

Date 05 August

2015

**Thomas E. Miller
Fiona H. Conington**

Developer's Full Name and Title

AND

Lender's Full Name and Title

UNILATERAL UNDERTAKING

**Made under Section 106 of the Town & Country Planning Act
1990 (as amended) relating to:-**

**Land at Land Adjoining Brookdale, Payhembury, Honiton (EX14
3EZ)**

IN FAVOUR OF EAST DEVON DISTRICT COUNCIL

EAST DEVON DISTRICT COUNCIL ECONOMY			
- 7 AUG 2015			
ACK	CIRC	SEEN	FILE

This **UNDERTAKING** is made on the fifth day of August two thousand and fifteen by:-

1.0 Thomas E. Miller and Fiona H. Conington, 5 Thorne Farm Way, Ottery St Mary, Devon EX11 1GX known as 'the Owner' and

1.1 Name and address of the financial institution with any outstanding loan on the land _____ known as 'the Lender'

TO

2.0 EAST DEVON DISTRICT COUNCIL of Knowle, Sidmouth, Devon, EX10 8HL known as 'the Council'

3.0 RECITALS

3.1 This **UNILATERAL UNDERTAKING** relates to land at Land Adjoining Brookdale, Payhembury, Honiton (EX14 3EZ) in the County of Devon edged red on the attached Plan A known as 'the Land'

3.2 The Owner is the freehold owner of the Land registered with the title absolute under title number DN654232

3.3 The Council is the Local Planning Authority by whom the obligations contained in this Deed are enforceable

3.4 The Lender has a charge over the Land dated _____

3.5 The Owner has made the Planning Application to the Council

3.6 The Council has not yet determined the Planning Application and the Owner enters into this **UNDERTAKING** the obligations of which are only enforceable following a grant of the Planning Permission (see Definitions) for the Development

4.0 DEFINITIONS

the Act	Means the Town and Country Planning Act 1990 as amended
Development	Means the development of the Land as described in the Planning Application and in accordance with the Planning Permission
Commencement of Development	Means the carrying out of any material operation as defined by Section 56(4) of the Act in connection with Development and "Commence" and "Commenced" shall be construed accordingly
Dwelling	Means a building or part of a building designed for residential occupation by a single household and "Dwellings" shall be construed accordingly
First Occupation	Means first occupation of any Dwelling but does not include temporary occupation for the purposes of construction fitting out or marketing and "First Occupy" shall be construed

accordingly

Habitat Mitigation Contribution	Means the sum of £626 (Index Linked) to be paid by the Owner to the Council as a contribution towards non-infrastructure projects to mitigate the impacts of the Development on the Pebblebed Heaths Special Protection Area
Index	Means the Retail Price Index
Index Linked	Means an increase to the sum to be paid which is calculated by applying to that sum the percentage increase (if any) in the Index between the date of this Undertaking and the date of payment
Interest Rate	Means the Law Society's Interest Rate calculated on a day to day basis
Land	Means land situated at Land Adjoining Brookdale, Payhempury, Honiton (EX14 3EZ) shown edged red on Plan A
Planning Application	Means the application for planning permission submitted to the Council for the Development and given reference number (PP-04362765) 15/1680/FUL
Planning Permission	Means planning permission to be granted by the Council pursuant to the planning application or by the Secretary of State on appeal.

5.0 INTERPRETATION

- 5.1 Nothing in this Undertaking shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation the Land or otherwise
- 5.2 Words imposing an obligation on a party to do any act whatsoever include an obligation to procure that act and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction
- 5.3 Words imparting the singular meaning shall unless the context otherwise requires include the plural and vice versa and where there is more than one covenantor all obligations of such covenantors shall be joint and several
- 5.4 The masculine feminine and neuter genders include each of the other genders and words denoting persons shall include corporations and vice versa
- 5.5 A reference to any Clause or Schedule (or any part of them) is unless the context otherwise requires a reference to a Clause or Schedule (or any part of them) contained in this Undertaking
- 5.6 A reference to an Act of Parliament or Statutory Instrument refers to the Act or Statutory Instrument as it applies at the date of this Undertaking SAVE THAT in the event any such Act or Statutory Instrument is consolidated amended or re-enacted then any reference to such Act or Statutory Instrument refers to that Act or Statutory Instrument as consolidated amended or re-enacted from time to time

- 5.7 References to any party in this Undertaking shall include the successors in title and assigns of that party and in the case of the Council includes any successor local planning authority exercising planning powers under the Act
- 5.8 The provisions of the Schedule shall be deemed imported into the operative parts of this Undertaking
- 6.0 **THE OWNER AND THE LENDER UNDERTAKE AS FOLLOWS:-**
- 6.1 This UNDERTAKING is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers and any enactments replacing or superseding the same with the intent to bind the Owner's interests in the Land and with the intent that the obligations herein contained shall be planning obligations
- 6.2 The planning obligations contained in the Schedule to this Undertaking are enforceable by the Council
- 6.3 Nothing in this Undertaking is or amounts to or shall be construed as a Planning Permission or approval
- 6.4 The Owner hereby covenants with the Council to observe and perform the restrictions stipulations and requirements specified in this Undertaking and the Schedule thereto
- 6.5 The Lender hereby consents to the execution of this Undertaking and acknowledges that subject as herein provided the Land shall be bound by the restrictions and obligations contained in the Schedule to this Undertaking
- 6.6 The Owner recognises that this planning obligation is a Local Land Charge and registerable as such in the Register of Local Land Charges maintained by the Council
- 6.7 For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Undertaking shall confer on any third party (other than the Council) any right to enforce or any benefit of any term of this Undertaking
- 6.8 If the Planning Permission should expire (without being renewed or extended) before the Development is Commenced or shall at any time be revoked this Undertaking shall forthwith determine and cease to have effect
- 6.9 Where in this Undertaking the Owner is required to comply with any requirement prior to First Occupation the Owner shall not First Occupy nor permit any other person to occupy any of the Open Market Dwellings before the said requirement has been satisfied
- 6.10 The Owner shall be deemed to have Commenced the Development pursuant to the Planning Permission if they Commence works referable to the Development amounting to a material operation as defined in Section 56(4) of the Act (not being works for which planning permission is not required) on the Land whether or not:-
- (i) The Planning Permission has been issued;
 - (ii) The Owner has satisfied all conditions precedent to commencement set out in the Planning Permission; or
 - (iii) Those works are in accordance with the Planning Permission

