

DATED 4<sup>th</sup> October 2011 2011

Vera Pearce

And

Raymond Dunn and Rosina May Dunn  
As Executors of the Estate of the late Percival James Pearce

-to-

SOUTH HAMS DISTRICT COUNCIL

---

**UNILATERAL UNDERTAKING  
IN TERMS OF  
SECTION 106 TOWN & COUNTRY PLANNING ACT 1990**

relating to

Land at Torrhill Cottages, Godwell Lane, Devon PL21 0LT.

---

THIS UNILATERAL UNDERTAKING is made the 4<sup>th</sup> day of October 2011

BY

**Vera Pearce and Raymond Dunn and Rosina May Dunn** as Executors of the Estate of the late **Percival James Pearce of 1 Torrhill Cottages, Godwell Lane, Ivybridge, Devon, PL21 0LT** (The Owner)

TO

**SOUTH HAMS DISTRICT COUNCIL** of Follaton House Plymouth Road Totnes TQ9 5NE ("SHDC")

1. DEFINITIONS

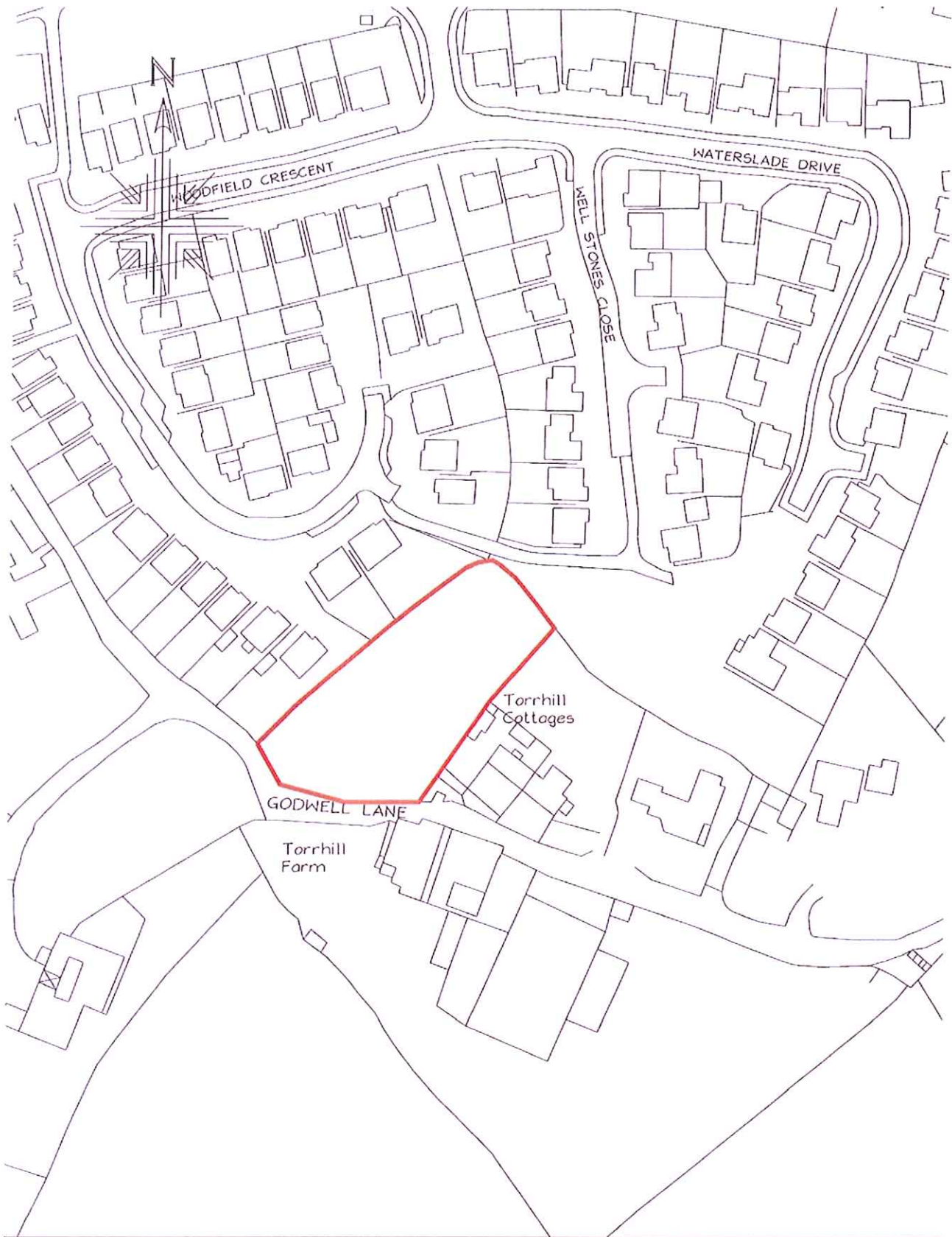
1.1 In this deed unless the context otherwise requires the following expressions shall have the meanings set out below:

**"the Act"** the Town & Country Planning Act 1990 as amended by the Planning and Compensation Act 1991

**"the Application"** the application submitted to the South Hams District Council on behalf of the Owners for planning permission in outline for the Development and allocated planning reference 27/1758/11/F

**"the Affordable Housing Contribution"** means the sum of £97,845 (ninety seven thousand, eight hundred and forty five pounds) to be used by SHDC for the purpose of providing subsidised housing within the District

**"Commencement of Development"** the date upon which the Development is begun by any material operation as defined in Section 56 of the Act and for the purposes of determining whether or not a material operation has been carried out there shall be disregarded such operations as archaeological investigation demolition site clearance site preparation site filling diversion and laying of



**BWW DESIGN Ltd**

STRUCTURAL & CIVIL  
CONSULTING ENGINEERS  
BUILDING DESIGN CONSULTANCY  
ADELAIDE, EXETER ROAD, IVYBRIDGE. PL21 0BD  
TEL./FAX. 01752 896835

JOB **1 TORRHILL COTTAGES,  
GODWELL LANE, IVYBRIDGE**

CLIENT **Mrs. PEARCE**

DETAIL **SITE PLAN  
UNILATERAL UNDERTAKING**

DRAWING NO  
**08501/UU**

SCALE

DATE **JUL 10**

DRAWN BY **PA**

CHECKED BY



services erection of fences and hoardings and construction of access or service road

**"the Development"** the development of the Land involving the erection of three dwellings and garages with a new access and associated works in accordance with the Application

**"the District"** the administration area of SHDC

**the "Indexation Allowance"** means an amount equal to the difference between the relevant contribution and any increase over that amount which is arrived at by applying to the amount the percentage increase in the Building Costs Information Service Index between the quarterly Index figure immediately preceding the date of this deed and the quarterly index figure of the quarter immediately preceding the date of payment

**"the Land"** land at Torrhill Cottages, Godwell Lane, Ivybridge, Devon shown edged red on the Plan for identification purposes

**"the Plan"** the plan number 08501/UU annexed to this deed

**"the Permission"** the planning permission which is granted pursuant to the Application

**"the Open Space, Sport & Recreation Contribution"** means the sum of **£14,625 (fourteen thousand, six hundred and twenty five pounds)** which shall be expended solely on sports and recreation facilities in the District

## 2. INTERPRETATION

Where in this deed the context so admits:

- 2.1 Words importing one gender include the other gender and words importing the singular include the plural and vice versa

- 2.2 The expressions "the Owner" and "SHDC" shall include their respective successors in title
- 2.3 Where for the time being there are two or more persons within the meaning of the expression "the Owner" covenants whether express or implied and made or to be made by or with such party are made by or with such persons jointly and severally
- 2.4 Clause headings in this deed are for convenience only and shall not affect construction or interpretation
- 2.5 Reference in this deed to any enactment shall include any statutory extension modification or re-enactment and includes any byelaw order rule regulation procedure scheme or other instrument having effect by virtue of an enactment
- 2.6 Save where a contrary intention is expressed a reference herein to a clause or Schedule shall be deemed to be a reference to a clause or Schedule of this deed and reference to a sub-clause or paragraph shall be deemed to be a reference to a sub-clause or paragraph of the clause sub-clause or Schedule in which such reference appears

3. RECITALS

- 3.1 SHDC is a local planning authority for the purposes of the Act and is the local planning authority by whom the planning obligations contained in this deed are enforceable
- 3.2 The Owner is the freehold of the Land shown outlined in red on the Plan and registered at The Land Registry under title number DN 510287

3.3 The Owner is willing to enter into planning obligations under this Unilateral Undertaking to facilitate the provision of Affordable Housing and Open Space, Sport and Recreation facilities in accordance with the terms of this Undertaking in the event of the SHDC granting the Permission

4. LEGAL EFFECT

4.1 This Unilateral Undertaking is made pursuant to Section 106 of the Act which section shall apply to the obligations hereinafter contained

4.2 The planning obligations contained herein shall be binding upon the Land and shall be enforceable by SHDC against the Owner and its successors in title SAVE THAT no person shall be liable for any breach of the covenants restrictions or obligations contained in this deed occurring after he has parted with his interest in the Land or the part in respect of which such breach occurs or occurring after he or she ceases to be an Owner

4.3 This deed shall not take effect until:  
(a) the Permission has been granted; and  
(b) there has been a Commencement of Development

4.4 If the Permission shall expire before Commencement of Development or is revoked this Deed shall forthwith determine and cease to have effect

5. UNDERTAKING

The Owner undertakes and covenants to comply with the planning obligations set out in the Schedule subject to the other terms of this deed

6. MONITORING FEES

The Owner acknowledges that SHDC shall be entitled to use a sum equivalent to

five per cent (5%) of the total payments and contribution payable pursuant to the provisions of this deed hereto towards the costs to be reasonably and properly incurred by SHDC in monitoring compliance with this deed and in assessing the details submitted to the Council for approval pursuant to this deed

7. GENERAL

- 8.1 Nothing in this deed shall prevent or restrict any of the statutory rights powers duties and obligations of SHDC in the exercise of its function as a local authority
- 8.2 This deed shall be registered in the South Hams District Council's Local Land Charges Register immediately on completion thereof

9. ARBITRATION

The Owner undertakes that any dispute or difference arising between it and SHDC with regards to the rights and obligations as to any matter or thing in any way arising out of or connected with the subject matter of this deed shall subject to the consent of SHDC be referred to the decision of a single arbitrator to be agreed between the Owner and SHDC or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

10. NOTICES

Any notice consent or approval required to be given under this deed shall be subject to the requirement that it is delivered personally or sent by pre-paid first class post to the address of the intended recipient or such other address for



service as shall have been previously notified by the recipient to the body delivering the notice consent or approval but no Notice shall be deemed served by e-mail

**IN WITNESS** whereof the Owner has signed this Unilateral Undertaking as a deed the day and year first before written

### SCHEDULE

1 Prior to occupation of the first dwelling of the Development the Owner shall pay to SHDC in full the Open Space, Sports and Recreation Contribution and the Affordable Housing Contribution plus the Indexation Allowance

Signed as a deed by  
Vera Pearce

*V. Pearce*

in the presence of

Signature.....*Richard King*.....

Name.....*RICHARD KING*.....  
(Capital letters)

Address *King - Solicitors*  
*24 Fore Street*  
*Exmouth PL21 9AB*

Occupation *Solicitor.*

Signed as a deed by  
Raymond Robert Dunn  
And Rosina May Dunn  
As Executors of the Estate  
Of the late Percival James Pearce

*R.R. Dunn*

in the presence of

Signature.....

*[Signature]*  
*Richard King*

Name.....

(Capital letters)

*RICHARD KING*

Address

*IVYBRIDGES*

Occupation

*Solicitor*