EVERSHEDS

DRAFT: (1)
Ref: MuttonK/GreenLY
Date: 21 December 2011

Dated 4 JANUARY 2012 ~~2011~~

TAYLOR WIMPEY UK LIMITED

UNILATERAL UNDERTAKING

---

under Section 106 Town and Country Planning Act 1990relating to land at Junction of Main Avenue and Hambledon Road, Dukes Meadow Development Site Waterlooville

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THIS UNDERTAKING is given on 4 January 2012.
~~2011~~

BY TAYLOR WIMPEY UK LIMITED (company number 01392762) whose registered office is at Gatehouse, Turnpike Road, High Wickham, Buckinghamshire HP12 3NR ("**the Landowner**")

TO

(1) WINCHESTER CITY COUNCIL of Colebrook Street, Winchester, Hampshire SO23 9LJ ("**the City Council**);

(2) COUNCIL OF THE BOROUGH OF HAVANT of Civic Centre Road, Havant, Hampshire PO9 2AX ("**the Borough Council**); and

BACKGROUND

(A) The City Council is the local planning authority for the purposes of Part 3 of the 1990 Act for the area within which part of the Extra Care Facility Site is located.

(B) The Borough Council is the local planning authority for the purposes of Part 3 of the 1990 Act for the area within which part of the Extra Care Facility Site is located.

(C) The Landowner is the freehold owner of the whole of both the Extra Care Facility Site and the Nursing Care Home Site free from encumbrances that would prevent the Landowner entering into this Undertaking.

(D) Pursuant to the Extra Care Facility Application the Landowner has applied to each of the City Council and to the Borough Council for outline planning permission for the Extra Care Facility.

(E) Pursuant to the Nursing Care Home Application the Landowner has applied to the City Council for outline planning permission for the Nursing Care Home Development and submitted the Nursing Care Home Section 106 Undertaking.

(F) On 13 June 2011 at a joint meeting the City Council and the Borough Council resolved to grant the Extra Care Facility Planning Permission subject, among other things, to the completion of a planning obligation securing the matters contained herein.

(G) At the joint meeting on 13 June 2011 the City Council resolved to grant the Nursing Care Home Planning Permission and the Nursing Care Home Planning Permission was issued on 7 September 2011.

(H) The Landowner has given this Undertaking with the intention that the obligations contained herein may be enforced by the City Council and the Borough Council against the Landowner and its successors in title

OPERATIVE PROVISIONS

1. **INTERPRETATION**

1.1 In this Undertaking, the following words and expressions have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990 as amended
"Accommodation Units"	the individual units of accommodation to be provided as part of the Extra Care Facility Development
"Care"	care as defined in the Town and Country Planning (Use Classes) Order 1987
"Commence"	the carrying out on the Extra Care Facility Site pursuant to the Extra Care Planning Permission of a material operation as specified in section 56(4) of the 1990 Act (other than an operation set out in **clause 3.2**)
"Commencement Date"	the date specified in **clause 3.1**
"Extra Care Facility"	the extra care facility to be constructed pursuant to the Extra Care Facility Development
"Extra Care Facility Application"	the application for outline planning permission for the carrying out of the Extra Care Facility Development made by the Landowner to both the City Council and the Borough Council and allocated references 10/03253/OUT and APP/11/00015 respectively
"Extra Care Facility Development"	the development of the Extra Care Facility Site to provide extra care accommodation comprising approximately 37 Accommodation Units
"Extra Care Facility Planning	the planning permission that may be granted in

Permission"	pursuance of the Extra Care Facility Application
"Extra Care Facility Site"	the freehold property at Junction of Main Avenue and Hambledon Road, Dukes Meadow Development Site Waterlooville forming part of the property registered at HM Land Registry under Title Number SH25743 shown for identification purposes only edged with a dashed red line and marked E1 on the Plan
"New Permission	a planning permission authorising the redevelopment of the Extra Care Facility Site in a manner which would if such redevelopment were completed cause the Landowner to be in breach of any or all of the provisions contained in this Undertaking
"Nursing Care Home"	the nursing care home to be constructed pursuant to the Nursing Care Home Development
"Nursing Care Home Application"	the application for outline planning permission for the carrying out of the Nursing Care Home Development made by the Landowner on 14 January 2011 to the City Council and allocated reference 10/03252/OUT
"Nursing Care Home Development"	development of the Nursing Care Home Site for a nursing care home with approximately 82 beds on the Nursing Care Home Site
"Nursing Care Home Site"	the freehold property at Phase 2 (M2) Land at Old Park Farm, Wimpey Site, Part of WWMDA Hambledon Road, Waterlooville forming part of the property registered at HM Land Registry under Title Number SH25743 shown for identification purposes only labelled "Associated Nursing Care Home" and marked M2 on the Plan
"Nursing Care Home Section 106 Undertaking"	The section 106 Undertaking provided by Taylor Wimpey UK Limited dated 15 August 2011 relating to the Nursing Care Home Site a copy of which is attached to this Undertaking.
"Nursing Care Home Planning	the planning permission issued by the City

Permission"	Council pursuant to the Nursing Care Home Application
"Occupation"	means takes occupation (including causing permitting or suffering the taking of occupation) for any purposes permitted by the Extra Care Facility Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the expressions **Occupy Occupied** and **Occupiers** shall be construed accordingly.
"Operate"	means the functions of:- day to day management; and provision of Care services and the expressions **Operators** and **Operation** shall be construed accordingly
"Plan"	the plan numbered 4729/20.B and attached to this Undertaking
"Specialist"	has the meaning given to it in **clause 10.2**

1.2 In this Undertaking:

1.2.1 the clause headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Undertaking and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

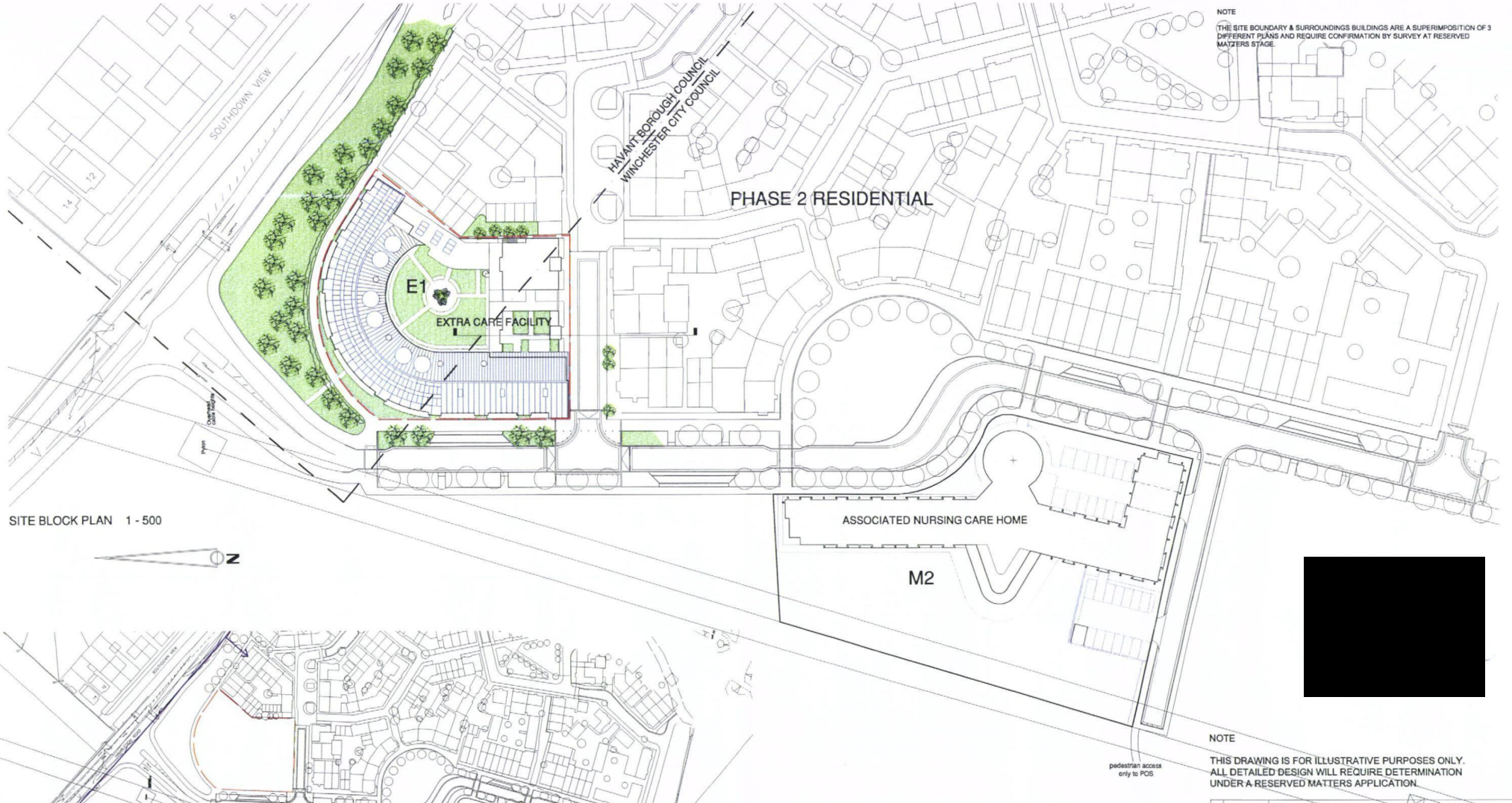
1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

