# UNILATERAL UNDERTAKING

**DATED:**

**NAME AND ADDRESS OF OWNER(S)**:

**[INSERT]**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(“the Owner(s)”)**

**[and]**

**[INSERT] [** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(“the Mortgagee”)\* ]**

**[and]**

**[INSERT] [** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(“the Developer”)\* ]**

**TO**

**NEW FOREST NATIONAL PARK AUTHORITY**of Town Hall, Avenue Road, Lymington, SO41 9ZG **(“the Authority”)**

**PLANNING OBLIGATION BY UNILATERAL UNDERTAKING**

**UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990**

**APPLICATION SITE ADDRESS**: **[INSERT]**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LAND REGISTRY TITLE No**: **[INSERT]**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PLANNING APPLICATION No**: **[INSERT]**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**THIS DEED** is made the day of 202

**THIS PLANNING OBLIGATION BY UNILATERAL UNDERTAKING is given to the NEW FOREST NATIONAL PARK AUTHORITY**

**BY:**

1. **[INSERT] (the ‘Owner’); and**
2. **[INSERT] (the ‘Developer’); and**
3. **[INSERT] (the ‘Chargee’)**

### WHEREAS:

1. Words, definitions and phrases appearing in these recitals have the meanings ascribed to them in clause 1 of this Deed.
2. The New Forest National Park Authority (the ‘Authority’) is the local planning authority for the purposes of the 1990 Act for the area in which the Land is situated.
3. The Owner[s] [is/are] the registered proprietor[s] with freehold title absolute of the Land under the Title Number [and free from any mortgage or charge / subject to the Charge].
4. [The Developer intends to develop the Land [and has an option for sale relating to the Land, referred to at [INSERT] of the Charges Register of the title to the land, dated [INSERT] and made between [INSERT]].
5. [The Chargee has an interest in the Land as a result of the Charge].
6. The [Owner[s]/ Developer] has applied to the Authority for planning permission for the Development on the Land.
7. In accordance with the 1990 Act and the 2021 Act, the Development generates certain requirements including in respect of biodiversity gain. The biodiversity gain is to be provided on site and is secured by conditions. The Development also generates ecological mitigation requirements. This Deed contains covenants made by the Owner[s] [and the Developer] that are necessary to secure the delivery of biodiversity gain and ecological mitigation

**NOW THIS DEED WITNESSETH** as follows:

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Deed the following words and phrases shall have the following meanings unless the context requires otherwise:

|  |  |
| --- | --- |
| “1990 Act” | means the Town and Country Planning Act 1990 |
|  |  |
| “2021 Act” | means the Environment Act 2021 |
|  |  |
| “Application” | means the application for planning permission for the Development validated by the Authority on [INSERT] and given reference number [INSERT] |
|  |  |
| “Biodiversity Gain Plan” | means the plan submitted to and approved by the Authority, to satisfy the biodiversity net gain requirements of the Development pursuant to Schedule 7A of the 1990 Act |
|  |  |
| “Biodiversity Gain Land Monitoring Contribution” | means the sum of £7506 (Seven thousand five hundred and six pounds ) to be paid by the Owner[s] to the Authority under Clause 5.2 of this Deed to be applied by the Authority as a financial contribution towards its costs of monitoring compliance with conditions [INSERT] of the Permission and approved by the Authority. |
|  |  |
| “Charge” | means the charge dated [INSERT] referred to at entries [INSERT] of the Charges Register of the Title Number |
|  |  |
| “Commencement of Development” | means the carrying out of a material operation as defined in Section 56(4) of the 1990 Act in respect of the Development other than (for the purposes of this Deed 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 and cognate expressions shall be construed accordingly |
|  |  |
| “Deed” | means this deed |
|  |  |
| “Development” | means the development of the Land in accordance with the Permission |
|  |  |
| “Ecological Mitigation” | means, together, the “New Forest Special Protection Area Mitigation Contribution” and the “Solent Special Protection Area Mitigation Contribution” |
|  |  |
| “Enabling Powers” | means Section 106 of the Act and Sections 65 and 65A of the Environment Act 1995 and all other enabling powers that may be relevant for the purpose of giving validity to or facilitating the enforcement of the obligations created by this Deed |
|  |  |
| “Habitat Creation and Enhancement Works” | means the habitat creation and enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Managementand Monitoring Plan) |
|  |  |
| “Habitat Commencement Date” | means the date upon which the Habitat Creation and Enhancement Works have commenced |
|  |  |
| “Habitat Management and Monitoring Plan” or “HMMP” | means the document entitled “Habitat Management and Monitoring Plan” as required by condition [INSERT] of the Planning Permission and approved by the Authority |
|  |  |
| "Interest in Default" | means interest at the rate of 4% over Lloyds Bank plc base lending rate from time to time in force |
|  |  |
| “Land” | means all that parcel of land known as [INSERT] in [INSERT] and being registered with absolute title at the Land Registry under the Title Number and shown for the purposes of identification only edged red on Plan 1 |
|  |  |
| “Monitoring Fee for Ecological Mitigation” | means a fee of [ ] pounds (£[ ]) payable by the Owner[s] to the Authority on delivery of this Deed to cover the Authority’s costs in the financial and physical monitoring of compliance with this agreement in respect of Ecological Mitigation |
|  |  |
| “New Forest Special Protection Area Mitigation Contribution” | means a financial contribution of [ ] pounds (£[ ]) |
|  |  |
| "Permission" | means a valid planning permission for the Development granted pursuant to the Application |
|  |  |
| “Plan 1” | means Plan 1 annexed to this Deed showing the extent of the Land edged red for the purpose of identification only |
|  |  |
| “Solent Special Protection Area Mitigation Contribution” | means a financial contribution of [ ] pounds (£[ ]) |
|  |  |
| “Title Number” | means Title number [INSERT] allocated to the Land by the Land Registry |

