

DATE: 14 December

2016

EMH HOUSING AND REGENERATION LIMITED

UNILATERAL UNDERTAKING

TO

ASHFIELD DISTRICT COUNCIL

SECTION 106

TOWN AND COUNTRY PLANNING ACT 1990

**RELATING TO THE PROPOSED DEVELOPMENT OF 12 AFFORDABLE
HOUSING UNITS AT LAND OFF CROSS ROW, SUTTON IN ASHFIELD**

Planning Application Ref: V/2016/0365

Contents

	PARTIES	1
1	DEFINITIONS	1
2	INTERPRETATION	3
3	INFORMATION	3
4	CHARGE EXEMPTION CLAUSE	4
5	STATUTORY AND LEGAL EFFECT	5
6	CONDITIONALITY	6
7	OBLIGATIONS	6
8	COSTS	6
9	INVALIDITY	6
10	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	7
11	GOVERNING LAW AND JURISDICTION	7
12	NOTICES	7
13	WAIVER	8
14	DISPUTE RESOLUTION	8
15	VAT	9
16	OTHER MATTERS	9
17	EXECUTION AND DELIVERY	9
	SCHEDULE 1 – General Obligations	10
	SCHEDULE 2 – Affordable Housing	11
	SCHEDULE 3 – Plan	13

THIS UNDERTAKING is made as a deed the 14 day of December . 2016

PARTIES

EMH HOUSING AND REGENERATION LIMITED (Company Number 32198R) of Memorial House, Whitwick Business Park, Stenson Road, Coalville, Leicestershire LE67 4JP ("the Owner")

TO

ASHFIELD DISTRICT COUNCIL of Urban Road, Kirkby-in-Ashfield, Nottingham, NG17 8DA ("the Council")

1. DEFINITIONS

In this Undertaking (except where the context otherwise requires):

"the 1972 Act" means the Local Government Act 1972;

"the 1990 Act" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991);

"the 2011 Act" means the Localism Act 2011;

"Affordable Housing" means social rented and affordable rented housing provided to eligible households whose needs are not met by the market and as defined in Annex 2 of the National Planning Policy Framework 2012 (NPPF) or its successor policy framework;

"Affordable Housing Units" means the Dwellings to be provided for use as Affordable Housing in accordance with Schedule 1 of this Undertaking;

"Chargee" means any mortgagee or chargee of the Owner or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

"Commencement of Development" means the earliest date on which any of the material operations (as defined by Section 56(4) of the 1990 Act) pursuant to the implementation of the Development is begun save for that irrespective of the provisions of Section 56(4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development;

- i. Trial holes investigations or other operations to establish the ground conditions of the Site, site survey work, or works or remediation

- ii. Archaeological investigations on the Site
- iii. Any works of demolition or site clearance
- iv. Any structural planting or landscaping works
- v. Ecological or nature conservation works associated with Development
- vi. Construction of site compounds boundary fencing or hoardings
- vii. Construction of access of highway works or provision of services (Including drainage and media)
- viii. Any other preparatory works agreed in writing with the Council

"the Development" means the development authorised by the Planning Permission;

"Dwellings" means all houses, maisonettes, flats, bungalows and all other varieties of accommodation which may be built or are intended to be built on the Site to be used as individual units of accommodation for Independent Occupation by one or more people;

"Homes & Communities Agency" means the Homes and Communities Agency or any equivalent successor body

"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;

"Plan" means the plan annexed to this Undertaking;

"Planning Permission" means the full planning permission granted by the Council under reference number V/2016/0365

"Protected Tenant" shall mean any tenant who:

(a) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Dwelling;

(b) has been granted a shared ownership lease of a particular Dwelling and the tenant has subsequently purchased all the remaining shares so that the tenant owns the entire Dwelling; or

(c) any mortgagee chargee and or successor in title to anyone falling with categories (a) or (b) above.

"Registered Provider ("RP")" means a registered provider as defined by Section 80 of the Housing and Regeneration Act 2008 which has also been added to the Council's list of approved housing providers;

“Rented Housing” means a Dwelling available for rent including social rented and affordable rented dwellings as defined in the National Planning Policy Framework 2012 or any amendment or supplemental guidance thereof

“the Site” means the land shown for the purposes of identification only edged red on the Plan.

2. INTERPRETATION

- 2.1 References to the masculine, feminine and neuter genders shall include the other genders.
- 2.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.
- 2.3 References to natural persons are to include corporations and vice versa.
- 2.4 Headings in this Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation.
- 2.5 The expressions the Owner and the Council shall include their respective successors in title and assigns.
- 2.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Undertaking.
- 2.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.
- 2.8 Where in this Undertaking a party includes more than one person any obligations of that party shall be joint and several.
- 2.9 Any reference in this Undertaking to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

3. INFORMATION

- 3.1 The Owner owns the freehold interest in the Site shown edged red on the Plan and is registered as proprietor of it together with other property with Title Absolute at H M Land Registry free from incumbrances under title number NT244449.