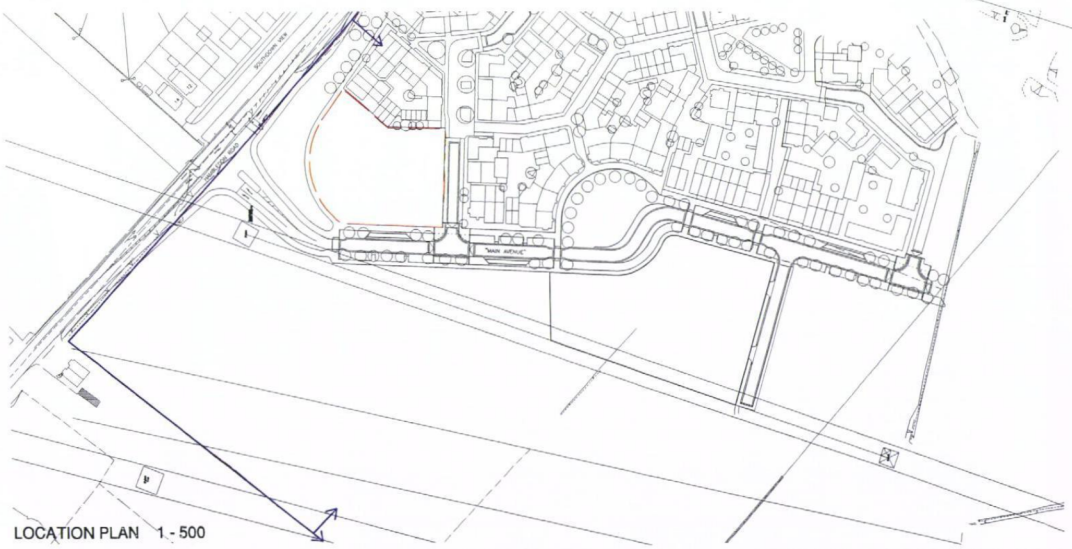
1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

NOTE

THE SITE BOUNDARY & SURROUNDINGS BUILDINGS ARE A SUPERIMPOSITION OF 3 DIFFERENT PLANS AND REQUIRE CONFIRMATION BY SURVEY AT RESERVED MATTERS STAGE.



SITE BLOCK PLAN 1 - 500



LOCATION PLAN 1 - 500

NOTE

THIS DRAWING IS FOR ILLUSTRATIVE PURPOSES ONLY. ALL DETAILED DESIGN WILL REQUIRE DETERMINATION UNDER A RESERVED MATTERS APPLICATION.

