

THIS UNDERTAKING is made the

13th

day of

June

2013

1. **BENJAMIN DOUGLAS NOCK and REBECCA JANE NOCK OF** Little Dunley Farm, Dunley Lane, Bovey Tracey, Newton Abbott, Devon TQ13 9PW ("**THE OWNER**")
To:
2. **TEIGNBRIDGE DISTRICT COUNCIL** of Forde House Brunel Road Newton Abbot Devon TQ12 4XX ("**COUNCIL**")

WHEREAS

1. The Council is the Local Planning Authority for the area in which the Site is situated for the purposes of the Town and Country Planning Act 1990 (as amended)
2. The Owner is the registered proprietor of the Site with title absolute under title numbers DN587390 and DN583694 subject to the entries disclosed in the Charges Registers at the said titles but otherwise free from encumbrances
3. An application was made to the Council for outline planning permission for the purposes of part 3 of the Act by an application numbered 12/03015/MAJ ('the Application') for the Development of the Site
4. On 13 February 2013 the Owner lodged the Appeal with the Secretary of State against the Council's refusal of the Application. The appeal reference is APP/P113/A/13/2191841 ('the Appeal')
5. The planning obligations entered into here by the Owner in respect of the Site shall be planning obligations for the purpose of Section 106 of the Act and shall be enforceable by the Council
6. This Undertaking is made pursuant to Section 106 of the Act and all other enabling powers in that behalf

NOW THIS DEED WITNESSETH

1. Definitions

1.1. In this Deed:

"the Act" means the Town and Country Planning Act 1990

"Affordable Dwellings" Dwellings to be disposed of or Occupied either as Affordable Rented Housing or Intermediate Affordable Housing pursuant to the Affordable Housing Scheme;

"Affordable Housing" means housing which is defined in NPPF Annex 2 as housing which includes "social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market" including provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision and in relation to which eligibility is

determined with regard to local incomes and local house prices;

“Affordable Housing Provider”

a social landlord registered in the register maintained by the HCA under Section 1 of the Housing Act 1996 or a non-profit provider of social housing registered pursuant to the Housing and Regeneration Act 2008 or such other body as may be approved by the Council or the Owner in the event that the Owner elects to be the provider of any Affordable Dwellings;

“Affordable Housing Scheme”

a scheme for the provision of Affordable Housing in the relevant Phase(s) which secures the provision by one or more Affordable Housing Provider(s) of a number of Affordable Dwellings in accordance with Parts 1 and 2 of the Third Schedule such scheme to identify in respect of the relevant Phase:

- i. the number of Affordable Dwellings in the respective Phase;
- ii. the specification (which shall include those Affordable Dwellings which are to be constructed as wheelchair accessible) location layout and phasing of construction of the Affordable Dwellings;
- iii. the mix of house types and anticipated tenure of the Affordable Dwellings;

“Affordable Rented Housing”

rented housing let by an Affordable Housing Provider to households who are eligible for Social Rented Housing at an affordable rent which is not subject to the national rent regime, but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent;

“Commencement of Development”

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence

	Development” shall be construed accordingly;
“District”	the electoral area of Teignbridge District Council;
“Development”	means development pursuant to the Permission;
“Dwelling”	means all Dwellings constructed on the Site
“HCA”	the Homes and Communities Agency of Central Business Exchange II, 406-412 Midsummer Boulevard, Central Milton Keynes, MK9 2EA or any successor body to its statutory Affordable Housing functions;
“Intermediate Affordable Housing”	means housing which meets the criteria set out in the NPPF Annex 2 (which can include shared equity (e.g. Homebuy) and other low cost homes for sale and intermediate rent but not Social Rented Housing or Affordable Rented Housing);
“Manager”	means the Council’s appointed manager for Housing;.
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations relating solely to any of the Dwellings and occupy and occupied shall be construed accordingly;
“Open Market Dwelling”	each of the Dwellings to be constructed pursuant to the Planning Permission which are not Affordable Dwellings;
“the Obligations”	means the planning obligations contained in Schedule 1
“the Permission”	means such conditional planning permission as may be granted by the Inspector appointed by the Secretary of State to determine the Appeal in respect of the Application
“Phase”	a phase of the Development comprising an area of land identified as a phase in a Reserved Matters Approval or through the condition discharge process;

"the Plan"

means the plan attached to this Undertaking titled "Redline Application Boundary"

"Planning Obligations"

Shall mean the obligations given by the Owner in i) an Agreement between the Owner and Devon County Council dated 11th June 2013; and ii) an Agreement between the Owner and Teignbridge District Council dated 11th June 2013 and in both Agreements defined as "Planning Obligations"