Save as expressly provided by this Deed, covenants and obligations given by any of the Parties shall attach to the Land and every part of it and shall bind their successors in title and assignees or any persons claiming by, under or through them. The references to the Parties or any other legal or natural person named in this Deed shall include the successors in title, heirs and assigns of the Parties and in the case of the Authority shall include any successor in function

Unless otherwise stated references to clause numbers are references to clauses in this Deed

Unless otherwise stated references to a schedule, a recital and a paragraph number are references to the schedule, recital and paragraph numbers in this Deed

Unless the context otherwise requires the singular includes the plural and vice versa

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders

References to persons include natural persons and partnerships, firms and other such unincorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted

References to Acts of Parliament, statutory instruments or Government circulars or regulations or policies or sections or paragraphs of any such Acts, statutory instruments or Government circulars or regulations or policies include any re-enactments, amendments or replacements of them

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

Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

Any covenant by a Party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

Where reference is made in this Deed to any position or title of a person appointed or employed by the Authority, such references shall be interpreted as being from time to time to any successor in function or to such other person as may be appointed in their place by that body

This Deed is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales

Subject to clause 18 nothing in this Deed 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 Deed

1.15 No waiver (whether express or implied) by the Authority of any breach or default by the Owner[s] or other person in performing or observing any of the covenants, restrictions or obligations of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Authority from enforcing any of the relevant terms or conditions contained in this Deed or acting on any subsequent breach or default of this Deed

1. **ENABLING POWERS**

2.1 This Deed is made under Section 106 of the 1990 Act and all Enabling Powers. The obligations entered into by way of the covenants in this Deed are planning obligations under Section 106 of the 1990 Act that the Owner[s] [and Developer] covenant[s] to observe perform and discharge in respect of the Land, and are enforceable by the Authority against the Owner[s] and any person deriving title from it or them [[and subject to clause 2.2 below are enforceable by the Authority against the Developer] [and subject to clause 7 are enforceable by the Authority against the Chargee] and any person deriving title from any of them]

2.2 [The Developer consents to the entering into by the Owner[s] of the planning obligations in this Deed and acknowledges that the Land is bound by the restrictions and obligations contained in this Deed. The Developer acknowledges that the planning obligations contained in this Deed will be binding on the Owners’ successors in title and the Developer agrees to be bound by them in the event that it becomes an owner of the Land or any part of it]

**3.** **NO RESTRICTION**

3.1 Nothing in this Deed shall be construed as restricting the exercise by the Authority of any powers exercisable by it under the 1990 Act or under any other Act or provision **PROVIDED ALWAYS** that this Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been issued by the Authority or any other appropriate person or authority pursuant to the provisions of that Act

1. **LIABILITY**

No person or company shall be liable for any breach of this Deed after it shall have parted with its entire interest in the Land or the part of the Land to which such breach relates but without prejudice to liability for any subsisting breach of covenant arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Land notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations which shall not constitute an interest for the purposes of this clause

The obligations in this Deed will not be enforceable against any statutory undertakers or utility companies that have received or receive a transfer of a freehold or leasehold interest or take an easement over any part of the Land if solely for the provision of laying and/or maintaining of pipes, services and substations

1. **COVENANTS AND EFFECTIVE DATE**

The covenants and obligations contained in this Deed will come into force on the issue of the Permission

The Owner[s] covenant[s] with the Authority to pay the Biodiversity Gain Land Monitoring Contribution to the Authority within 10 Working Days of the Habitat Commencement Date

[Prior to Commencement of Development the Owner[s] will pay to the Authority the New Forest Special Protection Area Mitigation Contribution

The Owner[s] will pay to the Authority Interest in Default on the New Forest Special Protection Area Mitigation Contribution from the date such payment falls due until the actual payment if later]

[Prior to Commencement of Development the Owner[s] will pay to the Authority the Solent Special Protection Area Mitigation Contribution

The Owner[s] will pay to the Authority Interest in Default on the Solent Special Protection Area Mitigation Contribution from the date such payment falls due until the actual payment if later]

1. **ACCESS TO THE LAND**

6.1 The Owner[s] hereby **AGREES** **AND** **DECLARES** that permission is hereby granted to authorised officers of the Authority upon reasonable notice and request and at reasonable times (except in an emergency) and subject to any instructions which the Owner[s] may give to ensure safety for officers of the Authority (or their nominated representatives) at their own or at the Authority’s risk to gain access to the Land in order to monitor compliance with this Deed

1. **CHARGEE**

7.1 The Chargee consents to the Owner[s] entering into this Deed.

7.2 Subject to Clause 7.3, the Chargee acknowledges that the [part of the] Land over which the Mortgagee has a charge shall be bound by the planning obligations in this Deed

7.3 The Chargee (and any other future mortgagee or chargee of any part of the Land) shall have no liability under this Deed unless it takes possession of the Land or any part of it in which case it shall be bound by the obligations in this Deed as a person deriving title through the Owner[s].

