

Dated _____ 2018

Unilateral Undertaking
made pursuant to

Section 106 of The Town and Country Planning Act 1990

Given by:

Clifford Property Developments Ltd

To

Swale Borough Council and Kent County Council

In respect of the development at Winterbourne Wood Quarry, Scoggers Hill,
Dunkirk, Faversham, ME13 9PH

Application Reference: 18/502208/FULL

DRAFT

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UNILATERAL UNDERTAKING made under Section 106 of the Town & Country Planning Act 1990 (as amended) relating to land at Winterbourne Wood Quarry, Scoggers Hill, Dunkirk, Faversham, Kent, ME13 9PH, made on 2018

GIVEN BY

(1) **CLIFFORD PROPERTY DEVELOPMENTS LIMITED** ("the Owner") of 11 Nash Court Road, Margate, Kent, CT9 4DJ (Company No. 04763091)

TO: **SWALE BOROUGH COUNCIL** at Swale House, Sittingbourne, Kent, ME10 3HT ('The Council') and **KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone, Kent, ME14 1XX ('The County Council')

1. RECITALS

- 1.1 'The Council' is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated and the body by which the provisions of this Deed are intended to be enforceable.
- 1.2 'The County Council' is the Minerals Planning Authority
- 1.3 'The Owner' owns the freehold interest in the land with Title Absolute registered at the Land Registry under title number K84627
- 1.4 The Owner has applied to the Council for the Planning Permission under reference 18/502208/FULL
- 1.5 'The Owner' is willing to enter into and be bound by the obligations and be subject to the restrictions in this undertaking on the terms set out therein.
- 1.6 The Owner has agreed to enter into this Undertaking:
 - 1.6.1 pursuant to the provisions of Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972
 - 1.6.2 upon the terms and conditions hereinafter appearing and
 - 1.6.3 with the further intent that the same shall be a Local Land Charge and registered as such upon its completion.

NOW THIS DEED made in pursuance of Section 106 of the 1990 Act and Section 111 of Local Government Act 1972 witnesses as follows:

2. DEFINITIONS AND INTERPRETATION

2.1 In this Undertaking the following words and expressions shall unless the context otherwise required have the following meaning:

“the 1990 Act” means the Town and Country Planning Act 1990 as amended

“the Blue Land” means the land which is shown for purposes of identification only edged blue on the Plan Reference RS/001 and the same is registered at the Land Registry and forms part of Title Number K84627

“Commencement of the Development” means the implementation of the Planning Permission by the carrying out on the Land of a material operation as defined by Section 56(4) of the 1990 Act in connection with the Development save that for the purposes of this Deed none of the following operations shall constitute a material operation:

2.1.1 Archaeological or site inspections

2.1.2 Site or soil surveys

2.1.3 The erection of a site compound

2.1.4 The erection of temporary fences or hoardings

2.1.5 The display of advertisements including the erection of advertisement hoardings and

and **“Commence”** shall be construed accordingly

“Development” means any activity on the Land which is authorised by either; the Planning Permission or the Minerals Planning Permission or under permitted development rights and/or any tree felling and/or any site clearance

“First Occupation” means the first occupation of the dwellings to be constructed on the Red Land

“The Green Land” means the land which is shown for purposes of identification only as the restoration scheme land on the restoration scheme plan prepared by Mr Newcombe The Ecologist attached hereto.

“Land” means the Blue Land, the Green Land and the Red Land.

“Minerals Planning Permissions” means the minerals planning permissions granted by the County Council with references SW/97/579/MR76 and SW/97/580/MR75.

“Permission Date” means the date upon which Planning Permission shall have been granted by ‘the Council’ pursuant to the Planning Application

“Planning Application” means the application dated 16 May 2018 for planning permission for the Development registered by the Council under the Council’s reference number 18/502208/FULL

“Planning Challenge” means an application for judicial review challenging the grant of the Planning Permission lodged within six weeks of the date of the grant of the Planning Permission.

“Planning Obligations” means the obligations contained in Clause 4.

“Planning Permission” means the planning permission for the Development granted pursuant to the Planning Application.

“Red Land” means the land which is shown for purposes of identification only edged red on the Plan Reference RS/001 and the same is registered at the Land Registry and forms Part of Title Number K84627.

“Scheme of Restoration” means the scheme of site restoration, landscaping and biodiversity enhancement, as prepared by Mr M Newcombe The Ecologist, the purpose of which is to restore and landscape the Land and to enhance its biodiversity.

- 2.2 The expressions the “Council”, “the County Council” the “Owner” shall include their respective successors in title and assigns save where specifically provided to the contrary by this Deed.
- 2.3 Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 2.4 This Deed is a planning obligation for the purposes of Section 106 of the 1990 Act.
- 2.5 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 2.6 References in this Deed to any Clause Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause Sub-Clause or Schedule to this Deed so numbered.
- 2.7 The Clause paragraph and Schedule headings do not form part of this Deed and shall not be taken into account in its construction or interpretation.

3. ENFORCEABILITY

- 3.1 The Owner enters into the obligations set out in this Undertaking for itself and its successors in title for the benefit of the Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner, but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof but not the Owner of a residential property constructed pursuant to the planning permission.

