

Date 3 August 2015

**Landowner's Full Name: Mr Philip Scott Spencer & Mrs Patricia Elizabeth Spencer**

**AND**

**Lender's Full Name: The property is fully owned by the above landowners with no mortgage**

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## **UNILATERAL UNDERTAKING**

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

**Land at Land at Land at 139 Chineway Gardens, Ottery St Mary,  
EX11 1JL**

**IN FAVOUR OF EAST DEVON DISTRICT COUNCIL**

15/18101A

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

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

- 1.0 Full name and address of the landowner Philip Scott Spencer and Patricia Elizabeth Spencer owners of Land at 139 Chineway Gardens, Ottery St Mary, EX11 1JL known as 'the Owner'
- 1.1 Name and address of the financial institution with any outstanding loan on the land known as 'the Lender' - not applicable

**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 at 139 Chineway Gardens, Ottery St Mary, EX11 1JL 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 DN43217
- 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 N/A
- 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

<b>First Occupation</b>	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
<b>Habitat Mitigation Contribution</b>	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
<b>Index</b>	Means the Retail Price Index
<b>Index Linked</b>	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
<b>Interest Rate</b>	Means the Law Society's Interest Rate calculated on a day to day basis
<b>Land</b>	Means land situated at Land at 139 Chineway Gardens, Ottery St Mary, EX11 1JL shown edged red on Plan A
<b>Planning Application</b>	Means the application for planning permission submitted to the Council for the Development and given reference number <u>15/1810/FUL</u>
<b>Planning Permission</b>	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

EXECUTED as a DEED by

Full Name of Individual: Philip Scott Spencer

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

) [REDACTED]  
) [REDACTED]  
) [REDACTED]  
.....  
..... DAVINA JUNE PALFREY .....  
..... SHADY ORCHARD SUNNYMILL .....  
..... OTTERY ST. MARY DEVON EX11 1DZ .....

EXECUTED as a DEED by

Full Name of Individual: Patricia Elizabeth Spencer

in the presence of:-

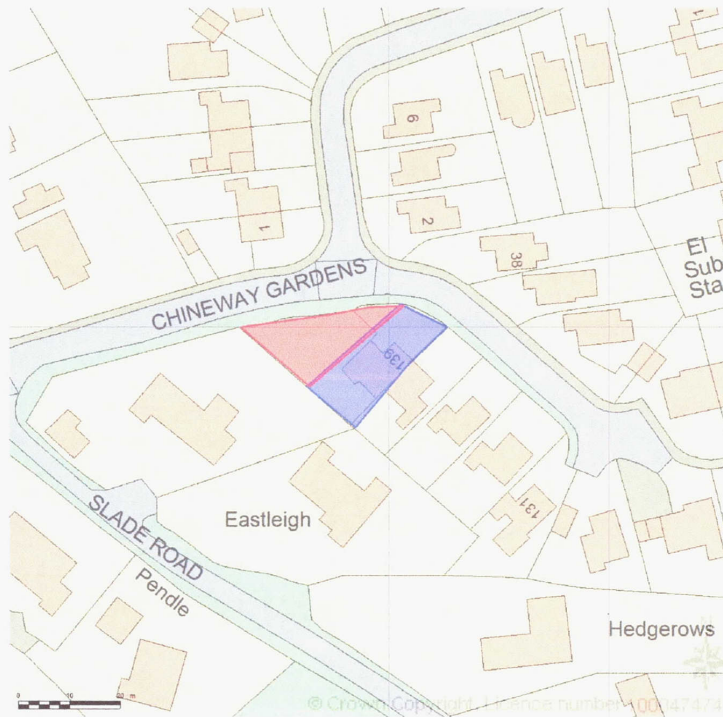
Signature of witness

Name (in BLOCK CAPITALS)

Address

) [REDACTED]  
) [REDACTED]  
) [REDACTED]  
.....  
..... DAVINA JUNE PALFREY .....  
..... SHADY ORCHARD SUNNYMILL .....  
..... OTTERY ST. MARY DEVON EX11 1DZ .....

