

DATED

2 July

2024

(1) JAMES ANDREW SELICK

AND

(1) WATERLOOVILLE ESTATES LIMITED

**UNCONDITIONAL ALLOCATION
AGREEMENT
relating to
nitrate mitigation at the Warnford Park
Estate for a prospective development site
at Land at 286-288 London Road,
Waterlooville**

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THIS AGREEMENT is made on

2 July

2024

BETWEEN:

- (1) **JAMES ANDREW SELICK** otherwise known as **ANDREW JAMES SELICK** of Warnford Park, Warnford, Southampton SO32 3LB ("**Owner**"); and
- (2) **WATERLOOVILLE ESTATES LIMITED** (company number 14008972) whose registered office is at 69 Watermint Quay, London N16 6DN ("**Developer**").

BACKGROUND

- A The Owner owns the property at the Mitigation Site on which he is or will be managing the land in a manner designed to enable a reduction of net nitrogen emissions in a manner that creates nitrogen mitigation available for developers to purchase to offset the adverse nitrogen impact on the Solent region by virtue of the Developer's intended development at the Development Land.
- B The Development will result in an increased discharge of nitrates from the Development Land. In order to obtain the Planning Permission the Developer needs to demonstrate to the Determining Authority that the Development can maintain nitrate neutrality.
- C The Owner has agreed to sell to the Developer some nitrogen Credits in accordance with the terms of this agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATIONS

The following definitions and rules of interpretation apply in this agreement:

"Agreed Number of Credits" means the number of Credits available from the Mitigation Land (being **9.53** Credits at the date of this agreement) for use exclusively in relation to the Development Land;

"Application" means the Developer's application for Planning Permission under application reference number APP/22/01165;

"Credits" means measurements of nitrogen reduction where one Credit equates to 1 Kg of total Nitrogen reduction (as against historic discharges on the Mitigation Land) in discharges from the Mitigation Land in each year;

"Determining Authority" means the local planning authority with jurisdiction over the Application;

"Developer's Conveyancer" means KHH Law of 1 Egerton Road, London, N16 6UE (Ref: Julian Kostick) or such other firm of solicitors as may be notified in writing by the Developer to the Owner from time to time;

"Development Land" means the land which is the subject of the Application being land at 286- 288 London Road, Waterlooville, Hampshire;

"Electronic Payment" means payment by electronic means in same day cleared funds from an account held in the name of the Developer's Conveyancer at a clearing bank to an account in the name of the Owner's Conveyancer;

"Mitigation Land" such part of the Mitigation Site (referred to in the Nitrate s106 Agreement as "**Credits Linked Land**") as determined by the Owner which is capable of providing the

Agreed Number of Credits and to be shown coloured orange on the plan annexed to the Notice of Purchase;

“Mitigation Site” means the Owner’s property known as Warnford Estate shown edged red on the plan annexed to the Nitrate s106 Agreement title to which is registered at HM Land Registry under title number HP506221 and HP614524;

“Monitoring Authority” means Southdowns National Park Authority;

“Nitrate s106 Agreement” means an agreement relating to the Mitigation Site dated 01 November 2023 and made between (1) East Hampshire District Council, The Council of the Borough of Havant, Winchester City Council, (2) the Monitoring Authority and (3) the Owner;

“Notice of Purchase” means a Notice of Purchase (as defined in the Nitrate s106 Agreement) in relation to the Agreed Number of Credits;

“Owner’s Conveyancer” means Irwin Mitchell LLP of Thomas Eggar House, Friary Lane, Chichester West Sussex PO19 1UF (reference SK/05437861/33) or such other firm of solicitors as may be notified in writing by the Owner to the Developer from time to time;

“Part 1 Conditions” means Part 1 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision) and **“Condition”** means any one of them;

“Part 2 Conditions” means Part 2 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision);

“Party” means the Owner or the Developer as the context so requires and **“Parties”** means both of them as the context so requires;

“Plan” means the plan attached to this agreement;

“Planning Permission” means planning permission granted pursuant to the Application or pursuant to any appeal against a refusal of the Application;

“Purchase Price” means [REDACTED]
[REDACTED] plus VAT;

“VAT” means value added tax or any equivalent tax chargeable in the UK; and

“Working Days” means any day from Monday to Friday (inclusive) which is not Good Friday, a statutory Bank Holiday or any day between 24 December to the immediately following 2 January inclusive.

2 AGREEMENT & NOTICE OF PURCHASE

- 2.1 In consideration of the Purchase Price paid by the Developer to the Owner on the date of this agreement (receipt of which is acknowledged by the Owner) the Owner agrees to allocate the Agreed Number of Credits to the Development Land on the date of this agreement.
- 2.2 Within 5 Working Days of the date of this Agreement the Owner will serve the Notice of Purchase on the Determining Authority.
- 2.3 This agreement is personal to the Developer. The Developer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement or any part of it.

- 2.4 The Developer cannot require the Owner to transfer the Agreed Number of Credits or any part of it to any person other than the owner for the time being of the Development Land.

3 CONDITIONS

- 3.1 The Part 1 Conditions will be incorporated in this agreement so far as they:
- 3.1.1 apply to a sale by private treaty;
 - 3.1.2 can be relevant to a sale of Credits;
 - 3.1.3 are not inconsistent with the other clauses in this agreement; and
 - 3.1.4 have not been modified or excluded by any of the other clauses in this agreement.
- 3.2 The terms used in this agreement have the same meaning when used in the Part 1 Conditions.
- 3.3 References in the Part 1 Conditions to:
- 3.3.1 “**seller**” are references to the Owner; and
 - 3.3.2 “**buyer**” are references to the Developer; and
 - 3.3.3 “**property**” are references to the Agreed Number of Credits.
- 3.4 The Part 2 Conditions will not be incorporated into this agreement.
- 3.5 The following Conditions are amended:
- 3.5.1 Condition 1.1.1 (c) so that reference to “**Clearing Bank**” means a bank which is a direct participant in the CHAPS system operated by the Bank of England;
 - 3.5.2 Condition 1.1.1(o) so that reference to VAT in Condition 1.1.1(o) is to VAT as defined by this agreement.
- 3.6 The following Conditions will not apply to this agreement: 2.1, 2.2, 4.1.1, 4.1.2, 4.1.3, 5, 6, 7, 8, 9.1.3, 9.5, 11, and 12.

4 TITLE

- 4.1 The Owner’s title to the Agreed Number of Credits has been accepted by the Developer prior to the date of this agreement.
- 4.2 The Developer is deemed to have full knowledge of the Owner’s title to the Agreed Number of Credits and is not entitled to raise any objection, enquiry, requisition or claim in relation to it.
- 4.3 The Developer shall not register any notices against the Owner’s title to the Mitigation Site in relation to this agreement.

5 MATTERS AFFECTING THE PROPERTY

The Owner will sell the Agreed Number of Credits to the Developer subject to the terms of the Nitrate s106 Agreement.

6 COSTS

The Developer will pay the following costs to the Owner:

- 6.1 [REDACTED] plus VAT towards the Owner's legal costs in connection with this agreement payable on or before the date of this agreement;
- 6.2 [REDACTED] plus VAT towards the Owner's agency costs in connection with this agreement payable on or before the date of this agreement;
- 6.3 [REDACTED] plus VAT to the Owner as a contribution to the Owner's internal administration, monitoring and/or verification contributions required to be paid to the Monitoring Authority pursuant to the Nitrates 106 Agreement payable on or before the Completion Date.

7 VAT

- 7.1 Each amount stated to be payable by the Developer to the Owner under or pursuant to this agreement is exclusive of VAT (if any).
- 7.2 If VAT is chargeable on any supply made by the Owner under or pursuant to this agreement, the Developer will pay the Owner an amount equal to that VAT as additional consideration on the date that the supply is made.
- 7.3 The Owner holds the Mitigation Site on trust for C E Holt & Partners. VAT is payable on the Purchase Price and the VAT invoice for the Purchase Price will be issued by C E Holt & Partners.

8 ENTIRE AGREEMENT

- 8.1 This agreement constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 8.2 The Developer acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently).

9 JOINT AND SEVERAL LIABILITY

Where the Developer comprises more than one person, those persons will be jointly and severally liable for the obligations and liabilities of the Developer arising under this agreement. The Owner may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

10 THIRD PARTY RIGHTS

A person who is not a party to this agreement will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

11 GOVERNING LAW

- 11.1 This agreement 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) will be governed by and construed in accordance with the law of England.
- 11.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this

agreement or its subject matter or formation (including non-contractual disputes or claims).

THIS AGREEMENT HAS BEEN ENTERED INTO on the date stated at the beginning of it.

Signed for and on behalf of the Owner: 

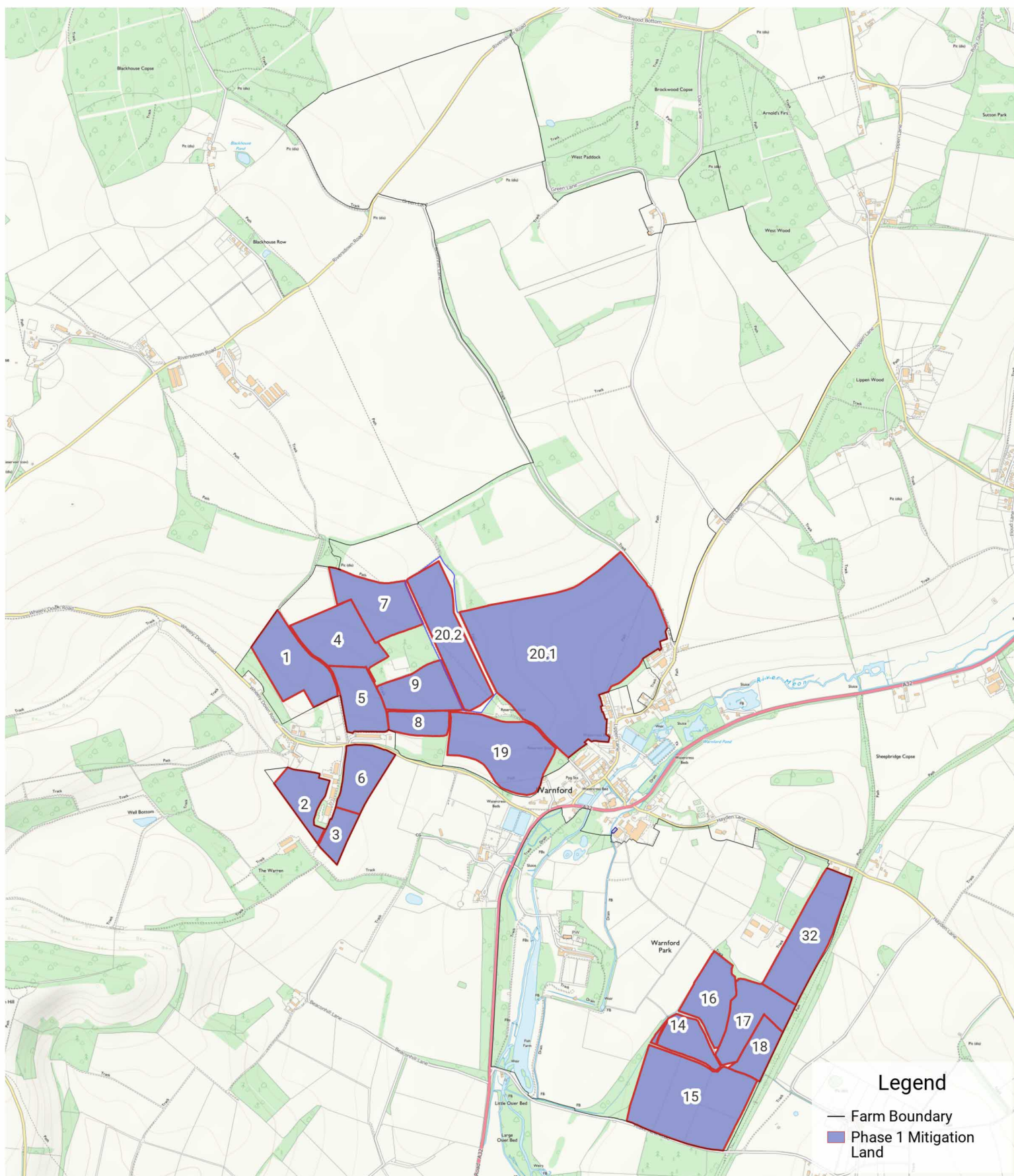
Signed for and on behalf of the Developer:

PLAN

Plan of Warnford Park Mitigation Land - Phase 1 (Appendix 1)



The land app



Produced on Nov 28, 2020.

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500 m

Scale 1:18000 (at A4)

