

Dated:

26th September 2025

UNILATERAL UNDERTAKING

given by

PHILLIPS BUILD LIMITED

to

HAVANT BOROUGH COUNCIL

UNILATERAL UNDERTAKING

pursuant to section 106 of the Town and Country
Planning Act 1990 and other powers relating to
Oklahoma, 4 Long Copse, Lane, Emsworth, PO10
7UL

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

Ref: HBC-066498

THIS UNILATERAL UNDERTAKING is given on

26th September 2025

BY:

- (1) **PHILLIPS BUILD LIMITED** (Company Registration No: 02268334 whose registered address is at Brindles, Delling Lane, Bosham Chichester, West Sussex, PO18 8NN ("the Owner"))

TO:

- (2) **HAVANT BOROUGH COUNCIL** of Public Service Plaza, Civic Centre Road, Havant PO9 2AX ("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 the Land Registry under Title Number SH28800.
- C The Application was submitted to and refused by the Council on 29th May 2025
- D The Owner has submitted the Appeal to the Secretary of State
- E The Owner enters into this Undertaking in order to secure the planning obligations contained in this Undertaking

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)
"Appeal"	The appeal submitted to the Secretary of State against refusal of the Application by the Council
"Application"	The application for planning permission allocated reference number APP/24/00987 for demolition of existing dwelling and the construction of 5 new dwellings with associated external works and landscaping
"Commence"	The carrying out of a "material operation" (as defined in section 56(4) of the Act) in connection with the Development save that for the purposes of this Undertaking and for no other purpose; operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of

	assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not be included (and "Commencement" and "Commenced" shall be construed accordingly)
"Contributions"	Any one or number of the financial contributions required to be made pursuant to this Undertaking, each of which shall be Index Linked
"Development"	The development of the Land in accordance with the Permission
"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
"Index Linked"	Adjusted in accordance with the Inflationary Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Inflationary Index monthly figure published before the date of this Undertaking and whose numerator shall be the last published Inflationary Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure
"Inflationary Index"	The Retail Prices Index all items excluding mortgage interest payments (RPIX) issued by the Office for National Statistics during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as the Council shall reasonably nominate taking into account any official reconciliation of changes in its basis of calculation
"Interest"	Interest at 4 per cent above the base lending rate of the Barclays Bank Plc (calculated on a daily basis from the date on which it fell due until the actual date of payment)
"the Land"	The land known as Oklahoma, 4 Long Copse, Lane, Emsworth, PO10 7UL shown edged with a red line on Plan 1
"Legal Costs"	The Council's legal costs in connection with the preparation and completion of this Undertaking
"Plan 1"	The plan annexed hereto and marked "Plan 1"
"Permission"	The full planning permission subject to conditions may be granted by the Secretary of State pursuant to the Application
"Secretary of State"	The Secretary of State for Housing, Communities and Local Government from time to time or successor body responsible for the governments Town and Country Planning functions or any Planning Inspector appointed by them

"Statutory Undertakers"	Organisations licensed by the government which include (but not limited to) all utilities electricity, gas, water, telephone, cable telephone and television and other telecommunication companies
"Undertaking"	This unilateral undertaking made by deed
"Working Day(s)"	Any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

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 its 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 made 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, its successors in title and any person deriving title in the Land or any part of it from the Owner.

4 EFFECT OF THE AGREEMENT

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

4.2 In the event that the Secretary of State makes a clear finding pursuant to the Appeal that any individual planning obligation within this deed is:

4.2.1 not compliant with Regulation 122 of the CIL Regulations; and/or,

4.2.2 immaterial to the grant of Permission and that no weight has been given to the same in reaching their decision

then that planning obligation or those planning obligations so identified by the Secretary of State will cease to have effect and shall be void for the purposes of this deed and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation.

5 THE OWNER'S UNDERTAKINGS

5.1 The Owner hereby undertakes to the Council that they will observe and perform the covenants on its part contained in Schedule One.

6 RELEASE AND LAPSE

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

6.2 This Undertaking shall lapse and be of no further effect if:

6.2.1 the Appeal is dismissed and any subsequent challenge to the Secretary of State's decision is either not made within the statutory timeframe or the legal options to challenge the decision are exhausted and the Secretary of State's decision is upheld; or

6.2.2 the Permission expires; or

6.2.3 the Permission shall be varied or revoked other than with the consent of the Owner; or

6.2.4 the Permission is quashed following a successful legal challenge.