3.2 The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations and covenants contained in this Undertaking are enforceable.

3.3 The Council is a local authority for the purposes of the 1972 Act and the 2011 Act.

3.4 The Council is satisfied that the Development is such as may be approved by the Council under the 1990 Act and planning permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Undertaking.

4. CHARGE EXEMPTION CLAUSE

4.1 The provisions under this Undertaking shall not be binding on a Chargee PROVIDED THAT the Chargee prior to seeking to dispose of the Affordable Housing pursuant to any default under the terms of its mortgage or charge give not less than 3 months prior notice to the Council of its intention to dispose and;

(a) in the event that the Council responds within two months from receipt of the notice indicating that arrangements for the transfer of the relevant Affordable Housing can be made in such a way as to safeguard the Dwelling(s) as Affordable Housing in accordance with this Undertaking then the Chargee shall co-operate with such arrangements and use reasonable endeavours to secure such transfer provided that the Chargee shall not be required to act in a manner that is contrary to its duties under the charge or mortgage and the Council shall give due consideration to the interest of the Chargee in respect of any monies outstanding under that charge or mortgage;

(b) if the Council does not serve its response to the notice served under paragraph (a) within the two months then the Chargee shall be entitled to dispose free of the restrictions set out in this Undertaking;

(c) if the Council and the Chargee cannot secure the transfer referred to in paragraph (a) above within three months from the date of the Chargee's notice to the Council referred to in clause 4.1 above then the Chargee shall have complied with its obligations under paragraph (1) and the Chargee shall be entitled to dispose free of the restrictions set out in this Undertaking;

PROVIDED THAT at all times the rights and obligations in this clause 4.1 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

5. STATUTORY AUTHORITY AND LEGAL EFFECT

- 5.1 This Undertaking shall constitute a planning obligation for the purposes of and made pursuant to Section 106 of the 1990 Act Section 111 of the 1972 Act and all other enabling powers.
- 5.2 The obligations of the Owner in this Undertaking are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council as local planning authority.
- 5.3 Save as otherwise provided in this Undertaking the Owner covenants with the Council to the intent that this Undertaking shall be enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under it to the Site or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 5.4 No person shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking after they shall have parted with all interest in the Site or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.
- 5.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking in respect of any site used only as an electricity substation, gas governor or pumping station.
- 5.6 No Protected Tenant of the Dwellings shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of covenant and/or be liable for any breach of a covenant and/or an obligation contained in this Undertaking.
- 5.7 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the

Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.

5.8 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or under any other Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

5.9 The Owner shall give the Council written notice of any change in ownership of its interest in the Site within 14 days of the change taking place and for the avoidance of doubt this does not include transfers of Individual Dwellings.

6. CONDITIONALITY

6.1 This Undertaking is conditional upon:

6.1.1 Issue of the Planning Permission by the Council; and

6.1.2 the Commencement of Development

except for any relevant provisions of clauses 5.9, 8.1 and 16.2 which shall come into effect immediately on completion of this Undertaking.

7. OBLIGATIONS

7.1 The Owner covenants in respect of the Site as set out in the Schedules.

8. COSTS

8.1 The Owner agrees to pay to the Council on the signing of this Undertaking the Council's reasonable costs and disbursements in relation to the preparation, negotiation and completion of this Undertaking.

9. INVALIDITY

9.1 It is agreed and declared that if any clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible.

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 10.1 Nothing contained in this Undertaking shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council, and to the specific person executing this Undertaking as the Owner and its successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Undertaking.

11. GOVERNING LAW AND JURISDICTION

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

12. NOTICES

- 12.1 A notice given under this Undertaking:

12.1.1 shall be in writing; and

12.1.2 shall be sent for the attention of the person and to the address specified in clause 12.2 (or such other address or person as each party may notify to the others in accordance with the provisions of this clause 12); and shall be delivered personally or sent by prepaid first class post or recorded delivery or (if the notice is to be served by post outside the country from which it is sent) sent by air mail.

- 12.2 The address for service of notices are:

12.2.1 The Council - as set out on page 1 of this Undertaking

12.2.2 The Owner - as set out on page 1 of this Undertaking

- 12.3 A notice is deemed to have been received:

12.3.1 if delivered personally at the time of delivery; or

12.3.2 in the case of prepaid first class post or recorded delivery 2 Working Days from the date of posting; or

12.3.3 in the case of airmail 5 Working Days from the date of posting; or

12.3.4 if deemed received under the previous sub-clauses of this clause 12.3 is not within business hours (meaning 9am to 5.30pm on a Working Day) when business next starts in the place of receipt.