6.11 It is acknowledged that:-

- (i) The obligations contained in this Undertaking shall take effect the Commencement of the Development**
- (ii) The County Court in whose district the Land is situate shall have full jurisdiction to hear and determine proceeding arising from or relating to this Undertaking or for the enforcement of its terms or any of them**
- (iii) No person shall be liable for breach of an obligation or covenant contained in this Undertaking after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of an obligation or covenant prior to parting with such interest**

SCHEDULE 1

HABITATS MITIGATION CONTRIBUTION

The Owner for themselves and their successors in title to the Land covenant as follows:-

- 1.0 Not to cause or permit First Occupation until the Habitats Mitigation Contribution has first been paid to the Council
- 2.0 In the event of the Owner failing to settle any account or accounts that may be properly and duly rendered to the Owner within fourteen days of despatch to the Owner the sum due shall accrue interest at the Interest Rate.

1.

IN WITNESS of which this Planning Obligation has been duly executed as a Deed on the date and year first before written

[Attestation Clauses – use the following variations as appropriate]

EXECUTED as a DEED by

Thomas Edwin Miller

)

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

JOSEPH LOPP

7 Wyndham Avenue, Exeter, EX1 2BQ.

EXECUTED as a DEED by

Fiona Helen Conington

)

in the presence of:-

)

Signature of witness

Name (in BLOCK CAPITALS)

Address

18 ST MARGARET'S VIEW
EXMOUTH
EX8 5BJ

JOY MEAD

EXECUTED as a DEED and the Common

)

Seal of Name of Organisation having a Common Seal

)

was hereunto affixed in the presence of

)

Authorised Signatory

EXECUTED as a DEED by

)

Name of organisation not having a Common Seal

)

acting by

:-

)

Authorised Signatory

Authorised Signatory

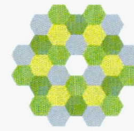
CHECKLIST FOR COUNCIL OFFICERS

1. Ensure the following information is correctly inserted into the Undertaking:
 - (a) **Front Page:**
 - i. Landowner's full name and title
 - ii. Developer's and Lender's name and address if they are a party
 - iii. Details of any additional owners, developers or lenders as appropriate
 - iv. Site address
 - (b) **Page 1:**
 - i. The year at the first line
 - ii. Names and addresses of the owner(s), Developer(s) and any lenders who are parties to the Undertaking at paragraphs 1.0-1.2
 - iii. The site address at paragraph 3.1
 - iv. The title number(s) at paragraph 3.2
 - v. The date of the charge(s) at paragraph 3.4
 - (c) **Page 2:**
 - i. The site address in the definition of Land
 - ii. The correct sum in the definition of Open Space Contribution
 - iii. The application reference number in the definition of Planning Application
 - (d) **Page 6:**
 - i. The names of the parties in the appropriate attestation clauses
2. Where no developer is a party, ensure that the following references to the Developer are deleted:
 - (a) **Page 1:** Entire paragraph 1.1, and references in paragraphs 3.5 and 3.6
 - (b) **Page 2:** Reference in the Definition of Open Space Contribution
 - (c) **Page 3:** References in heading 6.0 and paragraphs 6.4, 6.6, 6.9, and 6.10
 - (d) **Page 4:** Reference in sub-paragraph 6.10(ii)
 - (e) **Page 5:** References in the first sentence and paragraph 2.0 of the Schedule
3. Where no lender is a party, ensure that the following references to the Lender are deleted:
 - (a) **Page 1:** Entire paragraphs 1.2 and 3.4
 - (b) **Page 3:** reference in heading 6.0 and entire paragraph 6.5
4. Ensure that the appropriate possessive/verb/pronoun forms (all marked with an asterisk) are inserted to correspond with the references to the parties in the above paragraphs.
5. Where more than one owner, developer or lender are involved, ensure that:
 - (a) Their interests and status are correctly recorded in the Recitals at page 1;

- (b) References to the parties are appropriately amended to ensure that they are all correctly referred to and bound by the Undertaking; and
 - (c) Their details are inserted in the appropriate attestation clauses.
- 6. Ensure that all owners and lenders having a mortgage against the land are parties to the Undertaking.
- 7. Check that Plan A correctly depicts the land and corresponds with the Owner's title.
- 8. Ensure that no obligations are being entered into that may affect land which does not belong to the Owner(s).
- 9. If the land is unregistered, refer the matter to your solicitor and request an epitome of title to be produced by the Owner/Developer.
- 10. Should the Owner/Developer remove any of the clauses from the Undertaking, ensure that the amended Undertaking is reviewed by your solicitor.

Land Registry Current title plan

Title number **DN654232**
Ordnance Survey map reference **ST0801NE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Devon : East Devon**



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 17 August 2015 at 14:58:48. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by Land Registry, Plymouth Office.