'B'	06 06 11	Additional landscaping detail shown; unit adjacent TW Unit 174 removed. Spiral stairs in courtyrd & maintenance stairs to S-E corner block shown.	SW
'A'	11 01 11	'Illustrative purposes' note added, development adjacent E1 corrected.	SW

PROPOSED EXTRA CARE ACCOMMODATION - Plot E1

Duke's Meadow
Waterlooville

TAYLOR WIMPEY

SCALE	DATE	DRAWN
1:500	Nov 2010	BJS

SITE & BLOCK PLANS

4729 / 20.B

LIONEL GREGORY LIMITED
ARCHITECTS
UNIT J1, FULCRUM BUSINESS PARK
VANTAGE WAY, POOLE
DORSET. BH12 4NU
TEL: (01202) 723157
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E-MAIL: office@lionelgregory.co.uk

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1.2.4 references to the Extra Care Facility Site includes any part of it;

1.2.5 references to any party in this Undertaking include the successors in title of that party and references to the City Council or Borough Council include any successor local planning authority exercising planning powers under the 1990 Act for their respective administrative areas;

1.2.6 "including" means "including, without limitation";

1.2.7 any covenant by the Landowner not to do anything includes a covenant not to permit or allow the doing of that act or thing;

1.2.8 where two or more people form a party to this Undertaking, the obligations they undertake may be enforced against them all jointly or against each of them individually; and

1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking is to be unaffected.

1.3 The parties to this Undertaking do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS UNDERTAKING

2.1 This Undertaking is given pursuant to Section 106 of the 1990 Act and to the extent that they fall within the terms of Section 106 of the 1990 Act, the obligations contained herein are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable as follows:

2.1.1 by the City Council insofar as they relate to development within the administrative boundaries of the City Council;

2.1.2 by the Borough Council insofar as they relate to development within the administrative boundaries of the Borough Council.

2.2 This Undertaking may be registered as a local land charge by each of the City Council and the Borough Council.

2.3 The obligations in this Undertaking will not be enforceable against a statutory undertaker after the transfer of the statutory operations and any land upon or in which the statutory operations are situated by the Landowner to that statutory undertaker.

2.4 Nothing in this Undertaking prohibits or limits the right to develop any part of the Extra Care Facility Site in accordance with planning permissions other than that relating to the Extra Care Facility Development granted after the date of this Undertaking whether or not pursuant to an appeal.

3. COMMENCEMENT DATE

3.1 The obligations contained in **clauses 4.1 to 4.2** and Schedule 1 referred to therein do not come into effect until the date on which the Extra Care Facility Development Commences (subject to the provisions of **clause 3.2**)

3.2 The Commencement Date will not be triggered by any of the following operations:

3.2.1 site investigations or surveys;

3.2.2 site decontamination;

3.2.3 construction of access and service roads;

3.2.4 the demolition of any existing buildings or structures;

3.2.5 the clearance or regrading of the Extra Care Facility Site;

3.2.6 works connected with infilling; or

3.2.7 works for the provision of drainage or mains services to prepare the Site for development.

4. OBLIGATIONS

4.1 The Landowner undertakes to the City Council and the Borough Council to comply with its obligations set out in **Schedule 1** in relation to the Extra Care Facility Development and to bind the Extra Care Facility Site.

4.2 No person will be liable for any breach of the terms of this Undertaking occurring after the date on which they part with all their interest in the Extra Care Facility Site or the part thereof in respect of which such breach occurs, but they will remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Extra Care Facility Site in any transfer of such property will constitute an interest for the purposes of this **clause 4.2**

5. **TERMINATION OF THIS UNDERTAKING**

5.1 This Undertaking will come to an end if:

5.1.1 subject to **clause 5.2**, the Extra Care Facility Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Undertaking or any part of it irrelevant, impractical or unviable;

5.1.2 the Extra Care Facility Planning Permission and expires before the Commencement Date without having been implemented; or

5.1.3 at any time after the date of this Undertaking the City Council the Borough Council or any other competent authority grants a New Permission under which development is implemented for the purposes of section 56 of the 1990 Act.

