

Dated:

20

UNILATERAL UNDERTAKING

given by

[Applicant]

to

WINCHESTER CITY COUNCIL

UNILATERAL UNDERTAKING

pursuant to section 106 of the Town and Country
Planning Act 1990 and other powers relating to

[]

**Southampton, Fareham & Havant Legal Partnership
Southampton City Council
Civic Offices
Southampton
SO14 7LY**

BY:

- (1) **[Applicant name]** whose registered address is at **[address]** (“the Owner”)

TO:

- (2) **WINCHESTER CITY COUNCIL** of City Offices, Colebrook Street, Winchester, Hampshire, SO23 9LJ (“the Council”)

RECITALS

- A The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- B The Owner is the freehold owner of the Land registered with title absolute at HM Land Registry under Title Number(s) **[Title number]**.
- C The Owner has agreed to give this Undertaking to regulate the disposal of wastewater from the Land in order to reduce the level of nutrients discharged into groundwater or surface water.
- D The Owner has entered into the Grant Funding Agreement and agrees to assign the benefit of this reduction in nutrients to Fareham Borough Council to offset against other development.
- E The Owner has agreed to be party to this Undertaking and consent[s] to this Undertaking being given and to the obligations becoming binding on the Land.

OPERATIVE PART

1 DEFINITIONS

1.1 In addition to the definitions set out below, a series of specific definitions are included in each of the Schedules to this Undertaking giving further defined terms and expressions to facilitate interpretation and unless stated to the contrary the specific definitions in the Schedules shall apply throughout this Undertaking where the relevant terms and expressions are used.

1.2 In this Undertaking the following expressions shall have the meanings indicated:

“Act”	The Town and Country Planning Act 1990 (as amended)
“Enabling Powers”	Section 111 of the Local Government Act 1972 (as amended) Section 1 of the Localism Act 2011 and all other enabling powers which may be relevant for the purpose of giving validity to or facilitating the enforcement of the obligations created by this Undertaking
“the Land”	The land known as [house name or address] shown for identification purposes only edged with a red line on Plan 1

“Plan 1”	The plan annexed hereto and marked “Plan 1” showing the Land edged red
“Statutory Undertakers”	Organisations licensed by the government which include all utilities electricity, gas, water, telephone, cable telephone and television and other telecommunication companies
“Undertaking”	This unilateral undertaking made by deed

2 INTERPRETATION

- 2.1 Where in this Undertaking reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Undertaking.
- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 2.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5 References to any party to this Undertaking shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.6 References to "the parties" shall mean the parties to this Undertaking and reference to a "party" shall mean any one of the parties.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.9 Obligations not to do something under this Undertaking shall be deemed to be obligations not to permit or suffer such thing to be done.

3 STATUTORY AUTHORITY

- 3.1 This Undertaking is given pursuant to section 106 of the Act and the Enabling Powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Undertaking create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner, their successors in title and any person deriving title in the Land or any part of it from the Owner.

4 EFFECT OF THE UNDERTAKING

This Undertaking shall take effect on the day and year first before written.

5 THE OWNER'S COVENANTS

The Owner hereby covenants with the Council they will observe and perform the covenants on their part contained in Schedule One.

6 RELEASE AND LAPSE

6.1 The Owner shall not be liable for a breach of any of their obligations under this Undertaking (save for antecedent breaches) after they shall have parted with all of their respective interests in the Land.

6.2 This Undertaking shall not be enforceable against Statutory Undertakers who have an interest in or arising purely in connection with their apparatus or operational land situated within the Development.

7 LOCAL LAND CHARGE

This Undertaking is a local land charge and may be registered as such by the Council.

8 DUTY TO ACT REASONABLY

All parties to this Undertaking acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any deed consent approval or expression of satisfaction is due from one party to another under the terms of this Undertaking the same shall not be unreasonably withheld or delayed.

9 NO FETTER ON DISCRETION OR WAIVER

9.1 Nothing contained or implied in this Undertaking shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

9.2 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

10 WARRANTY AS TO TITLE

The Owner hereby warrants that no person other than the parties to this Undertaking has any interest in the Land for the purposes of section 106 of the Act.

11 SEVERABILITY

If any part of this Undertaking shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Undertaking shall continue in full force and effect.

