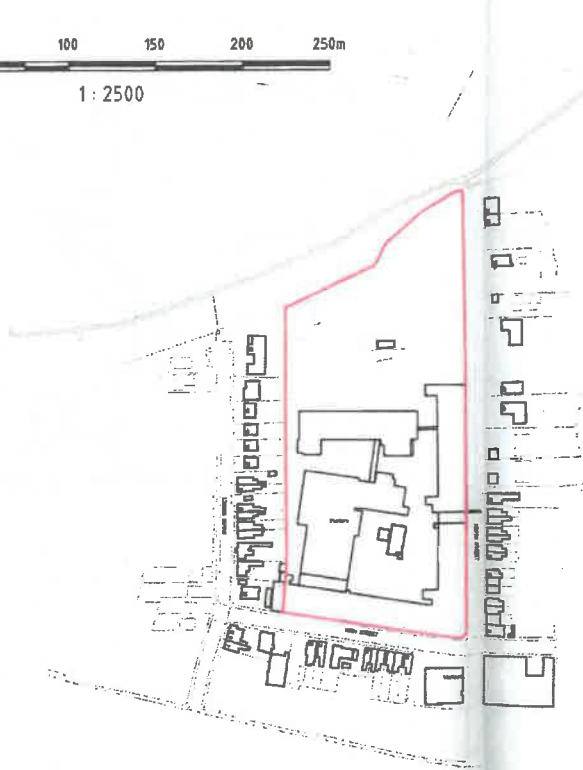


.....  
Director

.....  
~~\*Director/Secretary/Witness~~

0 50 100 150 200 250m

1:2500



Location Plan

All the buildings and the surrounding area shown on this plan are shown as they are and not as they may be in the future. The client is responsible for the accuracy of the information provided. The client is also responsible for the accuracy of the information provided. The client is also responsible for the accuracy of the information provided.



**influence**

independent architecture interior design environmental strategy

PROJECT  
Level on North Street - Headquarters

ELEMENT  
Furniture

TITLE  
Location Plan

SCALE 1:2500 DATE 11/08/14  
DRAWN QTP CHECKED SP

JOB NO. 00213 PROJ. NO. (08)002 REV. NO. 001 DRAWING NO. A4

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