

Dated:

1 APRIL

2020/1

FAREHAM BOROUGH COUNCIL

and

SOUTH DOWNS NATIONAL PARK AUTHORITY

and

ANDREW SELICK

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 the Warnford
Park Estate, Warnford, Hampshire

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

Ref: ENV-038501

BETWEEN:

- (1) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, Hampshire, PO16 7AZ ("the Council");
- (2) **SOUTH DOWNS NATIONAL PARK AUTHORITY** of South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH ("Mitigation Land Authority"); and
- (3) **ANDREW SELICK** of Warnford Park, Warnford, Southampton, SO32 3LB ("the Mitigation Land Owner")

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** The Mitigation Land Authority is the local planning authority for the purposes of the Act for the area in which the Mitigation Land is situated.
- C** The Mitigation Land Owner is the freehold owner of the Mitigation Land registered with title absolute at the Land Registry under Title Numbers HP506221 and HP614524.
- 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 and other overnight 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, the Mitigation Land Authority and the Mitigation Land 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 development comprising residential and other overnight accommodation in the Council's area.

IT IS AGREED AS FOLLOWS:

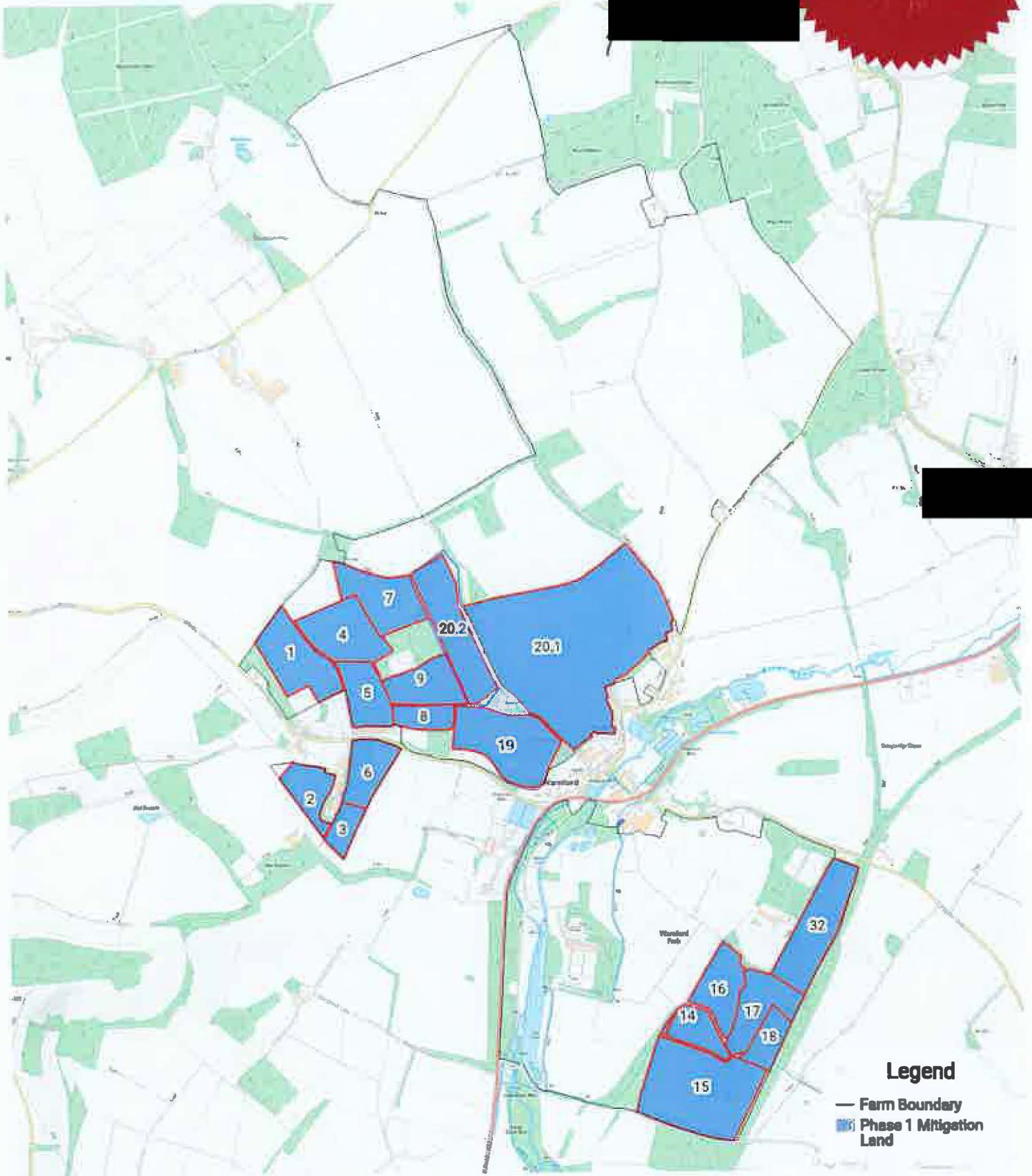
1 DEFINITIONS

- 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
"Access Provisions"	The duties on the Mitigation Land Authority and other terms as set out in paragraph 5 of the Schedule to this Deed

"Act"	The Town and Country Planning Act 1990 (as amended)
Activation Date	The date of service of the first Notice of Purchase
"Agriculture"	<p>(a) use for horticulture, fruit growing, seed growing (including the growing of cereal crops);</p> <p>(b) use for dairy farming;</p> <p>(c) use for the breeding and keeping of livestock (any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of land);</p> <p>(d) use of the land as grazing land; and</p> <p>(e) use as market gardens or nursery grounds,</p> <p>and 'Agricultural' shall be construed accordingly</p>
"Application"	Any planning application for residential development or development comprising other overnight accommodation 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 Mitigation Land Owner to a developer that correspond to the Credits Linked Land where one Credit equates to 1 Kg per annum 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 area 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
"Development"	The development of Development Land in accordance with a Permission
"Development Land"	The land which is the subject of an Application
"End Date"	The date 125 years from the date of this Deed
"European Designated Sites"	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
"Habitats Regulations"	The Conservation of Habitats and Species Regulations 2017
"Index"	The All In Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or Index

"Index Linked"	For the purposes of any payment or financial contribution expressed to be Index Linked means adjusted in accordance with the Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Index monthly figure published before the date of this Deed and whose numerator shall be the last published 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
"Initial Verification Contribution"	The sum of £5,500.00 (five thousand five hundred pounds) Index Linked to cover the Mitigation Land Authority's costs of monitoring compliance with this agreement until the Twenty Year Date as set out in paragraph 4 of the Schedule to this Deed, and calculated based on 20 visits at a cost of £275 per visit.
"Interest"	interest at 4 per cent above the base lending rate of the Barclays Bank Pic (calculated on a daily basis from the date on which it fell due until the actual date of payment)
"Legal Costs"	The Council's and the Mitigation Land Authority's reasonable legal costs incurred in the preparation, negotiation and execution of this Deed
"Mitigation Land"	The land known as land at Warnford Park Estate, Warnford, Hampshire shown for identification purposes only edged with a red line on Plan 1
"Notice of Purchase"	<p>A written notification (from the Mitigation Land Owner to the Council) of the purchase of Credits to include the following information:</p> <ul style="list-style-type: none"> • Name of developer purchasing the Credits; • Details of the Development to benefit from the Credits, to include application number, description and location; • Number of Credits purchased; • Nitrogen budget for the Credits Linked Land; • 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.
"Occupation"	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
"Plan 1"	The plan annexed hereto and marked "Plan 1" showing the Mitigation Land edged red
"Permission"	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 permission and variations of conditions attaching to such planning permission, and any minor or non-material amendments to such planning permission provided such



Legend

- Farm Boundary
- Phase 1 Mitigation Land

	modifications, variations or amendments do not increase the number of Credits required for the Development)
"Twenty Year Date"	The date twenty years from the Activation Date
"Verification Contribution"	The sum of £6,050 (six thousand and fifty pounds) Index Linked to cover the Mitigation Land Authority's costs of monitoring compliance with this agreement for years 21-125 (£275 every five years and a visit in year 125) as set out in paragraph 4 of the Schedule to this Deed
"Woodland Planting Scheme"	means a scheme for the planting of trees on the Mitigation Land (or part of the Mitigation Land, but so that it must always include such part as becomes Credits Linked Land on the Activation Date and on service of any subsequent Notice of Purchase), to include details of number and species of trees and timing of planting, and measures for maintaining and encouraging the successful growth of the trees for a minimum of ten years after planting, and which shall be designed so as to ensure that there will be a minimum of 20% canopy cover across the Mitigation Land at maturity.
"Working Day"	Monday to Friday inclusive, excluding any bank or public holidays

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, Section 22 of the Cities and Local Government Act 2016 and Section 1 of the Localism Act 2011. The

covenants, restrictions and requirements imposed upon the Mitigation Land 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 the Mitigation Land Authority against the Mitigation Land 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 Mitigation Land 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 Mitigation Land Owner on the Council of a Notice of Purchase the land identified within that notice shall become Credits Linked Land.

5 THE MITIGATION LAND OWNER'S COVENANTS

- 5.1 The Mitigation Land 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 Mitigation Land Owner hereby covenants with the Mitigation Land Authority 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 MITIGATION LAND AUTHORITY'S COVENANTS

- 6.1 The Mitigation Land Authority 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 the Mitigation Land 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 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 Mitigation Land 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 the Mitigation Land Authority.
- 8.2 Upon the full satisfaction of all the terms of this Deed the Mitigation Land Owner may request that the Mitigation Land Authority 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 the Mitigation Land Authority 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 the Mitigation Land Authority 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 the Mitigation Land Authority from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

11 COVENANT AS TO TITLE

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

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 THE MITIGATION LAND AUTHORITY COSTS

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

14 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999 AND NO EXCLUSIVITY

14.1 Subject to the remaining provisions of this clause 14, 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 Mitigation Land 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 Mitigation Land 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 marked "for the attention of the Head of Development Management";

15.1.2 on the Mitigation Land Authority marked "for the attention of the Director of Planning" at the address as detailed above; and

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

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 INTEREST ON LATE PAYMENTS

16.1 Any amount due from the Mitigation Land Owner under this Deed which is not paid on the due date shall be payable with interest.

17 NOTIFICATION OF SUCCESSORS IN TITLE

17.1 The Mitigation Land Owner covenants with the Council and the Mitigation Land Authority that it will give immediate written notice to the Council and the Mitigation Land Authority 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.

18 JURISDICTION

18.1 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.

19 DELIVERY

19.1 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 COVENANTS

The Mitigation Land Owner covenants with the Council and the Mitigation Land Authority 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 Agriculture or deposit or permit the deposit of any fertiliser on the Credits Linked Land 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:

1.2.1 The harvesting and removal of any existing crop in the ground at the Activation Date provided no additional fertiliser inputs are applied;

1.2.2 the planting and management of trees in accordance with the Woodland Planting Scheme;

1.2.3 leaving the Credits Linked Land naturally to regenerate;

1.2.4 planting and maintaining greensward;

1.2.5 creating and maintaining open space;

1.2.6 creating and maintaining forestry rides;

1.2.7 the carrying out and maintenance of any planting scheme or woodland management plan that is first approved by Natural England, the Forestry Commission, or any other authority for the time being with relevant responsibility for land such as the Mitigation Land

provided no further fertiliser inputs are applied.

1.3 By no later than two months after (a) the Activation Date and (b) the date of service of any subsequent Notice of Purchase to submit to the Council for its written approval a Woodland Planting Scheme, such approval to be given only after the Council has first given at least 14 days' written notice to the Mitigation Land Authority of the proposed Woodland Planting Scheme, but not in any event to be unreasonably withheld or delayed. For the avoidance of doubt a Woodland Planting Scheme submitted under this paragraph must always include within its scope the area of the Mitigation Land that is, by virtue of a served Notice of Purchase, becoming Credits Linked Land, and it may (but need not – the matter being entirely at the Owner's discretion) include other parts of the Mitigation Land in anticipation of further Notices of Purchase. Where a Woodland Planting Scheme is submitted in relation to land ("Additional Land") that was not at the relevant time Credits Linked Land and that Scheme is approved by the Council, there is no requirement for any further Woodland Planting Scheme to be submitted in relation to that Additional Land when a subsequent Notice of Purchase is served that has the effect of that Additional Land becoming Credits Linked Land in due course unless the Owner wishes to vary the scheme subsequently.

1.4 Following approval of each Woodland Planting Scheme, to implement and thereafter comply with the approved Woodland Planting Scheme:

- (a) in so far as it relates to any parcel of land that becomes Credits Linked Land; and
- (b) so that any required planting shall take place no later than the next planting season following such parcel of land becoming Credits Linked Land (but may occur earlier).

1.5 The parties acknowledge that any Woodland Planting Scheme may need to be varied from time to time. Any such variation may be proposed by the Mitigation Land Owner and then will be subject to approval in line with the process contemplated by paragraph 1.3 of this schedule.

2. NOTIFICATION REQUIREMENTS

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

3. VERIFICATION CONTRIBUTIONS

3.1 The Mitigation Land Owner undertakes to the Mitigation Land Authority to pay the Initial Verification Contribution and the Verification Contribution to the Mitigation Land Authority on or before the Activation Date.

THE MITIGATION LAND AUTHORITY OBLIGATIONS

4. MONITORING

4.1 The Mitigation Land Authority undertakes to the Council to 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 Mitigation Land Owner subject to the Access Provisions) by a qualified chartered forester to inspect the Mitigation Land 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 Annually from the Activation Date until the Twenty Year Date; and
- 4.1.2 Every five years from the Twenty Year Date until the End Date; and
- 4.1.3 One visit in the final year ending on the End Date.

5. ACCESS PROVISIONS

5.1 In connection with the Mitigation Land Authority's accessing the Mitigation Land the following provisions apply:

- 5.1.1 All access onto the Mitigation Land and any adjoining land belonging to the Mitigation Land Owner shall be entirely at the risk of the Mitigation Land Authority;**
- 5.1.2 Without prejudice to paragraph 5.1.1, the Mitigation Land Authority will give the Mitigation Land Owner no fewer than 7 days' written notice of any inspections (which will set out the expected duration of the inspection and include a list of the equipment that the Mitigation Land Authority will use for the monitoring and verification inspection) and will also give the Mitigation Land Owner or his representative the opportunity to accompany the Mitigation Land Authority's representative on any monitoring or verifying inspection to assist with site safety; and**
- 5.1.3 In gaining access to the Mitigation Land, the Mitigation Land Authority will cause no damage or disturbance to the Mitigation Land nor to any adjoining land of the Mitigation Land Owner nor to any operations carried out thereon by or on behalf of the Mitigation Land Owner.**

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:)

[Redacted]

Authorised Signatory:

THE COMMON SEAL OF)
SOUTH DOWNS NATIONAL PARK AUTHORITY)
was affixed in the presence of:)

[Redacted]

Authorised Signatory:



SIGNED as a deed by)
ANDREW SELICK)
In the presence of:)

[Redacted]

Witness Signature:

[Redacted]

Name: [Redacted]

Address: 62 A HART ROAD AVE
WATERLOO
PO BOX 812

Occupation: CONTACT DIRECTOR