5.2 **Clause 5.1.1** will not apply in respect of any minor modifications to the Extra Care Facility Planning Permission or the Extra Care Facility Development agreed from time to time between the City Council, the Borough Council and the Landowner *prior* to the Commencement Date.

6. **NOTICES**

6.1 Any notice, demand or any other communication to be served under this Undertaking will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

6.2 Any notice, demand or any other communication to be served is to be sent to the address of the relevant party set out at the beginning of this Undertaking or to such other address as one party may notify in writing to the others at any time as its address for service.

6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.3.1 if delivered by hand, at the time of delivery;

6.3.2 if sent by post, on the second working day after posting; or

6.3.3 if sent by recorded delivery, at the time delivery was signed for.

6.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it will be treated as having been served on the next working day.

7. EXECUTION

The Landowner has executed this Undertaking as a deed and it is delivered on the date set out above.

SCHEDULE 1

Obligations

The Landowner undertakes to the City Council and the Borough Council to bind the Extra Care Facility Site as follows:

1. Not to Commence the development of the Extra Care Facility on the Extra Care Facility Site unless and until a contract has been let for the construction of the Nursing Care Home and confirmation of the same has been submitted in writing to both the City Council and the Borough Council

2. Not to Occupy the Extra Care Facility

2.1 prior to the later of:-

a) receipt by the Borough Council and City Council in writing of the details of the company to Operate both the Nursing Care Home Facility and Extra Care Home Facility; and

b) date when the Nursing Care Home has been completed and is sufficiently staffed to provide care to occupiers of the Extra Care Facility in accordance with this Undertaking

2.2 unless the same company is Operating both the Nursing Care Home Facility and Extra Care Home Facility and details of the Operator have been provided in writing to the City Council and the Borough Council

PROVIDED THAT the Extra Care Facility need not be Operated by the same organisation if

(i) details of the identity of the proposed Operator of the Extra Care Facility have been submitted in writing to both the City Council and the Borough Council; and

(ii) confirmation has been provided as to the arrangements that have been made by the proposed Operator of the Extra Care Facility to secure the compliance with the provisions of paragraphs 4 and 6 of this Schedule 1; and

(iii) the City Council and the Borough Council have confirmed in writing their approval to the details submitted pursuant to sub paragraphs (i) and (ii) of this paragraph 2.2

3. To notify in writing the Borough Council and the City Council within ten working days of any proposed changes to the identity of the company operating the Extra Care Facility and to secure the written approval of both the City Council and the Borough Council in accordance with paragraph 2 above if the company proposed

to Operate the Extra Care Facility is different to the company Operating the Nursing Care Home

4. That Occupation of each of the Accommodation Units comprising the Extra Care Facility shall be restricted to the following:

4.1 a person who is in need of Care and who has entered into binding arrangements to access such Care and other support services to a minimum of 2 hours of such Care per week via the Operation of the Nursing Care Home or an alternative Care provider in the vicinity of the Extra Care Facility which has been approved in writing for this purpose by the City Council and the Borough Council and who is either:-

4.1.1 over 60 years of age on the date of taking up residence; or

4.1.2 disabled within the meaning of the Equality Act 2010; or

4.2 persons who are the spouse, co-habitee or dependent of a person within paragraphs 4.1.1 or 4.1.2 for the duration of the life of that person spouse co-habitee or dependent; or

4.3 persons employed or engaged to provide services for any person falling within any of the sub paragraphs of paragraph 4.1 above and living in the same accommodation for such a purpose PROVIDED THAT (save with the written agreement of the Borough Council and the City Council) no more than two Accommodation Units may be so occupied at any one time and PROVIDED ALWAYS THAT respite carers may live in the same Accommodation Unit as their patients on a temporary basis for a maximum period of one month subject to prior notification to the Borough Council and the City Council

5. To make available copies of the arrangements referred to in 4.1 above for inspection on giving reasonable notice by the Borough Council and the City Council as often as may reasonably be required

