|  |
| --- |
| DATE: 2024 |
| UNILATERAL UNDERTAKING PURSUANT TO SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990 AND OTHER ENABLING POWERS RELATING TO LAND south of berrington, shrewsbury, shropshire sy5 6ha |
| **JUSTIN RICHARD STEVENSON, SIR CHARLES HOLCROFT BT** and **JOSHUA EUAN NICHOLAS LOVEGROVE-FIELDEN**and**SIR CHARLES ANTHONY CULCHETH HOLCROFT BT** |
| andeconergy international LIMITEDandLloyds Bank PLCtoshropshire COUNCIL |
|  | CMS Cameron McKenna Nabarro Olswang LLP1-3 Charter Square SheffieldS1 4HScms.law |  |

 Table of Contents

[1. Definitions 4](#_Toc160096740)

[2. Interpretation 5](#_Toc160096741)

[3. Statutory provisions 5](#_Toc160096742)

[4. Future planning consents and approvals 6](#_Toc160096743)

[5. The Owners Covenants 7](#_Toc160096744)

[6. Determination of deed 7](#_Toc160096745)

[7. Local land charge 7](#_Toc160096746)

[8. Third parties 7](#_Toc160096747)

[9. Mortgagee Protection 7](#_Toc160096748)

[10. Dispute resolution 7](#_Toc160096749)

[11. Indemnity 8](#_Toc160096750)

[12. Governing law 8](#_Toc160096751)

[13. Costs 8](#_Toc160096752)

[14. Waiver 8](#_Toc160096753)

[15. Change in ownership 9](#_Toc160096754)

[Schedule 1 Owners’ Covenants 10](#_Toc160096755)

[Schedule 2 The Plan 11](#_Toc160096756)

[Schedule 3 Skylark Mitigation and Management Plan 12](#_Toc160096757)

THIS DEED IS MADE THE DAY of 2024

1. PARTIES
	1. **JUSTIN RICHARD STEVENSON** of Wellfield, Dovaston, Oswestry SY10 8DP; **SIR CHARLES ANTHONY CULCHETH HOLCROFT BT** of Wrentnall House, Wrentnall, Pulverbatch, Shrewsbury, SY5 8ED and **JOSHUA EUAN NICHOLAS LOVEGROVE-FIELDEN** of Longden Manor, Pontesbury, Shrewsbury, SY5 0XH (the “**First Owner**”);
	2. **SIR CHARLES ANTHONY CULCHETH HOLCROFT BT** of Wrentnall House, Wrentnall, Pulverbatch, Shrewsbury, SY5 8ED (the “**Second Owner**”);
	3. **ECONERGY INTERNATIONAL LIMITED** company registration number 12669318 whose registered office is Part 1st Floor, 76-80 Old Broad Street, London, EC2M 1QP (the “**Developer**”); and
	4. **LLOYDS BANK PLC** company registration number 00002065 whose registered office is situate at 25 Gresham Street, London EC2V 7HN (the “**Mortgagee**”);

**TO**

* 1. **SHROPSHIRE COUNCIL** of Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND (the “**Council**”).
1. RECITALS
	* 1. The Council is the local planning authority for the purposes of the Act for the area in which the Application Site and Mitigation Site is situated and as such is the local planning authority entitled to enforce the planning obligations contained in this Deed.
		2. The First Owner owns a beneficial interest in the Application Site pursuant to a settlement deed dated 17 January 2023 between (1) Sir Charles Anthony Culcheth Holcroft BT and (2) Sir Charles Anthony Culcheth Holcroft BT, Justin Richard Stevenson, and Joshua Euan Nicholas Lovegrove-Fielden.
		3. The Second Owner is the freehold owner of the Mitigation Site and the Application Site which are together registered with title absolute at the Land Registry forming part of title number SL193575.
		4. The Mortgagee has a charge dated 23 March 2020 over part of the Application Site referred to at entry numbers 10 and 11 of the charges register to title number SL193575.
		5. The Planning Application was submitted by the Developer to the Council for the Development.
		6. On 9 May 2023, the Council’s southern area planning committee resolved at its meeting to refuse to grant planning permission for the Development pursuant to the Planning Application and planning permission was refused on 16 May 2023.
		7. The Developer has submitted the Appeal against the Council’s refusal.
		8. The Parties enter into this Deed without prejudice to their respective submissions in respect of the Appeal.
		9. This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to proceed and agree that the obligations contained in this Deed may be enforced by the Council against the Owners (and the Mortgagee (but only in so far as the Mortgagee is a mortgagee in possession)) pursuant to the terms of this Deed.
2. it is agreed as follows:
	1. Definitions
		1. In this Deed the following expressions shall have the following meanings:
3. “**Act**”means the Town and Country Planning Act 1990 (as amended);
4. “**Appeal**” means an appeal to the Secretary of State following the refusal of the Planning Application by the Council which has been given appeal reference number APP/L3245/W/23/3332543.
5. “**Application Site**” means the land edged red on the Plan;
6. “**Commencement of Development**”means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development except for the construction of site access as set out on drawing 111182-10-01 dated 05/22 submitted with the Planning Application begins to be carried out and the use of the terms “**Commence Development**” and “**Commence the development**” and “**Commenced**” and “**Commencement** **Date**” shall be construed accordingly;
7. “**Deed**” means this unilateral undertaking;
8. “**Development**” means development pursuant to the Planning Permission described as erection of an up to 30 MW Solar PV Array, comprising ground mounted solar PV panels, vehicular access, internal access tracks, landscaping and associated infrastructure, including security fencing, CCTV, client storage containers and grid connection infrastructure, including substation buildings and off-site cabling;
9. “**Inspector**” means the inspector appointed on behalf of the Secretary of State to determine the Appeal;
10. “**Mitigation Site**” means the land edged blue on the Plan;
11. “**Owners**” means the First Owner and the Second Owner;

“**Parties**” means the parties to this Deed;

1. “**Plan**”meansthe plan attached to this Deed at ‎Schedule 2;
2. “**Planning Application**”means the application made by the Developer to the Council for the Development validated by the Council on 27 September 2022 under reference number 22/04355/FUL;
3. “**Planning Permission**”means the Planning Permission that may be granted by the Inspector or the Secretary of State for the Development pursuant to the Appeal in the event that the appeal against refusal is upheld;
4. “**Secretary of State**” means the Secretary of State for Levelling Up, Housing and Communities (or any successor secretary of state from time to time);
5. “**Skylark Mitigation Strategy**” means the skylark mitigation strategy secured by way of planning condition attached to the Planning Permission and based on the principles set out in the Skylark Mitigation and Management Plan dated 1 May 2023 and attached to this Deed at ‎Schedule 3 as may be amended from time to time in writing as agreed in writing by the Council at its absolute discretion.
	1. Interpretation
		1. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
		2. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
		3. References to persons include firms’ companies’ corporations authorities or other bodies and vice versa.
		4. References to Acts of Parliament statutory instruments or Government circulars or sections or paragraphs of such Acts statutory instruments or government circulars include any re-enactments amendments or replacements of them 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.
		5. The references to the parties named in this Deed shall, unless the context otherwise requires, include their successors in title and assigns and in the case of any local authority shall also include any successor in function.
		6. The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed.
		7. References to clauses are to the clauses of this Deed.
		8. References to Application Site or Mitigation Site shall include any part of it unless the context otherwise requires.
		9. If any provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.
		10. Wherever there is more than one person named as a party and where an obligation falls to be performed by more than one person, the obligations can be enforced against every person so bound jointly and against each individually unless there is an express provision otherwise.
		11. Any covenant on the Owners and/or the Mortgagee not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
	2. Statutory provisions
		1. This Deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 Localism Act 2011 and any other enabling powers.
		2. The obligations contained at ‎Schedule 1 to this Deed are planning obligations enforceable by the Council for the purposes of Section 106 of the Act and are entered into by the Owners and the Mortgagee with the intention that they bind the interests held in the Application Site held by the First Owner and the Second Owner and their respective successors and assigns and the Mitigation Site held by the Second Owner and its respective successors and assigns.
		3. The obligations in this Deed are conditional upon the grant of the Planning Permission by the Inspector or the Secretary of State pursuant to the Appeal save for the provisions of clauses ‎7, ‎8, ‎12 and ‎13 which come into effect at the date of this Deed.
		4. In the event that the Inspector concludes in the Decision Notice that any of the planning obligations set out in ‎Schedule 1 to this Deed are not required and/or are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to that obligation in determining the Appeal then the relevant obligation shall from the date of the Decision Notice cease to have effect as set out in the Decision Notice and the Parties shall be under no obligation to comply with the relevant obligation in this Deed.
		5. Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site or Mitigation Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
		6. No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Application Site or the part of the Application Site in respect of which such breach occurs, or the Mitigation Site or the part of the Mitigation Site in respect of which such breach occurs but they will remain liable for any antecedent breaches of this Deed which occurred prior to parting with such interest.
		7. The First Owner enters into this Deed with the effect of binding the Application Site and the Second Owner enters into this Deed with the effect of binding the Application Site and the Mitigation Site. The Mortgagee enters into this Deed to give its consent and agrees that its interest in part of the Application Site shall be bound by the terms of this Deed as if it has been registered as land charge prior to the creation of the Mortgagee’s interest in the Application Site, subject to the terms of clause ‎9 of this Deed.
	3. Future planning consents and approvals
		1. In the event that any new planning permission is granted by the Council or an Inspector or the Secretary of State varying or removing conditions on the Planning Permission pursuant to section 73 of the Act, save and in so far as this Deed has been amended by way of a deed of variation prior to the grant of such planning permission, with effect from the date that any new planning permission is granted pursuant to section 73 of the Act:
			1. the obligations in this Deed shall (in addition to continuing to bind the Development) relate to and bind all subsequent planning permissions without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to section 106 of the Act; and
			2. the definitions of Planning Permission, Planning Application and Development in this Deed shall be construed to include references to any planning permissions granted under section 73 of the Act and the development permitted by such subsequent planning permission.
	4. The Owners Covenants
		1. The Owners and the Mortgagee covenant with the Council as set out in ‎Schedule 1 to this Deed.
	5. Determination of deed
		1. This Deed shall be determined and have no further effect if the Planning Permission:
			1. expires;
			2. is varied or revoked other than at the request of the Developer; or
			3. is quashed following a successful legal challenge.
	6. Local land charge

This Deed is a local land charge and may be registered as such by the Council.

* 1. Third parties

No provisions of this Deed shall be enforceable under the Contract (Rights of Third Parties) Act 1999.

* 1. Mortgagee Protection

No mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver) shall be liable for any breach of this Deed unless it takes possession of the Application Site or the Mitigation Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owners as if it had been executed and registered as a land charge prior to the creation of the mortgagee’s interest in the Site.

* 1. Dispute resolution
		1. Subject to Clause ‎10.2 below in the event of any dispute or difference arising between the Parties to this Deed touching or concerning any matter or thing arising out of this Deed such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and shall receive representations from the Parties in dispute and his decision shall be final and binding on the Parties to the dispute or difference (except in the case of manifest error or fraud) and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares (and if one party shall bear more than their due proportion they may recover the excess from the other as a debt).
		2. In the absence of agreement between the Parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to Clause ‎10.1 above or as to the appropriate professional body within 14 Working Days after any party has given to the other Parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to Clause ‎10.1 above then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares (and if one party shall bear more than their due proportion they may recover the excess from the other as a debt).
	2. Indemnity
		1. In consideration of the Owners entering into this Deed on the date hereof the Developer hereby indemnifies and shall keep the Owners indemnified against all or any losses, costs, claims, liabilities, expenses and demands arising from:
			1. all obligations of the Owners under this Deed;
			2. any breach or non-performance of the obligations of the Developer under this Deed;

save for where such losses, costs, claims, liabilities, expenses and demands arise out of any:

* + - 1. negligent act of the Owners;
			2. breach or non-performance of any of the obligations contained in paragraphs ‎1 and ‎3 of ‎Schedule 1 to this Deed by the Owners; or
			3. are caused by the Owners allowing Commencement of Development by persons under its control without the prior written approval of the Developer.
	1. Governing law

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.

* 1. Costs

The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1,213.20.

* 1. Waiver

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

* 1. Change in ownership

The Owners shall give to the Council as soon as practicably possible written notice of any change in ownership of any of their interests in the Application Site or Mitigation Site 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 Application Site or Mitigation Site by reference to a plan.

1. Owners’ Covenants

The Owners covenant (to the extent that such obligations are applicable to their respective interests in the Mitigation Site and/or the Application Site, as relevant) with the Council:

* + - 1. Prior to Commencement of Development to implement the Skylark Mitigation Strategy secured by way of planning condition attached to the Planning Permission;
			2. Not to Commence Development unless and until the Skylark Mitigation Strategy has been implemented in full and written confirmation of such implementation has been issued to the Council; and
			3. To maintain the Skylark Mitigation Strategy for the lifetime of the Development.
1. The Plan
2. Skylark Mitigation and Management Plan

**IN WITNESS** whereof this instrument has been executed as a Deed by the parties to this Deed the day and year first before written

Signed as a deed by )

**JUSTIN RICHARD STEVENSON** )

In the presence of: )

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Signed as a deed by )

**JOSHUA EUAN NICHOLAS LOVEGROVE-FIELDEN**)

In the presence of: )

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Signed as a deed by )

**SIR CHARLES ANTHONY CULCHETH HOLCROFT BT**)

In the presence of: )

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Executed as a deed by )

**ECONERGY INTERNATIONAL LIMITED** )

acting by a director )

In the presence of: )

 Director

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Executed as a deed by affixing

THE COMMON SEAL of )

**LLOYDS BANK PLC** )

in the presence of )

Authorised Signatory