6.3 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Undertaking.

6.4 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

7.1 This Undertaking is a local land charge and the parties hereby consent to its registration as such by the Council.

8 NO FETTER ON DISCRETION OR WAIVER

- 8.1 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 its functions as a local authority.
- 8.2 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.

9 COVENANT AS TO TITLE

- 9.1 The Owner hereby undertakes to the Council that no other person has any interest in the Land for the purposes of section 106 of the Act.

10 SEVERABILITY

- 10.1 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.

11 THE COUNCIL'S COSTS

- 11.1 The Owner hereby undertakes to the Council that it will on or before the date of this Undertaking pay the Council's Legal Costs, the receipt of which is hereby acknowledged

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 12.1 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 deed between the parties and the Council without the consent of any such third party.

13 NOTIFICATION OF COMMENCEMENT

- 13.1 The Owner undertakes to the Council that it will:
- 13.1.1 notify the Council in writing of the date of Commencement of the Development within five Working Days of it occurring; and
 - 13.1.2 pay to the Council upon written demand its reasonable fees for additional monitoring caused by the Owner's non-compliance with 13.1.1.

14 NOTICES

- 14.1 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:
- 14.1.1 on the Council at the address shown above or by email to cil@havant.gov.uk marked "for the attention of the Executive Head of Place" and bearing the reference "s106-APP/-24/00987-Oklahoma, 4 Long Copse Lane, Emsworth, PO10 7UL";
 - 14.1.2 on the Owner at the address as detailed above or as notified by the Owner in writing to the Council;

15 INDEX LINKING

- 15.1 Each and every one of the Contributions which are to be paid under the terms of this Undertaking shall be Index Linked.

16 PAYMENT OF THE CONTRIBUTIONS

- 16.1 The Contributions shall be payable to the Council by either:
- 16.1.1 cheque made payable to Havant Borough Council; or
 - 16.1.2 by BACS or telegraphic transfer.
- 16.2 All payments must state the Application reference number and the address to which this Undertaking relates.
- 16.3 Payment by cheque shall be sent to the Council in accordance with the details set out in clause 16.1.1 identifying the obligation to which the payment relates.

17 INTEREST ON LATE PAYMENTS

- 17.1 Any amount due from the Owner under this Undertaking which is not paid on the due date shall be payable with Interest.

18 NOTIFICATION OF SUCCESSORS IN TITLE

- 18.1 The Owner undertakes to 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.

19 VAT

- 19.1 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any value added tax properly payable.

20 JURISDICTION

- 20.1 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.

21 DELIVERY

- 21.1 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

SOLENT RECREATION MITIGATION STRATEGY OBLIGATIONS

DEFINITIONS

In this Schedule the following terms have the following meanings:

"Solent Recreation Mitigation Strategy"	The Bird Aware Solent Revised Strategy revised strategy dated September 2024 (or such amended or replaced version published from time to time)
"Solent Recreation Mitigation Strategy Contribution"	The sum of £4,353.65 (four thousand three hundred and fifty three pounds sixty five pence) towards the Solent Recreation Mitigation Strategy

The Owner undertakes to the Council as follows:

1 Solent Recreation Mitigation Strategy Contribution

- 1.1. Not to Commence the Development unless the Solent Recreation Mitigation Strategy Contribution has been paid to the Council.

SCHEDULE TWO

NITRATE MITIGATION OBLIGATIONS

DEFINITIONS

In this Schedule the following terms have the following meanings:

"Nitrate Mitigation Contribution"	The sum of £15,942.85 (fifteen thousand nine hundred and forty two pounds eighty five pence) towards nitrate mitigation at Warblington Farm, Havant
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The Owner undertakes to the Council as follows:

1 Nitrate Mitigation Contribution

- 1.1 Not to Commence the Development unless the Nitrate Mitigation Contribution has been paid to the Council.

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

EXECUTED as a DEED by
PHILLIPS BUILD LIMITED
in the presence of:

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8-9-2025.

Director:

18-9-2025

Director/Secretary:

18TH September 2025

PLAN 1