6. To ensure that flexible Care and other support services appropriate to the assessed individual needs of occupiers of the Accommodation Units (so as to allow them to live independently) is available to them 24 hours a day and seven days a week

7. To provide and maintain a linked call system between each Accommodation Unit and the Nursing Care Home allowing the occupiers thereof to summon the provision of Care additional to that to be provided pursuant to paragraph 4.1 above

MICHAEL DORE
ATTORNEY

SIGNED as a deed by)
TAYLOR WIMPEY UK LIMITED)
acting by its attorney)
in the presence of:)

[redacted]

Witness signature: [redacted]

Name: [redacted]

Address: [redacted]

Occupation: [redacted]

EVERSHEDS

Dated 15 August 2011

TAYLOR WIMPEY UK LIMITED

UNILATERAL UNDERTAKING

---

under sections 106 and 106A of the Town and Country Planning Act 1990 relating to land at Old Park Farm, Waterlooville

We certify this document as a true copy of the original
Eversheds LLP
Date: 16/08/2011
EVERSHEDS LLP

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THIS UNDERTAKING is given on 15 August 2011

BY:

TAYLOR WIMPEY UK LIMITED (registered number 01392762) whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire HP12 3NR ("**the Landowner**")

TO:

WINCHESTER CITY COUNCIL of Colebrook Street, Winchester, Hampshire SO23 9LJ ("**the City Council**")

AND

The COUNCIL OF THE BOROUGH OF HAVANT of Civic Offices, Civic Centre Road, Havant, Hampshire, PO9 2AX ("**the Borough Council**")

AND

HAMPSHIRE COUNCIL of The Castle, Winchester, Hampshire SO23 9LJ ("**the County Council**")

BACKGROUND

(A) By virtue of the Principal Agreement the Nursing Care Home Site was made subject to various planning obligations as part of the Wimpey Site (as defined in the Principal Agreement) as set out therein

(B) The Landowner is the owner of the freehold of the Nursing Care Home Site registered under title number SH25743 free from encumbrances that would prevent the Landowner from giving this Undertaking

(C) The City Council the Borough Council and the County Council are for the purposes of Section 106 and 106A of the Act the authorities which can enforce in terms of this Undertaking

(D) The Landowner has submitted the Nursing Care Home Application and the City Council has resolved to grant the Nursing Care Home Planning Permission

(E) By this Undertaking the Landowner agrees that the Nursing Care Home Site should be bound by certain obligations set out in the Principal Agreement as provided for herein

OPERATIVE PROVISIONS

1. **INTERPRETATION**

1.1 In this Undertaking the following expressions shall have the following meanings:

"Nursing Care Home Development"	the development of a Nursing Care Home on the Nursing Care Home Site to provide a facility with approximately 82 beds pursuant to the Nursing Care Home Application
"Nursing Care Home Application"	the application for outline planning permission for the Nursing Care Home Development made by the Landowner on 14 January 2001 to the City Council and allocated reference 10/03252/OUT
"Nursing Care Home Site"	the freehold property at Old Park Farm, Waterlooville forming part of the property registered at HM Land Registry under title number SH25743 shown for identification purposes only edged red on the Plan
"Nursing Care Home Planning Permission"	the planning permission to be issued by the City Council pursuant to the Nursing Care Home Application
"Plan"	the Plan attached to this Undertaking
"Principal Agreement"	an agreement dated 20 December 2007 entered into between Hampshire County Council (1) the City Council (2) Havant Borough Council (3) the Landowner (4) and Laing Homes Limited (5) pursuant to Section 106 of the Act