"Protected Tenant or Person"

any tenant or person who:

- i. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling; or
- ii. has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling; or
- iii. has been granted a lease of a Intermediate Dwelling and has subsequently purchased from the Affordable Housing Provider all the remaining equity so that the tenant owns the entire Intermediate Dwelling; or
- iv. has otherwise obtained full ownership of a single Intermediate Dwelling;

"Rental Dwellings"

any Affordable Dwelling which is:

1. let by way of tenancy granted by an Affordable Housing Provider at a rent not exceeding the HCA's target rent for the time being; or
2. Affordable Rented Housing;

"Reserved Matters Approval"

a reserved matters approval or reserved matters approvals granted in relation to the Reserved Matters Submission;

"Reserved Matters Submission"

any reserved matters application(s) made pursuant to the Planning Permission;

"Secretary of State"	Secretary of State for Communities and Local Government;
"the Site"	means Site shown edged red on the Plan for the Development known as land at Bradley Bends Bovey Tracey Devon
"Social Rented Housing"	housing owned and managed by local authorities and Affordable Housing Providers , for which guideline target rents are determined through the national rent regime and may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the HCA as a condition of grant.
"Viability Appraisal"	An appraisal to be undertaken for the purposes of demonstrating the maximum percentage of Affordable Dwellings that can be provided without the Development being economically unviable (subject to a minimum provision of 30% and a maximum of 40%) and in accessing economic viability such appraisal to be based on the methodology used in the appraisal undertaken by Burrows - Hutchinson Ltd in their report entitled "Strictly Confidential Report for Teignbridge District Council on the Viability and likely Profitability of the Proposed Development at Bradley Bends, Bovey Tracey, Devon" relating to the Application and dated February 2013 or such other methodology as may be agreed between the Owner and the Council.

2. Interpretation

In this Undertaking, except where the context requires otherwise:

- 2.1. The singular includes the plural, the masculine includes the feminine, and vice versa
- 2.2. References to clauses and schedules are to the clauses in and schedules to this Undertaking
- 2.3. Reference to any party having an interest in land affected by this Undertaking shall include any successor in title of that party to that land or to any part of it or to any person deriving title through or under that party
- 2.4. Reference to any party having a statutory function referred to in this agreement shall include any successor to that statutory function
- 2.5. Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it

SCHEDULE 1 AFFORDABLE HOUSING

Part 1

1. The Owner Undertakes to the Council as follows:
 - 1.1. Subject to the provisions of paragraph 12 of this Schedule the Development (taken as a whole) shall deliver in accordance with and in the manner set out in Part 1 of this Schedule no less than 30% of the Dwellings as Affordable Dwellings of which 30% shall be Intermediate Dwellings and 70% shall be Rental Dwellings (subject to paragraph 1.3 below).
 - 1.2. The Affordable Dwellings shall be constructed to at least Code 3 of the Code for Sustainable Homes.
 - 1.3. Depending upon need to be determined in the approved Affordable Housing Schemes, up to but no more than 5% of the Affordable Dwellings shall be constructed in accordance with and in the manner set out in Part 1 of this Schedule so as to be wheelchair accessible.
 - 1.4. In each Phase:
 - 1.4.1. no more than 50% of the Open Market Dwellings in the relevant Phase shall be Occupied prior to the completion and transfer to the Affordable Housing Provider(s) of 50% of the Affordable Dwellings comprised in the relevant Phase;
 - 1.4.2. no more than 80% of the Open Market Dwellings in the relevant Phase shall be Occupied prior to the completion and transfer to the Affordable Housing Provider(s) of all of the Affordable Dwellings in comprised in the relevant Phase.
2. The Affordable Dwellings shall at all times when Occupied be Occupied as the sole private residences of the occupiers and shall not be use as a second home or holiday home. This paragraph 2 shall only be enforceable against persons who have an interest in the relevant Affordable Dwelling.
3. Prior to the Commencement of Development of each Phase the Owner shall submit an Affordable Housing Scheme relating to the relevant Phase to the Council.
4. Once the approval of the Council to the Affordable Housing Scheme in respect of a Phase has been received the Owner shall construct the Affordable Dwellings comprised in the relevant Phase in accordance with the relevant Affordable Housing Scheme and the timescales set out in paragraph 1.4 above.