PROVIDED THAT

- 3.1.1 The Owner and any successors in title of the Owner and any person deriving title under it shall not be liable for any breach of this Deed occurring after it shall have parted with its interest in the Land or the part of the Land to which the breach relates.

4. PLANNING OBLIGATIONS ON THE OWNER

The Owner hereby covenants:

- 4.1 From the date of grant of Planning Permission not to carry out any Development on the Land until it has served written notice on the Council (for the attention of the Head of Planning) and the County Council (Head of Planning Applications) and specifying that it will EITHER
 - (a) Recommence quarrying on the Land using the Minerals Planning Permissions or alternatively
 - (b) Implement the Planning Permission.
- 4.2 If notice is given under 4.1 to implement the Planning Permission then the following clauses shall apply:
 - 4.2.1 To surrender the Minerals Planning Permissions on the Land
 - 4.2.2 Not to permit First Occupation until the Scheme of Restoration has been implemented
 - 4.2.3 Not to claim nor seek compensation in respect of the obligation arising under Clause 4.2.1 or 4.2.2 nor in respect of the exercise by the Council or the County Council of its powers under Section 97, 99 and 102 of the Act in respect of the Minerals Planning Permission
 - 4.2.4 To indemnify the Council and the County Council from and against any claims or demands arising from the Council exercising powers of modification revocation or discontinuance in respect of the Land
 - 4.2.5 To submit a scheme for the management of the blue land to the Council for approval, in writing, within 6 months of the commencement of the development

- 4.2.6 Not to permit First Occupation until the approved woodland management scheme on the Blue Land has been implemented
- 4.2.7 To preserve and maintain the Blue Land as woodland in perpetuity and appoint otherwise utilise an appropriate management body such as the Kent Wildlife Trust or RSPB provided that should the Owner wish to transfer or otherwise dispose of the whole or any part of the Blue Land such transfer or any other disposition requiring registration at The Land Registry shall not take place without the consent of the Council (such consent not to be reasonably withheld or delayed)
- 4.2.8 To preserve and maintain the Green Land, the subject of the Scheme of Restoration, as prepared by Mr Newcombe The Ecologist in accordance with the approved Scheme of Restoration and in perpetuity
- 4.3 If notice is given under 4.1 to recommence quarrying then the following clauses shall apply:
 - 4.3.1 Surrender the Planning Permission on the Land
 - 4.3.2 Not to claim nor to seek compensation in respect of the obligation arising under Clause 4.3.1 in respect of the exercise by the Council of any of its powers under Sections 97, 99 and 102 of the Act in respect of the Planning Permission
 - 4.3.3 To indemnify the Council and the County Council from and against all claims or demand arising from the Council exercising powers of modification revocation or discontinuance of the Land

5. COSTS

- 5.1 The Owner covenants to pay to the Council on completion of this Deed its reasonable and properly incurred legal and administrative costs

6. LEGAL BASIS

- 6.1 This Undertaking is made pursuant to Section 106 of "The Act"
- 6.2 The Covenants and requirements under this Undertaking are planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as Local Planning Authority against "The Owner" and its successors in Title.

7. MISCELLANEOUS

- 7.1 It is agreed and declared by and between the parties as follows:
- 7.2 The Planning Obligations contained herein take effect as provided for by this Deed but for the avoidance of doubt they shall not be of any effect until Commencement of Development with the exception of clause 5.
- 7.3 This Deed shall be registered in the Register of Local Land Charges.
- 7.4 If the Planning Permission is not granted this Deed shall forthwith determine and cease to have effect and the Owner and the Council will effect cancellation of all entries made in the Register of Local Land charges in respect of this Deed.
- 7.5 The Council will upon the written request of the Owner at any time after the Planning Obligations set out within this Deed have been fully discharged or performed issue written confirmation and effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Nothing in this Deed shall be construed as affecting prohibiting or limiting any rights to develop any part of the Land in accordance with any other planning permission granted whether before or after the date of this Deed by the Council the County Council or the First Secretary of State or any other competent authority.
- 7.7 If there is any conflict between the terms of this Deed and any conditions attached to the Planning Permission the latter shall take precedence
- 7.8 Where the approval agreement confirmation or consent of the Council or any Officer of the Council is required or any matter has to be agreed for any purpose under or in

connection with the terms of this Deed such approval agreement consent or matter to be agreed shall not be unreasonably withheld or delayed

7.9 Nothing in this Deed shall require the performance by the Owner of any obligations whatsoever in or upon over or under land outside the Land if that land is outside the ownership or control of the Owner

7.10 No person other than a contracting party may enforce any provision of this Deed by virtue of the Contracts (Rights or Third Parties) Act 1999

7.11 "The Owner" undertakes to "The Council" to give the Council immediate written notice of any change in ownership of any interests in the site occurring before all of the Covenants under this Undertaking have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the site or unit purchased be reference to a plan

IN WITNESS whereof the parties hereto have by affixing their respective common seals executed this document as a Deed upon the date hereof

EXECUTED AND DELIVERED as a Deed the day and year first hereinbefore written

Signed as a Deed by
Jason Matthew Clifford of
Clifford property Developments Ltd
In the presence of

Witness Signature:

Witness Name:

Witness Address:

Occupation: