

DATED

2023

A & M POPE LIMITED

TO

EASTLEIGH BOROUGH COUNCIL

UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 relating to the proposed development at 39 Fair Oak Road, Bishopstoke, Eastleigh SO50 6LF

Planning Application: F/23/94642
Appeal Reference: APP/W1715/W/23/3323461

THIS UNILATERAL UNDERTAKING is made the day of 2023

BY

- (1) **A & M POPLE LIMITED** (Co. Regn. No. 04558380) whose registered office is at Oak Hill Cottage, Lordswood, Highbridge, Eastleigh SO50 6HR (the “Owner”) and

TO

- (2) **EASTLEIGH BOROUGH COUNCIL** of Eastleigh House Upper Market Street
Eastleigh Hampshire SO50 9YN ("the Council")

RECITALS

- (1) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated
- (2) The Owner is the registered proprietor of the Site registered at Land Registry under title number HP859206
- (3) The Owner has by written application numbered F/23/94642 applied to the Council for Planning Permission for the Development of the Site, which was refused on 26 April 2023. The Owner has submitted the Appeal against the Council's Refusal.
- (4) The Owner gives this undertaking and the planning obligations contained herein in the event that the Planning Permission is granted pursuant to the Appeal.

(Definitions)

1. In this Deed in addition to the defined expressions herein referred to the following expressions shall have the following meanings:

"the Act"	means the Town and Country Planning Act 1990 (as amended)
"Appeal"	means the appeal to the Secretary of State in relation to the Council's refusal of the Planning Permission and given reference number APPW1715/W/23/3323461
"Contribution Payments"	means the payments to be made by the Owner to the Council in respect of: (i) the New Forest Ranger Contribution; (ii) New Forest SANG Contribution; (iii) New Forest SANG Monitoring Contribution; and (iv) New Forest SANG Commercial Risk Contribution All index linked in accordance with clause 7 of this deed
"Commencement of Development"	means the carrying out in relation to the Development of any

material operation as defined by
section 56 (4) of the Act
and the expressions
“commenced”, “commence”,
“commencing” and “commences”
shall be construed accordingly

“Default Interest Rate”

means interest at four percent
(4%) above the base lending rate
of Barclays Bank Plc from time to
time

“Development”

means the development described
in Schedule Two

“Dwelling”

means the dwelling to be provided
on the Site by the carrying out of
the Development and the
expression “Dwelling” shall be
construed accordingly

“New Forest Ranger Contribution”

means the sum of FORTY-ONE
POUNDS AND SEVEN PENCE
(£41.07) to be paid by the
Owner to the Council towards a
New Forest Ranger

“New Forest SANG Contribution”	means the sum of ONE THOUSAND AND SIXTY EIGHT POUNDS AND TWENTY FOUR PENCE (£1968.24) to be paid by the Owner to the Council towards the New Forest SANG
“New Forest SANG Monitoring Contribution”	means the sum of NINE POUNDS AND THIRTEEN PENCE (£9.13) to be paid by the Owner to the Council towards the monitoring of the New Forest SANG
“New Forest SANG Commercial Risk Contribution”	means the sum of TWO HUNDRED AND ONE POUNDS AND EIGHTY FOUR PENCE (£201.84) to be paid by the Owner to the Council towards the commercial risk of the New Forest SANG
"Plan"	means the Plan annexed hereto

"S73 Permission" means a permission granted pursuant to section 73 of the Act

"Site" means the land described in Schedule One

OPERATIVE PROVISIONS :-

1. This Deed is made pursuant to Section 106 of the Act
2. The obligations by the Owner in this Deed are deemed to be planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council
3. The Owner for themselves and their respective successors in title hereby undertake to the Council with the intent of binding the Site so that such covenants shall be enforceable against successors in title and any person claiming through or under them to observe the restrictions and to perform the obligations contained in clause 14, 23 and 24 and Schedule Three
4. The performance of the obligations by the Owner aforesaid shall be subject to the provisos (if any) contained in Schedule Three
5. This Deed is a local land charge and may be registered as such by the Council
6. Save in respect of any provision requiring any disagreement or dispute between the parties to be referred to arbitration, if any dispute or difference shall arise between the parties then the following provisions shall apply

- 6.1. the dispute or difference may on written notice by any party at any time and served on the other parts (the "Determination Notice") be referred to and determined by an independent person (the "Independent Person") who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten (10) years and who shall be a specialist in relation to such subject matter
- 6.2. the Independent Person shall be appointed by agreement between the relevant parties (if within 10 working days after service of the Determination Notice they have been unable to agree) on the application of any relevant party by the President for the time being of the Law Society or his or her duly appointed deputy or any other person authorised by him or her to make appointments on his or her behalf
- 6.3. the Independent Person to be appointed under this Clause shall act as an expert and the following provisions shall have effect:
 - 6.3.1. the Independent Person shall act as an expert and not as an arbitrator and his or her decision shall be final and binding upon the parties to the dispute or disagreement (save in the case of manifest error)
 - 6.3.2. the Independent person shall consider (inter alia) any written representations made on behalf of any party (if made reasonably promptly) but shall not be bound by them
 - 6.3.3. the parties to the dispute or disagreement shall use all reasonable endeavours to procure that the Independent Person shall give his or her decision as speedily as possible;
 - 6.3.4. the cost of appointing the Independent Person and his or her costs and disbursements in connection with his or her duties under this Deed shall be shared between the parties

to the dispute or disagreement in such proportions as the Independent Person shall determine, or in the absence of such determination equally between such parties; and

6.3.5. if the Independent Person shall be or become unable or unwilling to act then the above procedure for the appointment of an expert may be repeated as often as necessary until a decision is obtained

7. The Owner undertakes that the Contribution Payments to be paid to the Council by the Owner under the terms of this Deed is required to be index linked and in this respect the relevant payment shall be increased by the percentage by which the Retail Prices Index ("RPI") published by the Office for National Statistics (or amendment or replacement thereof) increased from and including November 2022 to the date the payment is received by the Council.
8. If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date and including the date of payment.
9. If prior to receipt of any contributions payable pursuant to the terms of this Deed the Council incurs any expenditure in providing facilities to which it was intended to apply any such contribution (or in consequence of arranging the provision thereof) by the letting of a contract or otherwise including any design costs whether in anticipation of or as a result of the Development then the Council may immediately following receipt of such contribution deduct

therefrom a sum equivalent to such expenditure incurred and for the avoidance of doubt it is hereby further agreed that such a proportion of any such contribution shall not be the subject of any requirement to repay or account for it or any interest accrued thereon pursuant to the terms of this Deed and that such monies shall be and remain the property of the Council and shall not be bound by the terms of this Deed. For the further avoidance of doubt any such expenditure shall not result in an increase of the contributions identified in this Deed.

10. Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.
11. No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
12. Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission but any such planning permission may be subject to further s106 obligations.
13. Any person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term under this Deed save that this clause will not prevent the Council enforcing any provision of this deed even if they are not a party

14. The Owner covenants that it shall notify the Council in writing or procure that the Council is notified no later than 21 days after Commencement of Development
15. The Owner undertakes to the Council to give the Council immediate written notice of any change of ownership of any of its interest in the Site occurring before all the obligations under this Deed have been discharged by the Council and such notice shall give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation acquired by the transferee by reference to a plan.
16. The Owner warrants that no person other than the Owner has any legal interest in the Site.
17. In this Deed:
 - 17.1. the masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa and references to persons include firms corporations and unincorporated associations;
 - 17.2. a reference to a statute refers to the statute as it applies at the date of this Deed and any later amendment or re-enhancement of it and any regulations or statutory instrument made under it; and
 - 17.3. a reference to a clause or schedule is a reference to a clause or schedule contained in this Deed

18. The obligations in this Deed shall not be binding or enforceable against any statutory undertaker or authority who requires any part of the Site or interest in it for the operational purposes of its statutory undertaking or functions
19. If the Appeal is allowed, any future S73 Permission by the Council in relation to the Development, with effect from the date that such permission is granted, shall be bound by this Deed and this Deed shall in addition to continuing to bind the Site in respect of the Planning Permission relate to and bind all subsequent S73 Permissions and the Site itself without any further act by the parties PROVIDED THAT nothing in this clause shall:
 - (a) restrict the ability of the Owner to request a variation to the terms of this Deed in connection with the grant of any S73 Permissions (which request the Council shall consider in light of all the circumstances); or
 - (b) fetter the discretion of the Council in determining any application(s) under S73 of the Act; or
 - (c) fetter the discretion of the Council in determining the appropriate nature and/or quantum of section 106 obligations insofar as they are materially different to those contained in this Deed and required pursuant to a determination under S73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification agreement pursuant to section 106A of the Act.
20. 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

21. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Appeal is refused, or otherwise if Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
22. This Deed is to be governed by and interpreted in accordance with the law of England and is enforceable in the Courts of England and Wales and shall take effect on the date upon which it is made.
23. On or before completion of this Deed the Owner shall pay to the Council the Council's reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Deed.
24. On grant of Planning Permission pursuant to the Appeal the Owner undertakes to pay to the Council its Section 106 monitoring fee of £500.
25. It is hereby agreed and declared that the Owner shall not be liable for a breach of any of the obligations or covenants under this deed (save for antecedent breaches) after it has parted with its entire interest in the Site.

INDEX OF SCHEDULES

Schedule One	Description
Schedule Two	Proposed Development of the Site
Schedule Three	Contribution Payments

SCHEDULE ONE

Description of Site

The freehold land known as 39 Fair Oak Road, Bishopstoke, Eastleigh (SO50 6LF) shown for the purposes of identification only edged red on the Plan as the same is registered with HM Land Registry under title number HP859206

SCHEDULE TWO

Proposed Development of Site

Erection of two-storey dwelling to rear garden of 39 Fair Oak Road and insertion of new first-floor bay window to rear elevation of 39 Fair Oak Road

SCHEDULE THREE

The Contribution Payments

1. The Owner undertakes:
 - 1.1. to pay to the Council the Contribution Payments prior to Commencement of the Development, and
 - 1.2. not to Commence the Development until the Contribution Payments referred to in Paragraph 1 of this Schedule shall have been paid to the Council.

In Witness whereof the parties hereto have today executed and delivered this agreement as a Deed.

EXECUTED as a Deed by)
A & M POPE LIMITED)
Acting by a Director in the presence of)

Director

Witness Signature

Witness Name.....

Witness Occupation.....

Witness Address.....

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