

S106A/110/HON 1

Date

18 December

2015

Landowners's

**Mr Jonathan Brian David Marshall, Mr Brian Leslie Sidney
Marshall and Mrs Susan Clare Marshall**

UNILATERAL UNDERTAKING

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

**Land at Higher Brand Lane OS Ref.SY1699SW (north of
Willowtrees, Honiton Devon EX14 9TS)**

IN FAVOUR OF EAST DEVON DISTRICT COUNCIL

This **UNDERTAKING** is made on the 18th day of December
two thousand and fifteen by:-

1.0 Jonathan Brian David Marshall, Brian Leslie Sidney Marshall and Susan Clare Marshall of Tracey Ham Cottage, Awliscombe, Honiton, known as 'the Owner' and

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 Higher Brand Lane OS Ref.SY1699SW (north of Willowtrees EX14 9TS) 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 DN639406

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

3.4 The Owner has made the Planning Application to the Council

3.5 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
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 Higher Brand Lane OS Ref.SY1699SW (north of Willowtrees EX14 9TS) shown edged red on Plan A
Open Space Contribution	Means the sum of £4723.20 (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 youth play provision at Honiton Bottom play area
Planning Application	Means the application for planning permission submitted to the Council for the Development and given reference number (to be advised) 15/2459/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 OWNERS 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 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
- 6.6 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
- 6.7 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
- 6.8 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
- 6.9 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
- 6.10 It is acknowledged that:-
- (i) The obligations contained in this Undertaking shall take effect on 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.

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

Jonathan Brian David Marshall



in the presence of:-

Signature of witness

) NAOMI BURGESS

Name (in BLOCK CAPITALS)

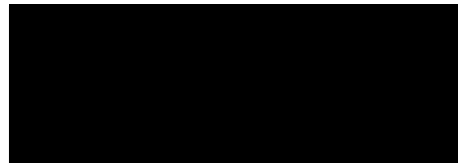


Address

6 BETTS HOUSE, LONDON
E18 4HN

EXECUTED as a DEED by

Brian Leslie Sidney Marshall



Susan Clare Marshall

) SC Marshall

in the presence of:-

Signature of witness



Name (in BLOCK CAPITALS)

) KELVIN BRISCOE

Address

TURNPIKE COTTAGE
AWLSCOMBE HUTTON
EX14 3NW.

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

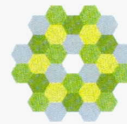
:-

Authorised Signatory

Authorised Signatory

Land Registry
Current title plan

Title number **DN639406**
Ordnance Survey map reference **SY1699SW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Devon : East Devon**



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This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 06 November 2015 at 15:46:25. 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.