12.4 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

13 WAIVER

13.1 No waiver (whether express or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

14 DISPUTE RESOLUTION

14.1 In the event of there being a dispute arising out of this Undertaking or the subject matter thereof (including any matter to be agreed or approved under this Undertaking but excluding matters of its interpretation) the following provisions shall apply:

14.1.1 the parties shall use their reasonable endeavours to resolve the dispute by agreement;

14.1.2 If agreement cannot be reached the matter in dispute shall be referred to and settled by a single expert to be agreed between the Owner and the Council or failing agreement to be nominated by the President of the Royal Institution of Chartered Surveyors on the application of either the Owner or the Council after giving notice in writing to the other party to this Undertaking;

14.1.3 the person to be appointed pursuant to clause 14.1.2 shall be a person having 10 years or more post qualification experience of projects comprising works of the scale and nature of the Development;

14.1.4 reference to the expert shall be on terms that determination shall take place within 28 Working Days of the expert accepting his instructions;

14.1.5 the expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such

determination such costs shall be borne by the Owner and the Council in equal shares;

14.1.6 the expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision;

14.1.7 the findings of the expert shall (other than in the case of a manifest error or fraud) be final and binding on the parties to the dispute.

15 VAT

15.1 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any value added tax properly payable.

16 OTHER MATTERS

16.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Undertaking and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Undertaking and shall cite the number and clause of this Undertaking to which it relates.

16.2 This Undertaking shall be registered as a Local Land Charge.

17 EXECUTION AND DELIVERY

17.1 This document is executed as a deed and is delivered on the date stated at the beginning of this Undertaking.

IN WITNESS of which the Parties have executed this Undertaking as a deed and have delivered it upon dating the day and year first before written.

SCHEDULE 1
General Obligations

1. The Owner covenants with the Council with the intent that these are planning obligations for the purposes of Section 106 of the 1990 Act;

1.1 To give the Council notice in writing if any changes in ownership of the Site

SCHEDULE 2

PART A **AFFORDABLE HOUSING**

OPERATIVE PROVISIONS

1. The Owner covenants with the intent that these are planning obligations for the purposes of Section 106 of the 1990 Act;
2. In carrying out the Development of the Site in accordance with the Planning Permission the Owner shall provide and construct all of the Dwellings as Affordable Housing Units.
3. The Owner shall submit to the Council and obtain written approval (such approval not to be unreasonably withheld or delayed) prior to the Commencement of Development a Local Lettings Plan
4. The Affordable Housing Units specified at paragraph 2 of this Part of this Schedule shall be provided as:
 - a. 4 x 3 Bedroom Dwellings as Rented Housing
 - b. 8 x 2 Bedroom Dwellings as Rented Housing
5. The Owner covenants with the Council with the intent that they shall not permit or cause to be permitted the Occupation of any Affordable Housing Unit save as:
 - a. in accordance with Part B of this Schedule; or
 - b. by way of a mortgage or legal charge; or
 - c. to another Registered Provider with the prior approval of the Council; or
 - d. by a Protected Tenant.
6. The Owner covenants with the Council with the intent that all Dwellings on Site or any part thereof shall be maintained managed and disposed of by the Registered Provider in accordance with its rules and objectives.

PART B
TERMS OF SELECTION OF OCCUPIERS OF THE DWELLINGS

RENTED HOUSING

1. The Registered Provider shall let the properties through the Ashfield and Mansfield Homefinder choice-based lettings system or its successors and in accordance with the Homefinder Partnership Agreement
2. In the event that the Registered Provider is no longer a party to the Ashfield and Mansfield Partnership Agreement the following shall apply :
3. Subject to the provisions of paragraph 7 of part B of this Schedule hereof in respect of initial rented housing vacancies the Registered Provider shall not permit the Rented Housing to be Occupied by persons other than those who are nominated or selected by the Council in accordance with the approved Local Lettings Plan or any approved variation thereto
4. Subject to the provisions of paragraph 7 of part B of this Schedule hereof in respect of any subsequent Rented Housing vacancies the Registered Provider shall not permit the Rented Housing to be occupied by persons other than those who are considered to be in housing need by the Council in accordance with the approved Local Lettings Plan or any approved variation thereto
5. In respect of paragraph 3 of Part B of this Schedule the Council shall nominate 100% of the occupiers for the first lettings. In respect of paragraph 4 of Part B of this Schedule the Council shall nominate 50% of any subsequent Rented Housing Vacancies and the Registered Provider shall nominate the remainder of the occupiers
6. The Registered Provider shall inform the Council of every Rented Housing vacancy which arises on the Site within 5 working days of it arising and shall provide details of the category of person to whom it has been disposed of within 5 working days of their accepting the property

7. In the event that the Council fails to nominate a tenant within ten (10) Working Days of the receipt of the vacancy being notified or if the person nominated fails to take up the offer of housing within five (5) Working Days of the offer being made the Registered Provider will have the right to select the tenant of that Dwelling from its own applicants.

SCHEDULE 3

The Plan

The Common Seal of
EMH HOUSING AND REGENERATION LIMITED
Was hereunto affixed
In the presence of



1367.

Authorised Signatory



✓

Authorised Signatory.