SITE LOCATION PLAN  
AREA 2 HA  
SCALE: 1:1250 on A4  
CENTRE COORDINATES: 310696 , 95293



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# H.M. LAND REGISTRY

TITLE NUMBER

**DN 43217**

ORDNANCE SURVEY  
PLAN REFERENCE

COUNTY

SHEET

NATIONAL GRID

SECTION

DEVON

SY 1095

G

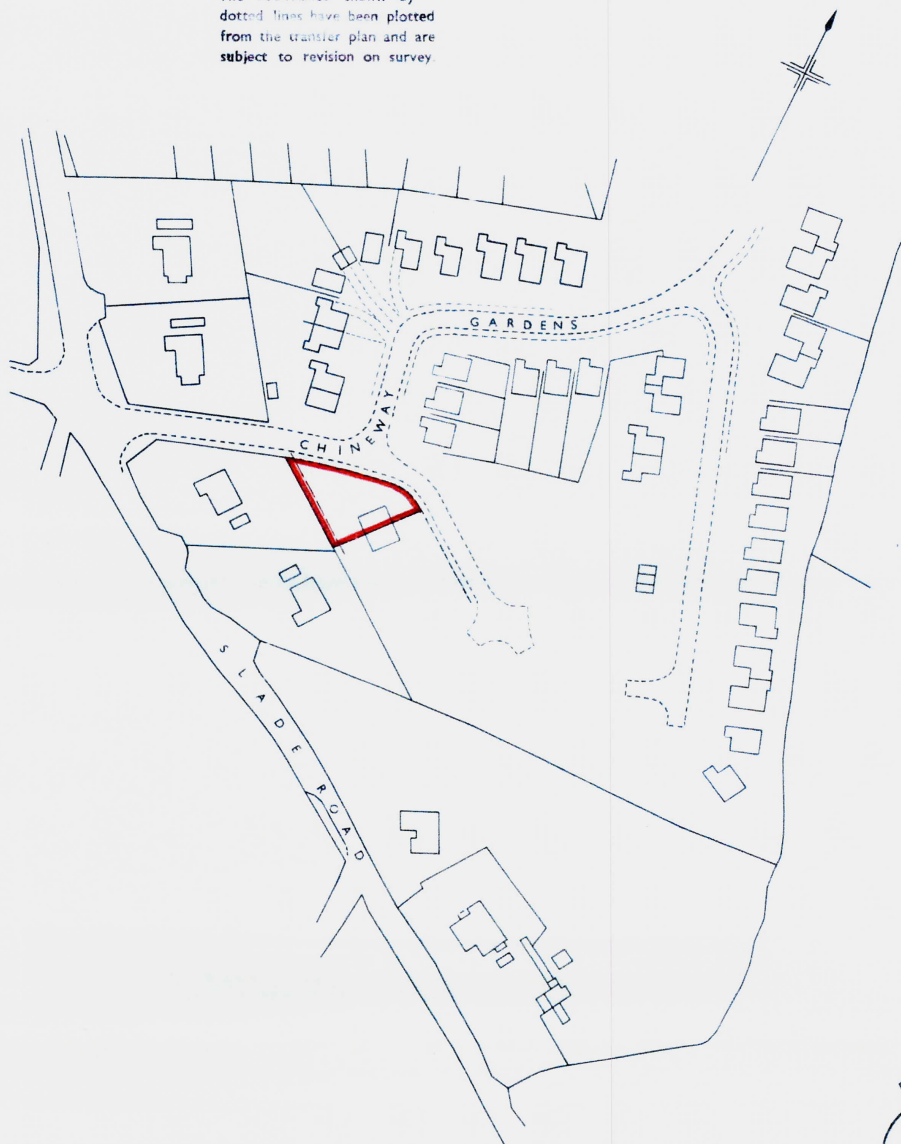
Scale: 1:1250 Enlarged from 1:2500

EAST DEVON DISTRICT

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OTTERY ST MARY PARISH

The boundaries shown by  
dotted lines have been plotted  
from the transfer plan and are  
subject to revision on survey



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 07 August 2015 at 13:48:05. 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.

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