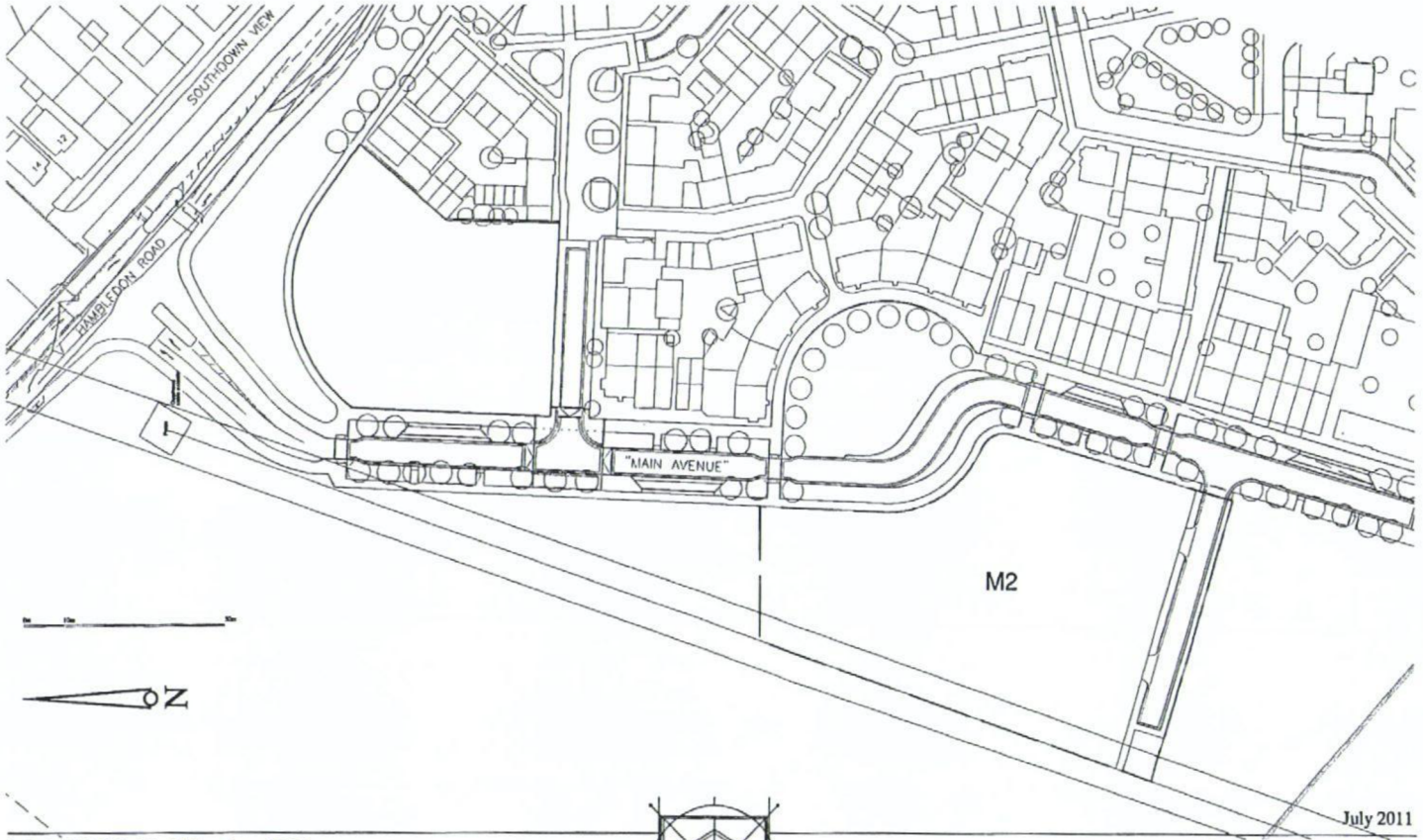
1.2 In this Undertaking:

1.2.1 the definitions contained in the Principal Agreement apply unless the context otherwise requires;

1.2.2 the clause headings do not affect its interpretation;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly



LOCATION PLAN 1 - 1250

Plot M2 - Nursing Care Home
Duke's Meadow
West of Waterlooville
Hampshire

LIONEL GREGORY LIMITED
ARCHITECTS

July 2011

UNIT J1, FULCRUM BUSINESS PARK
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4729 / Loc / M2

amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

1.2.4 references to any party in this Undertaking include the successor in title of that party and references to the City Council include any successor local planning authority exercising planning powers under the Act;

1.2.5 any covenant by the Landowner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;

1.2.6 where two or more people form a party to this Undertaking, the obligations they undertake may be enforced against them all jointly or against each of them individually; and

1.2.7 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking is to be unaffected

1.3 Unless expressly stated otherwise nothing in this Undertaking will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999

2. EFFECT OF THIS UNDERTAKING

2.1 This Undertaking is made pursuant to Sections 106 and 106A of the Act

2.2 The terms of this Undertaking are planning obligations for the purposes of Section 106 of the Act and are enforceable by the City Council against the Landowner and its successors in title

2.3 This Undertaking may be registered as a local land charge by the City Council

2.4 Nothing in this Undertaking prohibits or limits the right to develop any part of the Nursing Care Home Site in accordance with a planning permission other than the Nursing Care Home Planning Permission as specified in the Nursing Care Home Planning Application granted after the date of this Undertaking whether or not pursuant to an appeal

2.5 No person will be liable for any breach of the terms of this Undertaking occurring after parting with their interest in the Nursing Care Home Site or the part of the Nursing Care Home Site in respect of which such breach occurs but they will

remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Nursing Care Home Site in any transfer of the Nursing Care Home Site will constitute an interest for the purposes of this **clause 2.5**

3. **OBLIGATIONS**

3.1 The Landowner covenants with the City Council that:-

3.1.1 in the carrying out of the Nursing Care Home Development the Nursing Care Home Site shall be bound by obligations set out in **clause 16.17.2** of the Principal Agreement as if the Nursing Care Home Development was a Traffic Generation Unit (as defined in the Principal Agreement);

3.1.2 For the purposes of:-

a) the definitions of "Workplace Full Travel Plan" and "Workplace Framework Travel Plan" in Clause 2.1 of the Principal Agreement; and

b) Clauses 4.5, 4.6, 4.11, 4.12, 7.5.3, 7.5.7, 15.5, 15.6, 15.13, 16.6.2, 16.6.4 22.1, 22.2, 23.1, and 28.1 together with paragraph 1.5 of Schedule 9 of the Principal Agreement,

the Principal Agreement shall be read as if the Nursing Care Home Development was a Traffic Generation Unit (as defined in the Principal Agreement)

4. **COMMENCEMENT DATE**

4.1 The obligations contained in **clause 3.1** to this Undertaking do not come into effect until the date on which the Nursing Care Home Development commences by the carrying out on the Nursing Care Home Site pursuant to the Nursing Care Home Planning Permission of a material operation as specified in Section 56(4) of the Act.

4.2 The commencement of the Nursing Care Home Development will not be triggered by any of the following operations:

4.2.1 site investigations or surveys;

4.2.2 site decontamination;

4.2.3 construction of access and service roads;

4.2.4 the demolition of any existing buildings or structures;

4.2.5 the clearance or regrading of the Nursing Care Home Site;

4.2.6 works connected with infilling; or

4.2.7 works for the provision of drainage or mains services to prepare the Nursing Care Home Site for development.

5. TERMINATION OF THIS UNDERTAKING

5.1 This Undertaking will come to an end if:

5.1.1 the Nursing Care Home Planning Permission is quashed, revoked or otherwise withdrawn or modified at any time so as to render this Undertaking or any part of it irrelevant, impractical or unviable;

5.1.2 the Nursing Care Home Planning Permission expires before the commencement of the Nursing Care Home Development without having been implemented; or

5.1.3 at any time after the date of this Undertaking, the City Council or any other competent authority grants a planning permission for the Nursing Care Home Site for an alternative use which is not a Traffic Generation Unit and authorises the redevelopment of the Nursing Care Home Site in a manner which would if such redevelopment were completed cause the Landowner to be in breach of any or all of the provisions contained in this Undertaking.

6. EXECUTION

The Landowner has executed this Undertaking as a deed and it is delivered on the date set out above

EXECUTED as a deed by ~~affixing~~)
~~the common seal of~~)
TAYLOR WIMPEY UK LIMITED)
in the presence of: acting by its attorneys)

[redacted]

~~Secretary~~ attorney

Witnessed by:

[redacted]

~~Authorised signatory~~

[redacted]