**8. INTEREST IN DEFAULT**

8.1 If any sum or amount has not been paid to the Authority by the date it is due, the Owner[s] shall pay the Authority Interest in Default. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment

1. **THIRD PARTIES**

9.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Deed is not intended to and does not give any person who is not a Party to it any right to enforce any of its provisions **SAVE AS** otherwise specified herein other than by successors in title to the Parties

1. **NATURE OF THIS DEED**

10.1 This Deed is a Local Land Charge and the Authority shall register it as such in accordance with the provisions of the Local Land Charges Act 1975 and Section 106 of the 1990 Act

1. **CONSENT TO REGISTRATION**

11.1 The Owner[s] hereby consent[s] to the registration of this Deed in the Charges Register of the title to the Land

1. **OWNERSHIP AND WARRANTY AS TO TITLE**

TheOwner[s]hereby warrant[s] to the Authority that the details of the title to the land as described in the Recitals aboveare complete and accurate in every respect as at the date hereof. Further, the Owner[s] warrant[s] that at the date hereof they know of no persons other than the Owner[s] [and the Developer] [and the Chargee] with a legal or equitable interest in the Land

The Owner[s] shall indemnify and make good any loss to the Authority as a result of a breach of the warranty given in sub-clause 12.1 above within twenty eight (28) days of an itemised written request by the Authority to do so

The Owner[s] will give the Authority immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have 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 or otherwise acquired by reference to a plan.

1. **LEGAL COSTS AND FEES**

The Owner[s] covenants to pay to the Authority on or before the completion of this Deed the reasonable legal costs incurred in the preparation, completion and registration of this Deed

The Owner[s] covenants to pay to the Authority on or before the completion of this Deed any fees incurred pursuant to clause 11 above

The Owner[s] will pay to the Authority the Monitoring Fee for Ecological Mitigation on delivery of this deed

1. **NOTIFICATION OF TRIGGER DATES**

The Owner[s] [and the Developer] covenant[s] with the Authority that within five (5) working days of it occurring they will notify the Authority in writing of:

* + 1. the date of Commencement of Development
    2. the Habitat Commencement Date

1. **CONSENTS AND APPROVALS**

Where the agreement, approval, consent or expression of satisfaction is to be given by any Party or any person on behalf of any Party hereto under this Deed such agreement, approval or consent or expression of satisfaction:

shall not be unreasonably withheld or delayed;

shall be given in writing; and

may be validly obtained only before the act or event to which it applies.

Where any payment of costs or other payments are to be made by the Owner[s] to the Authority such costs and other payments shall be deemed to be reasonable and proper

1. **AGREEMENTS AND DECLARATIONS**

The parties agree that:

(a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

* + - 1. nothing in this Deed grants planning permission or any other approval, consent or permission required from the Authority in the exercise of any other statutory function.

1. **NOTICES**

Any notices required to be served by one Party on another under this Deed shall be in writing and served by recorded delivery:

* + 1. on the Authority at the address shown above marked “For the attention of the Solicitor and Monitoring Officer” and bearing the reference “[INSERT]”
    2. on the Owner[s] at the address shown above or such other address as may have been notified in writing to the Authority
    3. [on the Developer at the address shown above or such other address as may have been notified in writing to the Authority]
    4. [on the Chargee at the address shown above or such other address as may have been notified in writing to the Authority]

1. **SECTION 73 APPLICATIONS**

18.1 In the event that the Authority shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the 1990 Act in respect of the conditions in the Permission then references in this Deed to the Application and Permission shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly **PROVIDED THAT** this shall not fetter the Authority’s discretion in determining any Section 73 application or prejudice the Authority’s ability to require further obligations under Section 106 of the 1990 Act

1. **DETERMINATION OF DEED**

19.1 This Deed shall be determined and have no further effect if the Permission:

* + 1. expires before Commencement of Development;
    2. is varied or revoked other than at the request of the Owner[s]; or
    3. is quashed following a successful legal challenge

1. **GOVERNING LAW**

20.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

#### FIRST SCHEDULE

**The Land**

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

[AMEND SIGNATURE BLOCKS AS NECESSARY]

EXECUTED AS A DEED by )

**[INSERT]** )

in the presence of: )

Director:

Director/Secretary:

EXECUTED AS A DEED by )

**[INSERT]** )

in the presence of: )

Director:

Director/Secretary:

EXECUTED AS A DEED by )

**[INSERT]** )

in the presence of: )

Director:

Director/Secretary: