

Date

17 December

2015

S.M. Brine Ltd

UNILATERAL UNDERTAKING

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

**Land at Salters Cottage, 6 Queen Street, Budleigh Salterton,
Devon EX9 6LB**

IN FAVOUR OF EAST DEVON DISTRICT COUNCIL

This **UNDERTAKING** is made on the 17 day of December
two thousand and fifteen by:-

1.0 S. M. Brine Ltd, The Old Rope House, Lower Downside, Shepton Mallet, Somerset, BA4 4JX
known as 'the Owner' and

1.1 N/A 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 Salters Cottage, 6 Queen Street,
Budleigh Salterton. Devon EX9 6LB 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(s) DN283439

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
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 £749.00 (Index Linked) to be paid by the Owner to the Council as a contribution towards non-infrastructure measures to mitigate the impacts of the Development on the Exe Estuary and 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 Salters Cottage, 6 Queen Street, Budleigh Salterton. Devon EX9 6LB shown edged red on Plan A
Open Space Contribution	Means the sum of £1,038.00 (Index Linked) to be paid by the Owner to the Council as a contribution to the Council's costs of the provision and enhancement of outdoor table tennis tables in the parish of Budleigh Salterton
Planning Application	Means the application for planning permission submitted to the Council for the Development and given reference number <u>15/2432/FUL</u>
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
- 6.6 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

OPEN SPACE PROVISION

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 Open Space 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.

SCHEDULE 2

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)

Full Name of Individual
Mr Stephen Mark Brine

)

in the presence of:-)

Signature of witness

Name (in BLOCK CAPITALS)

Address

EXECUTED as a DEED by)

Full Name of Individual
Mrs Nicola Barbara Brine

)

in the presence of:-)

Signature of witness

Name (in BLOCK CAPITALS)

Address

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 S M BRINE LTD)

Name of organisation not having a Common Seal

.....)

acting by :- STEPHEN MARK BRINE)

Authorised Signatory NICOLA BARBARA BRINE

S M Brine
N Brine

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 17 DEC 2015 AT 13:44:48. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN THE REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY LAND REGISTRY, PLYMOUTH OFFICE.

TITLE NUMBER: DN283739

There is no application or official search pending against this title.

A: Property Register

This register describes the land and estate comprised in the title.

DEVON : EAST DEVON

1 (26.06.1990) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 6 Queen Street, Budleigh Salterton (EX9 6LB).

2 (26.06.1990) The land has the benefit of the following rights granted by but is subject to the following rights reserved by the Conveyance dated 4 February 1972 referred to in the Charges Register:-

"TOGETHER with all rights and easements as are at present enjoyed by the properties hereby conveyed EXCEPT AND RESERVING unto the Vendors and their successors in title (a) for the benefit of all other parts of their Estate and whether or not belonging to the Vendors at the date hereof (i) the free passage and flowing of water and soil gas and electric current through all sewers drains pipes wires and cables running through in under over or attached to the properties hereby conveyed with full power to reconstruct divert or alter all sewers drains pipes wires and cables as may be necessary or expedient (ii) the right for the Vendors and their successors in title and all persons authorised by them to enter upon the properties hereby conveyed at all reasonable times for the purposes of having access to the sewers drain pipes wires and cables thereon or running thereto or therefrom as aforesaid for the purpose of cleansing repairing maintaining or renewing the same (but without any obligation on the Vendors or their successors in title so to do) the Vendors and their successors in title making good all damage thereby occasioned."

3 (26.06.1990) The Conveyance dated 4 February 1972 referred to in the Charges Register contains the following provision:-

"PROVIDED ALWAYS that nothing herein contained or implied by law shall operate to confer on the Purchaser or his successors in title and that the Purchaser or his successors in title shall not hereafter acquire (i) any easement or quasi-easement right or privilege whatsoever over or against the Vendors' adjoining or adjacent property or any other part or parts of the said Estate other than any express rights hereby granted (ii) any rights to light or air or any other easement right or privilege which would or might restrict or prejudicially affect the future rebuilding alterations or development of such adjoining or adjacent property or any part thereof or any other part or parts of the said Estate."

4 (26.06.1990) The land has the benefit of the following rights granted by a Transfer of the land in this title dated 7 November 1988 made between (1) Lester Smith (Transferor) and (2) Heidi Ursula Bransden (Transferee):-

"TOGETHER WITH (i) a right of way at all times and for all purposes (in common with others similarly entitled) over path coloured blue on plan annexed (ii) all rights for passage and running of water and soil and surface water gas and electric current through all sewers drains pipes wires cales and other conducting media running through in under or over

A: Property Register continued

or attached to the Transferor's neighbouring and adjoining property known as 9 High Street Budleigh Salterton ("the Retained Property") as shown edged green on the said plan annexed hereto SUBJECT TO the owner of the property hereby transferred paying a fair proportion of the costs of the repair renewal and maintenance of the said service pipes wires cables and other conducting media insofar as they are used in common with the Retained Property."

NOTE: Copy plan filed.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (04.09.2015) PROPRIETOR: S. M. BRINE LIMITED (Co. Regn. No. 04697921) of The Old Rope House, Lower Downside, Downside, Shepton Mallet BA4 4JX.
- 2 (04.09.2015) The price stated to have been paid on 24 August 2015 was £168,500.
- 3 (04.09.2015) The Transfer to the proprietor contains a covenant to observe and perform the covenants referred to in the Charges Register and of indemnity in respect thereof.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (26.06.1990) A Conveyance of the land in this title and other land dated 4 February 1972 made between (1) Neil Arthur Campbell and others (Vendors) (2) The Right Honourable Gerard Neville Mark Fane Trefusis Baron Clinton (Lord Clinton) and (3) Lester Smith (Purchaser) contains the following covenants:-

"THE Purchaser hereby covenants on behalf of himself and his successors in title with the Vendors and Lord Clinton and their respective successors in title for the benefit and protection of the adjoining or neighbouring property belonging to the Vendors or Lord Clinton and each and every part thereof not to carry out any mining quarrying or other analogous operations on the properties hereby conveyed or any part or parts thereof."
- 2 (26.06.1990) By the Conveyance dated 4 February 1972 referred to above the land was conveyed subject as follows:-

"Subject also to all (if any) wayleaves and to all easements for the passage and flowing of water and soil gas and electric current to and from the said properties and other properties now or previously forming part of the Vendors' Estate whether at the time of sale belonging to the Vendors or not and to all rights of drainage way support light and air party walls fences and other easements and quasi-easements (if any) affecting the same and whether mentioned therein or not."

End of register

H.M. LAND REGISTRY		TITLE NUMBER	
		DN 283739	
ORDNANCE SURVEY PLAN REFERENCE	SY 0681	SECTION A	Scale 1/1250 Enlarged from 1/2500
COUNTY DEVON	DISTRICT EAST DEVON	© Crown copyright 1986	



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 17 December 2015 at 13:46:24. 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.

©Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.