

Dated:

30 SEPTEMBER

2020

**FAREHAM BOROUGH COUNCIL**

**and**

**ISLE OF WIGHT COUNCIL**

**and**

**HAMPSHIRE AND ISLE OF WIGHT WILDLIFE TRUST**

**and**

**JONATHAN MUIR**

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**AGREEMENT**

pursuant to Section 106 of the Town and Country  
Planning Act 1990, Section 33 of the Local  
Government (Miscellaneous Provisions) Act 1982  
and other powers relating to land at Little  
Duxmore Farm, Isle of Wight

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

**Ref: ENV-029304**

**BETWEEN:**

- (1) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, Hampshire, PO16 7AZ ("the Council");
- (2) **ISLE OF WIGHT COUNCIL** of County Hall, High Sreet, Newport, Isle of Wight, PO30 1UD ("IWC"); and
- (3) **HAMPSHIRE AND ISLE OF WIGHT WILDLIFE TRUST** (Co Regn No 00676313 and registered charity number 201081) whose registered address is at Beechcroft House, Vicarage Lane, Curdrige, Hampshire, SO32 2DP ("the Owner")
- (4) **JONATHAN MUIR** of St. Audries, Woodland Way, Kingswood, Surrey KT20 6NW ("the Mortgagee")

**RECITALS**

- A The Council is the local planning authority for the purposes of the Act for the area in which Development Land is situated.
- B IWC is the local planning authority for the purposes of the Act for the area in which the Mitigation Land is situated.
- C The Owner is the freehold owner of the Mitigation Land registered with title absolute at the Land Registry under Title Numbers IW57926 and IW64111 and the Mortgagee holds a legal charge over the Mitigation Land.
- D In accordance with the Habitats Regulations the Council may only grant planning permission where it is satisfied that there will not be adverse effect on the European Designated Sites as a result of the proposed development.
- E High levels of nitrates in the European Designated Sites means that the Council cannot be satisfied that additional residential accommodation will not have an adverse effect as a result of increased levels of nitrogen being discharged via wastewater treatment works.
- F In order to ensure that there is no such adverse effect, it is proposed to offset the increase in nitrogen arising from the Occupation of a Development by inter alia Imposing appropriate and counter-balancing restrictions on proportionate parts of the Mitigation Land.
- G The Council, IWC and the Owner have agreed to enter into this Deed in order to regulate the use of the Mitigation Land in contemplation of applications for planning permission in respect of future residential development in the Council's area.
- H The Owner's objectives in managing the Credits Linked Land are to prevent additional nitrogen from entering the Solent and to deliver appropriate elements of the Owner's charitable objectives which are:
  - (a) For the benefit of the public, to advance, promote and further the conservation, maintenance and protection of:
    - (i) Wildlife and its habitats
    - (ii) Places of natural beauty
    - (iii) Places of zoological, botanical, geographical, archaeological or scientific interest;
    - (iv) Features of landscape with geological, physiographical or amenity value in particular, but not exclusively, in ways that further biodiversity

- (b) To advance the education of the public in:
  - (i) The principles and practice of sustainable development
  - (ii) The principles and practice of biodiversity conservation
- (c) To promote research in all branches of nature study and to publish the useful results thereof

The purpose of all of the Owner's intended management practices on the Credits Linked Land is either to reduce the discharge of nitrogen or to deliver one of the objectives outlined above. In particular the purpose of grazing the land with livestock is to maintain and enhance the wildlife value of the Credits Linked Land. With these objectives in mind the Owner's intentions during the first three years of the scheme will be to establish a species rich grassland, woodland or scrub habitats either by natural regeneration, planting or utilising minimum tillage techniques to establish the grassland through seeding and if necessary reseeded any area of the Credits Linked land. Once the establishment phase has been completed the Owner does not intend to cultivate any areas where pasture has been established.

**IT IS AGREED AS FOLLOWS:**

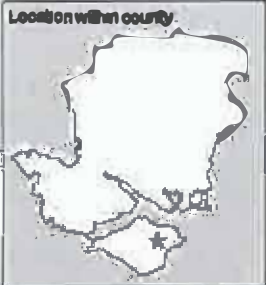
**1 DEFINITIONS**

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

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

"1982 Act"	The Local Government (Miscellaneous Provisions) Act 1982
"Act"	The Town and Country Planning Act 1990 (as amended)
"Application"	Any planning application for residential development submitted to and validated by the Council
"Commence"	The carrying out of a "material operation" (as defined in section 56(4) of the Act) in connection with a Development (and "Commencement" and "Commenced" shall be construed accordingly)
"Credits"	Credits sold by the Owner to a developer that correspond to the Credits Linked Land where one Credit equates to 1 Kg of total Nitrogen reduction (as against historic discharges on the Mitigation Land) in discharges from the relevant Credit Linked Land each year
"Credits Linked Land"	Such part of the Mitigation Land Identified In the Notice of Purchase and which corresponds to the number of Credits purchased in order to off-set anticipated additional nitrates from a particular development, and which for the avoidance of doubt shall not correspond to more than one specified development
"Deed"	This agreement made by deed

<b>"Development"</b>	The development of Development Land in accordance with a Permission
<b>"Development Land"</b>	The land which is the subject of an Application
<b>"End Date"</b>	The date 125 years from the date of this Deed
<b>"European Designated Sites"</b>	Collectively the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Chichester and Langstone Harbours SPA and Ramsar site, the Solent Maritime Special Area of Conservation and the Solent and Dorset Coast SPA
<b>"Five Year Date"</b>	The date five years from the date of this Deed
<b>"Habitats Regulations"</b>	The Conservation of Habitats and Species Regulations 2017
<b>"Legal Costs"</b>	The Council's reasonable legal costs incurred in the preparation and execution of this Deed in the maximum sum of £4,658.40
<b>"Mitigation Land"</b>	The land known as land at Little Duxmore Farm, Isle of Wight shown for identification purposes only edged with a red line on Plan 1
<b>"Monitoring Report"</b>	A report prepared by or on behalf of the Owner demonstrating how it has complied with its obligations in this Deed in respect of its management and use of the Mitigation Land, the first such report to cover the period since the date of this Deed and thereafter the period since the date of the previous Monitoring Report
<b>"Notice of Purchase"</b>	A written notification (from the Owner to the Council) of the purchase of Credits to include the following information: <ul style="list-style-type: none"> <li>• Name of developer purchasing the Credits;</li> <li>• Details of the Development to benefit from the Credits, to include application number, description and location;</li> <li>• Number of Credits purchased;</li> <li>• Nitrogen budget for the Credits Linked Land;</li> <li>• Details of the Credits Linked Land to include a plan with the Credits Linked Land clearly identifiable and specifying the size of the Credits Linked Land in hectares.</li> </ul>
<b>"Occupation"</b>	Occupation for the purposes permitted by a 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 "Occupy" and "Occupied" shall be construed accordingly
<b>"Plan 1"</b>	The plan annexed hereto and marked "Plan 1" showing the Mitigation Land edged red
<b>"Permission"</b>	A full or outline planning permission subject to conditions to be granted by the Council pursuant to an Application (and for the avoidance of doubt to include any modifications of such planning

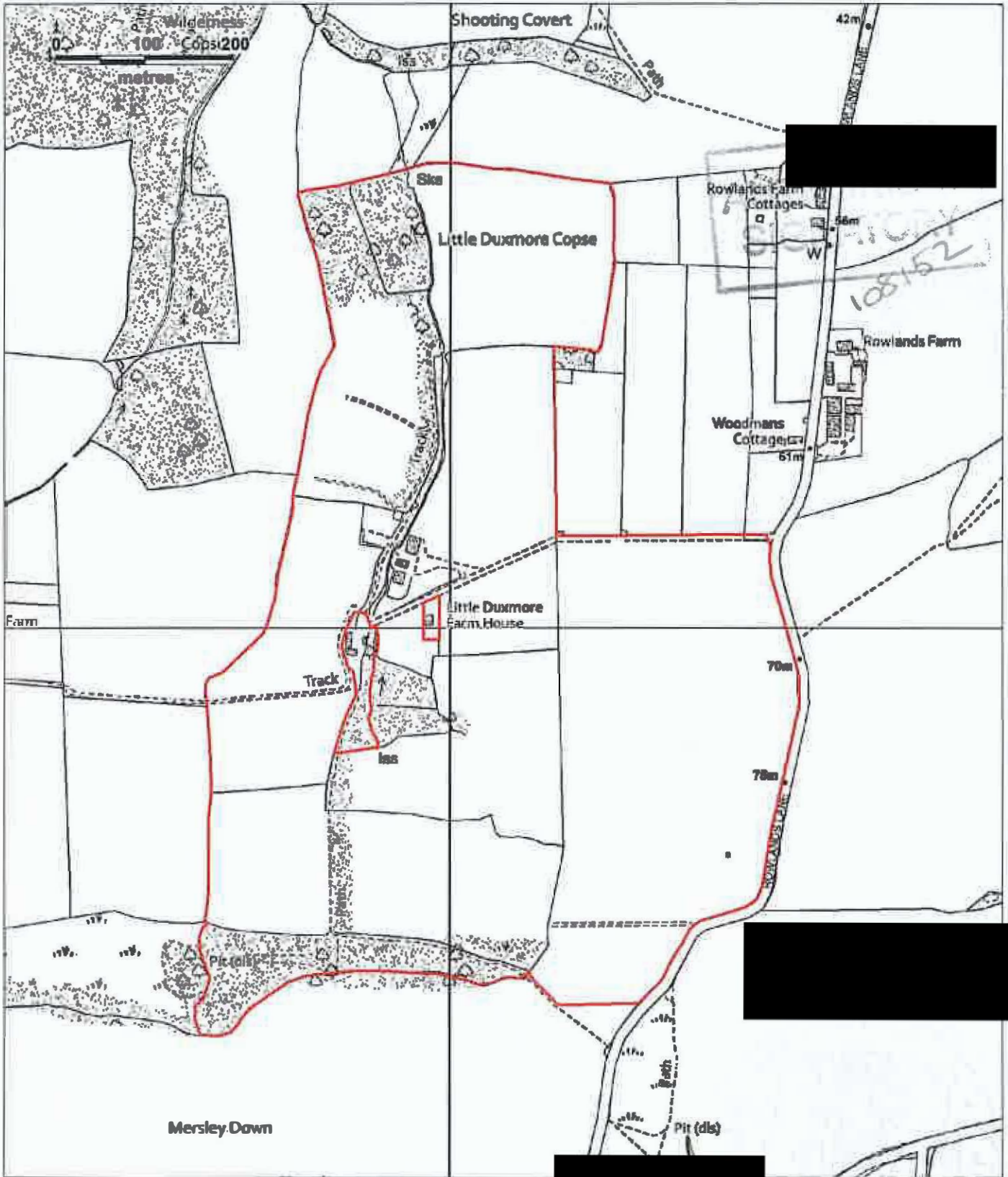


**Little Duxmore**  
Ordnance Survey basemap (1:10,000)  
Scale 1:6000 (A4)

Hampshire and Isle of Wight Wildlife Trust  
Beachcroft House, Vixenage Lane  
Cairdridge SO32 2DP  
web: www.hiwwt.org.uk



 Site boundary       Excluded land



Map reproduced by Hampshire and Isle of Wight Wildlife Trust. Crown Copyright 2020 OS 100016622. Unauthorized reproduction infringes Copyright and may lead to prosecution or civil proceedings. Mersley Down and MarnesFint Ltd. All rights reserved. Aerial photography courtesy of GetMapping plc. BAP Priority habitat, notable species and SINCC data supplied by the Hampshire Biodiversity Information Centre on behalf of Hampshire and Isle of Wight Wildlife Trust on 30 April 2020 by Catherine McGuire. For enquiries relating to the Wildlife Trust's GIS data contact Catherine.McGuire@hiwwt.org.uk, tel: 01489 774435.

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	<p>permission and variations of conditions attaching to such planning permission, and any minor or non-material amendments to such planning permission provided such modifications, variations or amendments do not increase the number of Credits required for the Development)</p>
<p><b>"Prohibited Uses"</b></p>	<ul style="list-style-type: none"> <li>(a) The Introduction (whether by way of fertilizer, animal feed or otherwise) of new nitrogen onto the Mitigation Land;</li> <li>(b) With the exception of mineral licks the supplementary feeding of livestock;</li> <li>(c) Use for the rearing or release of pheasants or other game birds on the Mitigation Land;</li> <li>(d) Dairy farming</li> <li>(e) commercial horticulture or the commercial growing of cereal crops);</li> <li>(f) Use for the keeping of livestock that requires supplementary feeding (excluding mineral licks) to maintain the condition of animals and where the average grazing density across the Credits Linked Land exceeds 0.25 grazing livestock units, where a grazing livestock unit is one cow on one hectare per year or 0.15 sheep per hectare per year;</li> <li>(g) Ploughing or subsoiling of the land with the exception of the use of minimum tillage techniques to plant cover/nectar crops to support farmland birds and pollinators, where the area of these crops will not exceed 10% of any single field and may not be applied to areas where pasture has been established.</li> </ul>
<p><b>"Residential Units"</b></p>	<p>Individual units within a Development to be used for residential purposes (and for the avoidance of doubt this definition shall include houses and flats as appropriate)</p>
<p><b>"Twenty Year Date"</b></p>	<p>The date twenty years from the date of this Deed</p>
<p><b>"Twenty Year Verification Contribution"</b></p>	<p>The sum of £15,000.00 (fifteen thousand pounds) to cover IWC's costs of monitoring compliance with this agreement until the Twenty Year Date as set out in paragraphs 3 and 4 of the Schedule to this Deed, and calculated as follows:</p> <p>£5,000 for monitoring during years 0-5 of this agreement (10 visits); and</p> <p>£10,000.00 for monitoring during years 6-20 of this agreement (15 visits).</p>
<p><b>"Verification Contribution"</b></p>	<p>A sum to reflect the reasonable costs per visit incurred by IWC in monitoring compliance with this agreement between the Twenty Year Date and the End Date such sum to be calculated at the time of each monitoring visit by the IWC (acting reasonably).</p>

## **2 INTERPRETATION**

- 2.1 Where in this Deed 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 Deed.
- 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 Deed shall, to the full extent permitted by law, 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 Deed 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.

## **3 STATUTORY AUTHORITY**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 33 of the 1982 Act and Section 1 of the Localism Act 2011. The covenants, restrictions and requirements imposed upon the Owner under this Deed create covenants pursuant to Section 106 of the Act and Section 33 of the 1982 Act and are enforceable by the Council and IWC against the Owner, and to the extent permitted by law, its successors in title and any person deriving title in the Mitigation Land or any part of it from the Owner.

## **4 EFFECT OF THE AGREEMENT**

- 4.1 Subject to clause 4.2 this Deed shall take effect on the day and year first before written.
- 4.2 The covenants contained in Paragraph 1 of the Schedule to this Deed shall only take effect in respect of each area of Credits Linked Land on the date of service of the Notice of Purchase in respect of that Credits Linked Land.
- 4.3 On service by the Owner on the Council and the IWC of a Notice of Purchase the land identified within that notice shall become Credits Linked Land.

## **5 THE OWNER'S COVENANTS**

- 5.1 The Owner hereby covenants with the Council pursuant to section 33 of the 1982 Act that it will observe and perform the covenants contained in the Schedule to this Deed subject to the operation of clauses 4.2 and 7.2 of this Deed.

5.2 The Owner hereby covenants with IWC pursuant to section 106 of the Act that it will observe and perform the covenants contained in the Schedule to this Deed subject to the operation of clauses 4.2 and 7.2 of this Deed.

## **6 IWC'S COVENANTS**

6.1 IWC hereby covenants with the Council that it will observe and perform the covenants contained in paragraph 4 of the Schedule to this Deed subject to the operation of clauses 4.2 and 7.2 of this Deed.

## **7 RELEASE AND LAPSE**

7.1 It is hereby agreed that Owner shall not be liable for a breach of any of its obligations under this Deed (save for antecedent breaches) after it shall have parted with all of its respective interests in the Mitigation Land.

7.2 Where any Permission expires without having been Commenced or where any Permission is quashed following a successful legal challenge, the Credits Linked Land relating to that Permission (via a Notice of Purchase) shall be released automatically on such expiry or quashing of such Permission from the covenants contained in the Schedule to this Deed so that the Owner shall then be entitled to serve a fresh Notice of Purchase in relation to that Credits Linked Land.

## **8 LAND CHARGES**

8.1 This Deed is a local land charge and shall be registered as such by IWC.

8.2 Upon the full satisfaction of all the terms of this Deed the Owner may request that IWC procure that all entries in the register of local land charges relating to it other than those obligations which are of continuing effect be removed as soon as reasonably practicable.

## **9 DUTY TO ACT REASONABLY**

9.1 All parties to this Deed 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 Deed the same shall not be unreasonably withheld or delayed.

## **10 NO FETTER ON DISCRETION OR WAIVER**

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

10.2 Nothing in this Deed shall impose any contractual or other obligations on the Council to grant a Permission.

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

## **11 COVENANT AS TO TITLE AND MORTGAGEE CONSENT**



11.1 The Owner hereby covenants with the Council and IWC that no person other than the parties to this Deed has any interest in the Mitigation Land.

11.2 The Mortgagee enters into this Deed as mortgagee only and to consent to its terms but strictly on the basis that no personal liability lies with the Mortgagee unless and until he is in possession of the Mitigation Land and then only in relation to breaches that occur or are continuing during such period of possession.

## **12 SEVERABILITY**

12.1 It is agreed that if any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

## **13 COUNCIL AND IWC COSTS**

13.1 The Owner hereby covenants with the Council that it will on or before the date of this Deed pay the Council's Legal Costs.

13.2 The Owner hereby covenants with the IWC that it will on or before the date of this Deed pay the IWC's reasonable legal costs incurred in the preparation and execution of this Deed in the maximum sum of £[ ]

## **14 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999 and NO EXCLUSIVITY**

14.1 Subject to the remaining provisions of this clause 13, and notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Council without the consent of any such third party.

14.2 For the avoidance of any doubt this deed does not grant the Council any exclusive rights in relation to the Mitigation Land and the Owner is free without consent of the other parties to this deed to enter into separate arrangements with other local planning authorities in relation to the Mitigation Land whether for similar purposes to this deed or otherwise SAVE THAT once any part of the Mitigation Land has become Credits Linked Land that part shall not be the subject of separate new commitments by the Owner in favour of another local planning authority where such commitments in effect duplicate the provisions of the Schedule to this deed.

## **15 NOTICES**

15.1 Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post or (in the case of the Council being the recipient) by email in the following manner:

15.1.1 on the Council at the address shown above or by email to [devcontrol@fareham.gov.uk](mailto:devcontrol@fareham.gov.uk) marked "for the attention of the Head of Development Management";

15.1.2 on IWC at the address as detailed above; and

15.1.3 on the Owner at the address as detailed above or as notified by the Owner in writing to the Council and IWC.

15.2 Notices served in accordance with this clause 15 shall be deemed received (a) where sent by first class prepaid post, by 4pm on the second working day following posting and (b)

where sent by email to the Council, by 9am on the first working day following sending of the email.

**16 NOTIFICATION OF SUCCESSORS IN TITLE**

16.1 The Owner covenants with the Council and IWC that it will give immediate written notice to the Council and IWC of any change of ownership of the Mitigation Land if at such time the obligations contained within this Deed 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 Mitigation Land purchased by reference to a plan.

**17 JURISDICTION**

17.1 This Deed 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.

**18 DELIVERY**

18.1 This Deed is for the purposes of the Regulatory Reform (Execution of Deeds and Documents) Order 2005 a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until such time as it is dated.

## **SCHEDULE**

### **THE OWNER'S OBLIGATIONS**

The Owner covenants with the Council and IWC as follows:

#### **1. COVENANTS REGULATING USE OF THE MITIGATION LAND**

- 1.1 Subject to paragraph 1.2 of this Schedule not to use any parcel of Credits Linked Land for any of the Prohibited Uses during the lifetime of the Development that is assigned to that parcel of Credits Linked Land.
- 1.2 Notwithstanding the provisions of paragraph 1.1 of this Schedule, the following activities (without limitation) shall for the avoidance of doubt be permitted:
- (i) The harvesting and removal of any existing crop in the ground up to the date of Commencement of Development provided no further fertiliser inputs are applied;
  - (ii) The planting and management of trees and shrubs;
  - (iii) Leaving the Mitigation Land naturally to regenerate;
  - (iv) Planting and maintaining greensward;
  - (v) The grazing of animals in order to maintain and promote the biodiversity of the Mitigation Land;
  - (vi) The carrying out and maintenance of any planting scheme that is first approved by Natural England, the Forestry Commission, or any other authority for the time being with the relevant responsibility for land such as the Mitigation Land.

#### **2. NOTIFICATION REQUIREMENTS**

- 2.1 Upon completion of any sale of Credits, but only once the Owner has been paid in full for such sale, the Owner shall immediately send the relevant Notice of Purchase to the Council and IWC.

#### **3. MONITORING CONTRIBUTIONS**

- 3.1 The Owner undertakes to IWC to pay the Twenty Year Verification Contribution to IWC on or before the service of the first Notice of Purchase.
- 3.2 The Owner undertakes to IWC and FBC to send a Monitoring Report to IWC at the following intervals:
- 3.2.1 Every six months from the date hereof until the Five Year Date; and
  - 3.2.2 Annually from the Five Year Date until the Twenty Year Date; and
  - 3.2.3 Every five years from the Twenty Year Date until the End Date; and
  - 3.2.4 One visit in the final year ending on the End Date.

**3.3** The Owner undertakes to IWC to pay, on written demand given by way of a notice in accordance with this deed, the Verification Contribution to IWC for the carrying out its monitoring obligations at paragraph 4.1.3 and 4.1.4 of this Schedule. Such demand shall not be given by the IWC before completion of the monitoring obligations on a year by year basis.

### **IWC OBLIGATIONS**

#### **4. MONITORING**

**4.1** IWC shall monitor the obligations insofar as they relate to the Mitigation Land by way of a physical visit to the Mitigation Land (such access hereby permitted by the Owner) to inspect the Mitigation Land, verify the contents of the Monitoring Report and provide as soon as practicable afterwards a written report to the Council of the findings of their visit, at the following intervals:

**4.1.1** Every six months from the date hereof until the Five Year Date; and

**4.1.2** Annually from the Five Year Date until the Twenty Year Date; and

**4.1.3** Every five years from the Twenty Year Date until the End Date; and

**4.1.4** One visit in the final year ending on the End Date.

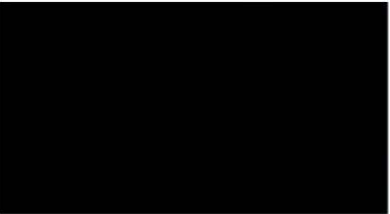
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

THE COMMON SEAL OF )  
FAREHAM BOROUGH COUNCIL )  
was affixed in the presence of: )



108152

Authorised Signatory:



THE COMMON SEAL OF )  
ISLE OF WIGHT COUNCIL )  
was affixed in the presence of: )

Authorised Signatory:

**BEN GARD  
PRINCIPAL LAWYER  
AUTHORISED SIGNATORY  
ISLE OF WIGHT COUNCIL**

135211

EXECUTED AS A DEED by )  
HAMPSHIRE AND ISLE OF WIGHT WILDLIFE TRUST )  
in the presence of: )



Director

Director/Secretary:



EXECUTED AS A DEED by )  
JONATHAN MUIR )  
In the presence of: )

Witness Signature: )

Witness Name: *ALEXANDER HILLDALE* )

Witness Address: *16 DONNINGTON ROAD* )

Witness Occupation: *ONE MAYFAIR PLACE* )

*LONDON* )

*LAWYER*