12 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Undertaking shall be enforceable by a third party who is not a party to the Undertaking and for the avoidance of doubt the terms of this Undertaking may be varied by Undertaking between the parties and the Council without the consent of any such third party.

13 NOTICES

13.1 Any notices required to be served by one party on another under this Undertaking shall be served by First Class prepaid post or by email in the following manner:

13.1.1 on the Council at the address shown above or by email to [] marked "for the attention of [] and bearing the reference []";

13.1.2 on the Owner at the address as detailed above or as notified by the Owner in writing to the Council; and

14 CONSENT OF THE MORTGAGEE

14.1 Notwithstanding clause 3.2, no obligation in this Undertaking shall be binding on or enforceable against any other chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part or parts of the Land or any receiver appointed by such chargee or mortgagee or any person deriving title through such charge, mortgage or receiver unless and until such chargee, mortgagee, receiver or person has entered into possession of the Land or part thereof to which such obligation relates

15 NOTIFICATION OF SUCCESSORS IN TITLE

15.1 The Owner covenants with the Council that they will give immediate written notice to the Council of any change of ownership of the Land if at such time the obligations contained within this Undertaking have not fully been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

16 JURISDICTION

16.1 This Undertaking is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

17 DELIVERY

17.1 This Undertaking has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE ONE

WASTEWATER OBLIGATIONS

DEFINITIONS

In this Schedule the following terms have the following meanings:

“Certificate of Completion”	a certificate issued by an approved building control body certifying that the installation of the New Package Treatment Plant has been completed in accordance with the Building Regulations 2015
“Grant Funding Agreement”	the agreement between the Owner and Fareham Borough Council to fund the replacement of the Old Septic Tank
“Minimum Term”	a period of 100 years which shall commence from the date of the issue of the Certificate of Completion
“New Package Treatment Plant”	the package treatment plan which is to be installed on the Land pursuant to the Grant Funding Agreement
“Old Septic Tank”	the septic tank on the Land which is in use immediately prior to the installation of the New Package Treatment Plant
“the Property”	the house or other residential property located on the Land and which is to be connected to the New Package Treatment Plant
“Package Treatment Plant Specification”	the guidelines published by the manufacturer of the New Package Treatment Plant Tank from time to time setting out the required maintenance regime for optimal performance of the New Package Treatment Plant

The Owner undertakes to the Council as follows:

1 New Package Treatment Plant

- 1.1. Upon the installation of the New Package Treatment Plant the Owner covenants that they shall not carry out any act or development at the Land that would prejudice the ability to test upkeep and maintain the New Package Treatment Plant in accordance with the Package Treatment Plant Specification.
- 1.2. The Owner shall retain the New Package Treatment Plant until the expiry of the Minimum Term and shall do nothing during that period that will cause the New Package Treatment Plant to function less effectively or cease functioning.
- 1.3. The Owner will throughout the Minimum Term arrange for the New Package Treatment Plant to be serviced, maintained and de-sludged as required in accordance with the Package Treatment Plant Specification.

- 1.4. The Owner will keep up-to-date records of all maintenance and monitoring undertaken of the New Package Treatment Plant in accordance with the Package Treatment Plant Specification.
- 1.5. The Owner will provide any information reasonably required by the Council its contractors or agents from time to time relating to the New Package Treatment Plant and the management and maintenance of the New Package Treatment Plant.
- 1.6. The Owner shall permit the Council its contractors or agents access to the Land on reasonable written notice to inspect the New Package Treatment Plant, including taking water samples if required.
- 1.7. The Owner shall:
 - 1.7.1 remedy any failures of the New Package Treatment Plant within 30 Working Days of becoming aware of such failure; and
 - 1.7.2 renew or replace the New Package Treatment Plant at the end of its operational lifespan with an alternative sewage treatment plant which achieves a certified level of 3.5 milligrams per litre total phosphorus and/or 15 milligrams per litre of total nitrogen as the case may be.

IN WITNESS whereof the parties hereto have executed this Undertaking on the day and year first before written

[Individual party]

SIGNED as a deed by)
[NAME OF OWNER])
In the presence of:)

Witness Signature:

Name:

Address:

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Occupation

