Stuart Partners Limited

UNILATERAL UNDERTAKING

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

Land at The Gap, Lower Broad Oak Road, West Hill, EX11 1UD

IN FAVOUR OF EAST DEVON DISTRICT COUNCIL
This **UNDERTAKING** is made on the __________________ day of __________________ two thousand and eighteen by:-

1.0 Stuart Partners Limited, Hill Barton Business Park, Clyst St Mary, Nr Exeter, EX5 1DR known as ‘the Owner’

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 **The Gap, Lower Broad Oak Road, West Hill, EX11 1UD** 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) DN626918

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**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>the Act</td>
<td>Means the Town and Country Planning Act 1990 as amended</td>
</tr>
<tr>
<td>Development</td>
<td>Means the development of the Land as described in the Planning Application and in accordance with the Planning Permission</td>
</tr>
<tr>
<td>Commencement of</td>
<td>Means the carrying out of any material operation as defined by Section 56(4) of the Act in connection with Development and &quot;Commence&quot; and &quot;Commenced&quot; shall be construed accordingly</td>
</tr>
<tr>
<td>Development</td>
<td></td>
</tr>
<tr>
<td>Dwelling</td>
<td>Means a building or part of a building designed for residential occupation by a single household and &quot;Dwellings&quot; shall be construed accordingly</td>
</tr>
<tr>
<td>First Occupation</td>
<td>Means first occupation of any Dwelling but does not include temporary occupation for the purposes of construction fitting out or marketing and &quot;First Occupy&quot; shall be construed</td>
</tr>
</tbody>
</table>
Habitat Mitigation Contribution

Means the sum of £146.85 (Index Linked) per dwelling 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 Pebblebed Heath 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 The Gap, Lower Broad Oak Road, West Hill, EX11 1UD 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 17/0523/OUT.

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. 

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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 UNDERTAKES 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 registrable 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 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 upon the Commencement of the Development

(ii) The County Court in whose district the Land is situate shall have full jurisdiction to hear and determine proceedings 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 of the Development until the Habitat 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
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

Name of organisation not having a Common Seal

acting by

Authorised Signatory

Authorised Signatory

) STUART PARTNERS LTD

) Director

Director
CHECKLIST

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 Habitat Mitigation 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 Habitat Mitigation
   
   (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.
PLAN A
Site Location Plan
A: Property Register

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

DEVON : EAST DEVON

1 (10.09.2012) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being land adjoining The Gap, Lower Broad Oak Road, West Hill, Ottery St Mary (EX11 1UD).

2 (10.09.2012) The land has the benefit of the rights granted by but is subject to the rights reserved by a Conveyance of the land in this title and other land dated 23 November 1949 made between (1) Monica Edith Mary Weakes and Joan Vyvyan Julia Eames and (2) Fleming Mackenzie.

NOTE: Copy filed.

3 (10.09.2012) The land has the benefit of the rights granted by but is subject to the rights reserved by a Transfer of the land in this title dated 25 July 2012 made between (1) Roy Anthony Raymond Stuart, Ross Stuart and Troy Stuart and (2) Stuart Partners Limited.

NOTE: Copy filed.


5 (12.12.2014) The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

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 (10.09.2012) PROPRIETOR: STUART PARTNERS LIMITED (Co. Regn. No. 07940731) of Hill Barton Business Park, Sidmouth Road, Clyst St Mary, Exeter, Devon EX5 1DR.

2 (10.09.2012) The value stated as at 10 September 2012 was £200,000.

C: Charges Register

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

1 (10.09.2012) The land is subject to the rights granted by a Deed dated 15 July 1959 made between (1) James Aubrey Daunton (2) Robert James
This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 03 January 2018 at 13:24:52. 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 HM Land Registry, Plymouth Office.
Hi Sulina,

UU for 17/0523/OUT, Land at the Gap, West Hill

I've put on your desk a UU for a Central application that is now with Bob as there is an Appeal ongoing. I've checked it against the Land Registry info and all looks ok, but could you look it over and make sure I haven't missed anything please?

The only issue I can see is that the front page has been dated by the agent and page 1 at the top is blank but has the set year as 2017. Do you have a template for the UU's to show the date as 2018 yet? The ones I found on the website still show the date as 2016.

As we will need to get back to the agent to ask for a fresh copy to exclude the date anyway, if you have an up to date template, we can send that to them.

Many thanks,
Anni

Anni Smith (Mrs)

Planning Support Officer (Mondays, Tuesdays and Wednesday mornings)
Central Planning Team
East Devon District Council

☎️ 01395 571596
✉️ East Devon District Council, Knowle, Station Road, Sidmouth. EX10 8HL
2nd January 2018

Dear Sir

APP/U1105/W/17/3183352 Appeal by Stuart Partners Ltd for Land at The Gap, West Hill Unilateral Undertaking

On behalf of Stuart Partners Ltd, please find attached a completed and signed Unilateral Undertaking in support of the above appeal, committing the appellant to making a payment to East Devon District Council of £146.85 per dwelling to mitigate the impacts of the proposed development on the Pebblebed Heath Special Protection Area. We note that the obligation contained in the Undertaking would come into effect upon the Commencement of the Development.

The document follows the local planning authority’s standard Unilateral Undertaking template for housing developments liable for Habitat Mitigation Contributions only, which was provided by your Section 106 Officer on 23rd November 2017. A copy has been sent to the Planning Inspectorate.

Please also find enclosed a cheque for £50 to cover registration costs.

If you require any further information or clarification, please do not hesitate to contact Amy Roberts on the number below.

Yours faithfully,

BELL CORNWELL LLP

AMY ROBERTS BSc (Hons), MSc, MRTP
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Email aroberts@bell-cornwell.co.uk