5. The Affordable Housing Provider (as successor in title to the Owner where applicable) shall allocate each Affordable Dwelling to a person who is considered by the Affordable Housing Provider to be in need of such accommodation and who in the opinion of the Affordable Housing Provider is unable to afford other accommodation on the open market in the locality suitable to the needs of himself and his household because of the relationship between housing costs and income and who immediately prior to such allocation has a local connection with or near to Bovey Tracey.
6. If the Affordable Housing Provider is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraph 5 above then the Affordable Housing Provider shall allocate any such Affordable Dwelling to a person who is considered by the Affordable Housing Provider to be in need of such accommodation and who in the opinion of the Affordable Housing Provider is unable to afford other accommodation on the open market in the locality suitable to the needs of himself and his household because of the relationship between housing costs and income and who immediately prior to such allocation has a local connection with the District.
7. If the Affordable Housing Provider is unable to allocate any of the Affordable Dwellings in the manner referred to in paragraph 5 or 6 above then the Affordable Housing Provider shall subject to the provisions of paragraphs 8 and 9 of this schedule allocate any such Affordable Dwelling to a person or persons ("the nominee") nominated by the Council's Manager for Housing from the Council's list of persons in priority housing need within the District PROVIDED that the Affordable Housing Provider shall have the right to reject an applicant if one of the following criteria is met:
 - 7.1. the nominee has no housing need as defined within the criteria for preference within the Housing Act 1996 (as amended by the Homelessness Act 2002); or
 - 7.2. the nominee is not a suitable tenant as defined within the criteria of the Affordable Housing Provider's allocations and lettings policy; or
 - 7.3. in the case of an Intermediate Dwelling the nominee does not have sufficient funds to purchase the required amount of equity,AND the Affordable Housing Provider has the right, whilst acting reasonably at all times, in respect of each nomination to reject the nominee by giving notice to the Council and such notice shall state the reasons for the rejection and the Council shall have the right to nominate an alternative.
8. In the circumstances set out in paragraph 9 the Affordable Housing Provider shall be released from the obligation under paragraph 7 of this Schedule and shall be entitled to allocate any vacant Affordable Dwelling to any person who is considered by the Affordable Housing Provider to be in need of such accommodation and who in the opinion of the Affordable Housing Provider is unable to afford other accommodation on the open market in the locality suitable to the needs of himself and his household because of the relationship between housing costs and income.
9. The circumstances set out in this paragraph shall be the following:-
 - 9.1. If no nomination is made by the Council's Manager for Housing within two weeks of notification by the Affordable Housing Provider of a vacancy;

- 9.2. If a nomination has been made by the Manager for Housing and the nominee has failed either:
- 9.2.1. in the case of an Intermediate Dwelling to exchange contracts within six weeks of the nomination; or
 - 9.2.2. in the case of an Affordable Rental Dwelling to sign a tenancy agreement within 14 days,
- AND it is agreed that in these circumstances the Council's Manager for Housing may not make a further or second nomination.
10. The obligations in Part 1 of this Schedule (except paragraphs 1.1 and 1.3) apply to each Phase separately.

PART 2 - RELEASE

11. The provisions and restrictions contained or referred to in Part 1 of this Schedule shall not apply to:
- 11.1. A Protected Tenant or Person or any person deriving title under a Protected Tenant or Person;
 - 11.2. any mortgagee or chargee of the Affordable Dwellings or any of them nor to any receiver appointed by any such mortgagee or chargee to the intent that any such mortgagee chargee or receiver may deal with or dispose of the Affordable Dwellings or any of them freed from the provisions and restrictions in Part 1 of this Schedule and on the basis that any person deriving title through or under such mortgagee chargee or receiver shall not be bound by the provisions and restrictions contained in Part 1 of this Schedule and shall only be bound by any other provisions in this Deed in so far as set out in Clause 9 on the basis that the respective Dwelling shall be construed as an Open Market Dwelling for the purposes of Clause 8.2 provided that:
 - 11.2.1. the mortgagee chargee or receiver (as the case may be) first gives written notice to both the Council and the Affordable Housing Provider that it is seeking a purchaser for the Affordable Dwelling concerned; and
 - 11.2.2. after a period of two months from the date of such notice the Council or the Affordable Housing Provider has not exchanged contracts unconditionally with the mortgagee chargee or receiver for the purchase of the Affordable Dwelling with a completion date no later than one month from exchange of contracts.

PROVIDED THAT for the avoidance of doubt the said chargee receiver or mortgagee shall not be obligated to dispose of any of the Affordable Dwellings for any sum less than the monies outstanding pursuant to the said mortgage or charge including the principal sum, interest accrued, costs and all reasonable expenses permitted by the relevant charge document.

Part 3 - Viability Appraisal

12. The percentage of Affordable Dwellings required pursuant to paragraph 1.1 of this Schedule shall be determined in accordance with the Viability Appraisal in the event that: