

AN UNDERTAKING DATED

2024

GIVEN BY:

(1) [REDACTED]

(2) [REDACTED]

(3) **CLYDESDALE BANK PLC**

TO:

(4) **EAST HERTFORDSHIRE DISTRICT COUNCIL**

(5) **UTTLESFORD DISTRICT COUNCIL**

WITH THE CONSENT OF:

(6) **ENDURANCE ENERGY WICKHAM HALL LIMITED**

**Planning obligation by unilateral undertaking under Section 106 of the
Town and Country Planning Act 1990
relating to land at Wickham Hall Estate Hadham Road Bishops Stortford Hertfordshire
CM23 1JG**

 **HOWES
PERCIVAL**

Flint Buildings
1 Bedding Lane
Norwich
Norfolk
NR3 1RG
Tel: 01603 762103
Fax: 01603 762104

BY

(1) [REDACTED]
[REDACTED]
[REDACTED] ("**First Owner**"); and

(2) [REDACTED]
 ("**Second Owner**"); and

(3) **CLYDESDALE BANK PLC** trading as Clydesdale Bank and Yorkshire Bank and Virgin Money (Co. Regn. No. SC001111) whose registered office is situated at 30 St Vincent Place, Glasgow G1 2HL and whose address for service is Business Fulfilment Team - Securities, Virgin Money, 7 - 8 North Avenue, Clydebank, G81 2NT ("**Chargee**");

TO

(4) **EAST HERTFORDSHIRE DISTRICT COUNCIL** of Wallfields, Pegs Lane, Hertford, SG13 8EQ ("**EHDC**");

(5) **UTTLESFORD DISTRICT COUNCIL** of Council Offices, London Road, Saffron Walden, Essex, CB11 4ER ("**UDC**");

WITH THE CONSENT OF:

(6) **ENDURANCE ENERGY WICKHAM HALL LIMITED** (Co. Regn. No. 13605363) whose registered office is situated at Unit 1 Burlington Park, Station Road, Foxton, Cambridge, England, CB22 6SA ("**Applicant**").

THIS UNDERTAKING is given on

2024

RECITALS

- 1 For the purposes of the 1990 Act EHDC is the local planning authority for the area within which the Construction Access Land is located is entitled to enforce the obligations contained in this Deed requiring compliance within its administrative area.
- 2 For the purposes of the 1990 Act UDC is the local planning authority for the area within which the Solar Farm Site is located is entitled to enforce the obligations contained in this Deed requiring compliance within its administrative area.
- 3 The First Owner is the registered proprietor of the Construction Access Land.
- 4 The Second Owner is the registered proprietor of the Solar Farm Site.
- 5 The Chargee is the proprietor of the following charges :
 - dated 7 December 2012 referred to in entry number 18 of the charges register of title number HD381853 relating to the Construction Access Land;
 - dated 7 December 2012 referred to in entry number 7 of the charges register of title number HD501304 relating to the Construction Access Land and the Solar Farm Site; andand the Chargee has agreed to enter into this Deed in order to consent to the terms hereof.
- 6 The Applicant has the benefit of a promotion agreement in relation to the Construction Access Land and the Solar Farm Site dated 5 April 2022 and the Applicant has applied to register this interest against title numbers HD381853 and HD501304 at the Land Registry.
- 7 The EHDC Solar Farm Permission was granted by EHDC on 19 December 2023 and the EHDC Solar Farm Permission approves the principle of using a route including the Construction Access Land as the construction access for the EHDC Solar Farm Development.
- 8 The Applicant submitted the Construction Access Application to EHDC and the Solar Farm Application to the Planning Inspectorate.

- 9 On [●] EHDC [resolved to grant/granted] the Construction Access Permission.
- 10 The Solar Farm Application is to be determined by a person appointed by the Secretary of State under the provisions set out in section 76D of the 1990 Act.
- 11 The Parties enter into this Deed to make provision for regulating the use of the Construction Access Land and the Solar Farm Site and securing the planning obligations contained within this Deed should the Solar Farm Application be granted.
- 12 The Owners and the Applicant are prepared to enter into this deed in order to secure the planning obligations it creates.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- | | |
|-------------------------------|--|
| “1990 Act” | the Town and Country Planning Act 1990; |
| “CIL Tests” | the tests set out in Regulation 122(2) of the CIL Regulations; |
| “CIL Regulations” | the Community Infrastructure Regulations 2010; |
| “Commencement Date” | means the date Commencement of Development occurs; |
| “Commencement of Development” | the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Solar Farm Development begins to be carried out on the Solar Farm Site pursuant to the Solar Farm Permission other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions and the temporary display of site notices or advertisements and “Commence” and “Commencement” and “Commence Development” shall be construed accordingly; |
| “Construction Access” | means the construction access route for the Solar Farm Development over the Construction Access Land; |

“Construction Access Application”	means the application for full planning permission validated by the EHDC on [●] and allocated reference number [●];
“Construction Access Land”	means land at Wickham Hall Estate, Hadham Road, Bishops Stortford Hertfordshire CM23 1JG registered under title numbers HD501304 and HD381853 which is shown [as a dashed blue line] on the Construction Access Land Plan for identification purposes only;
“Construction Access Land Plan”	the drawing titled “[Site Layout Plan]” and given drawing number “[H5234 D03 Rev K]” attached to this Deed at Schedule 1;
“Construction Access Permission”	the planning permission to be issued by EHDC pursuant to the Construction Access Application or any variation to that permission granted pursuant to an application under Section 73 of the 1990 Act;
“Construction Access Scheme”	means the use of the Construction Access as the means of accessing the Solar Farm Site for all construction traffic and deliveries relating to the Solar Farm Development at all times during the Construction Period (unless otherwise agreed in writing by EHDC and UDC);
“Construction Period”	means the period between (i) the Commencement Date; and (ii) the Date of First Use;
“Date of First Use”	means the date on which the First Use occurs;
“Decision Letter”	the decision letter issued by the person appointed by the Secretary of State pursuant to section 76D of the 1990 Act confirming

	whether or not the Planning Application is granted;
“EHDC Solar Farm Development”	means development of land to the west of the Solar Farm Site pursuant to the EHDC Solar Farm Permission;
“EHDC Solar Farm First Use Date”	means the date on which the EHDC Solar Farm Development is ready for use for the generation of electricity;
“EHDC Solar Farm Permission”	means the planning permission granted by EHDC on 19 December 2023 under reference 3/21/2601/FUL or any variation to that permission granted pursuant to an application under Section 73 of the 1990 Act or a replacement permission;
“First Use”	means the Development is ready for Use;
“Inspector”	a person appointed by the Secretary of State to determine the Planning Application;
“Owners”	means together the First Owner and Second Owner;
“Planning Inspectorate”	the executive agency sponsored by the Department for Levelling Up, Housing and Communities entitled to exercise the powers conferred by the 1990 Act;
“Practically Complete”	means completion of the provision of the Construction Access in accordance with the Construction Access Permission so that it may be used to comply with the Construction Access Scheme and “Practically Completed” and “Practical Completion” shall be construed accordingly;

“Secretary of State”	the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and including any successor in function;
“Section 73 Consent”	means a planning permission granted pursuant to section 73 of the Act which varies and/or removes any condition to which the Construction Access Permission or the Solar Farm Permission (as appropriate) is subject to and/or to which such planning permission granted pursuant to section 73 of the Act was granted;
“Solar Farm Application”	means the application made by the Applicant and registered by the Planning Inspectorate with reference S62A/2024/[●] for the development of [●];
“Solar Farm Development”	means the development authorised by the Solar Farm Permission;
“Solar Farm Permission”	means the planning permission as may be granted pursuant to the Solar Farm Application or any variation to that permission granted pursuant to an application under Section 73 of the 1990 Act;
“Solar Farm Plan”	drawing marked “[●]” and given drawing number [●] attached to this Deed at Schedule 1;
“Solar Farm Site”	the part of the land at Wickham Hall Estate Hadham Road Bishops Stortford Hertfordshire CM23 1JG registered under title number HD501304 and shown edged [●] on the Solar Farm Plan for identification purposes only;

“Statutory Undertaker“	means any statutory undertaker (other than the Owners and any successor to the Owners operating the Development) who occupies the Construction Access Land or Solar Farm Site in their capacity as a statutory undertaker for purposes related to their function as a provider of the supply of utility services that is not associated with the Use;
“Use”	means use of the Development for the generation of electricity;
“Working Day”	means any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between Christmas Day and New Year’s Day

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, sub-clause, schedule, paragraph, sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause, sub-clause, schedule, paragraph, sub-paragraph or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Subject to Clause 5, 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.
- 2.5 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.

- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and references to EHDC and UDC shall include their respective successors to its statutory functions.
- 2.7 The headings are for reference only and shall not affect the construction of this Deed.
- 2.8 Any covenant by any of the Owners not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2 The covenants restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by EHDC and UDC as local planning authorities against the Owners and their successors in title.
- 3.3 This Deed is a local land charge and upon completion shall be registrable by EHDC and UDC as such.

4 CONDITIONALITY

This Deed is conditional upon:

- 4.1 the grant of the Solar Farm Permission; and
- 4.2 the Commencement of the Development.

Save for the provisions of this clause and clauses 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13 which shall come into effect immediately on completion of this Deed

5 THE OWNERS' COVENANTS

- 5.1 Subject to Clause 6.6, the Owners covenant with the EHDC and UDC (as appropriate) for themselves and their successors in title to observe and perform the obligations and stipulations contained in this Deed and the covenants as set out in Schedule 2.

6 MISCELLANEOUS

- 6.1 The Owners shall comply with any reasonable requests of EHDC or UDC and their duly authorised officers or agents to have reasonable access to any part of the Construction Access Land or Solar Farm Site (for the purposes of inspection only) or any reasonable requests to provide documentation within the Owners' possession (at the Owners' expense) for the purposes of monitoring compliance with the obligations contained herein.
- 6.2 The Owners declare and covenant to EHDC and UDC to observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Deed.
- 6.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.4 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.
- 6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Solar Farm Permission shall be quashed, revoked or otherwise withdrawn or (without the written consent of the Owners or the Applicant) it is modified by any statutory procedure (other than by pursuant to section 73 of the 1990 Act) or expires prior to the Commencement of Development.
- 6.6 No person or entity shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Construction Access Land or Solar Farm Site or the part of the Construction Access Land or the part of the or Solar Farm Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the reservation of any rights or the inclusion of any covenants in any transfer shall not constitute an interest for the purposes of this clause.
- 6.7 None of the covenants in this Deed shall be enforceable against any Statutory Undertaker who acquires any part of the Construction Access Land or Solar Farm Site or interest therein in its capacity as a Statutory Undertaker.

- 6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Construction Access Land or Solar Farm Site in accordance with a planning permission other than the Construction Access Permission or the Solar Farm Permission.
- 6.9 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of EHDC or UDC under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities.
- 6.10 Any mortgagee shall be liable only for any breach of the provisions of this Deed during such period as he is a mortgagee in possession of the Construction Access Land or Solar Farm Site (as appropriate).
- 6.11 If in determining the Solar Farm Application the Secretary of State or the Inspector expressly states in the Decision Letter that any planning obligation or any part of any planning obligation contained in this Deed:

6.11.1 is not a material planning consideration; and/or

6.11.2 can be given no weight in determining the Solar Farm Application; and/or

6.11.3 does not constitute a reason for granting Permission in accordance with the CIL Tests; and/or

6.11.4 is otherwise inappropriate or unnecessary; and/or

6.11.5 are secured by or imposed as a planning condition on the Solar Farm Permission,

then subject to Clause 6.4 of this Deed such planning obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the Decision Letter

7 WAIVER

No waiver (whether expressed or implied) by EHDC, UDC, the Owners or the Applicant 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 EHDC, UDC, the Owners or the Applicant (as appropriate) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 CHANGE IN OWNERSHIP

The Owners covenant with EHDC and UDC to give them both written notice of any transfer in ownership of any of its freehold interests in the Construction Access Land or Solar Farm Site such notice to be served within twenty one (21) Working Days of such transfer and 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 Construction Access Land or Solar Farm Site (as appropriate) by reference to a plan PROVIDED THAT this obligation shall not apply to the transfer or grant of leases of electricity sub-stations or gas governors or the like.

9 CHARGEES CONSENT

The Chargee acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Construction Access Land and the Solar Farm Site shall be bound by the planning obligations, Undertakings and covenants contained in this Deed and that the security of the mortgage over the Construction Access Land and the Solar Farm Site shall take effect subject to this Deed PROVIDED THAT the Chargee shall otherwise have no liability under this Deed unless it takes possession of the Construction Access Land and the Solar Farm Site in which case they too will be bound by the planning obligations, Undertakings and covenants as if they were a person deriving title from the Owners.

10 NOTICES

10.1 Any notice shall be deemed to be served if delivered personally or sent via recorded delivery as follows:

10.1.1 EHDC: Legal Services Manager, East Hertfordshire District Council, Wallfields, Hertford SG13 8EQ

10.1.2 UDC: Assistant Director Planning and Building Control and posted to Uttlesford District Council, London Road, Saffron Walden, Essex, CB11 4ER

10.1.3 First Owner: [REDACTED]
[REDACTED]
[REDACTED]

10.1.4 Second Owner: [REDACTED]
[REDACTED]

10.1.5 Chargee: Business Lending Services, 20 Merrion Way, Leeds LS2 8NZ

11 SECTION 73 CONSENT

11.1 If any Section 73 Consent is granted after the date of this Deed:-

11.1.1 the planning obligations in this Deed shall automatically relate to and bind such Section 73 Consent from the date of the grant of the Section 73 Consent (in addition to continuing to bind the Construction Access Land in respect of the Construction Access Permission or the Solar Farm Site in respect of the Solar Farm Permission (as appropriate)) without the need to enter into any subsequent deed of variation or new deed pursuant to section 106 or section 106A of the 1990 Act;

11.1.2 the definitions of "**Application**", "**Development**", and "**Planning Permission**" (other than for the purpose of Clause 1) shall be construed to include reference to (respectively and as appropriate) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself; and

11.1.3 this Deed shall be endorsed with the following words in respect of any Section 73 Consent:-

"the planning obligations and undertakings in the Deed relate to and bind the [Construction Access Land / Solar Farm Site] in respect of which a new planning permission reference [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

provided that:-

11.1.4 nothing in this Clause shall fetter the discretion of EHDC or UDC (as appropriate) in determining any planning application for a Section 73 Consent and the appropriate planning obligations, other obligations and undertakings required in connection with the determination of the same;

11.1.5 to the extent that any of the planning obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

- 11.1.6 EHDC and UDC (as appropriate) reserve the right to require the completion of a separate planning obligation that could include other obligations and undertakings by deed of agreement or deed of variation in connection with any Section 73 Consent if either or both (acting reasonably) consider it desirable and necessary to do so.
- 11.2 In the event of different planning obligations or other obligations or undertakings agreed by EHDC and UDC being binding on any Section 73 Consent pursuant to Clause 11.1.6 above, this Deed shall not apply to that Section 73 Consent if that separate deed expressly states that it is in substitution (or partial substitution) for the undertakings contained in this Deed.

12 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the Owners submits to the non-exclusive jurisdiction of the courts of England.

13 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

SCHEDULE 1

Construction Access Land Plan

Solar Farm Plan

SCHEDULE 2

Construction Route Obligations

- 1 The Owners hereby covenant with EHDC as follows (unless otherwise agreed in writing by EHDC):
 - 1.1 To use the Construction Access in accordance with the Construction Access Scheme for all construction traffic and deliveries associated with the construction of the Development during the Construction Period
 - 1.2 From the later of:
 - 1.2.1 the Date of First Use; or
 - 1.2.2 the EHDC Solar Farm First Use Date

the Owner shall remove any physical works carried out in order to use the Construction Access and restore the Construction Access to the condition it was in before the Construction Access was first used pursuant to the Construction Access Scheme within three months (or such other period as may be agreed with EHDC in writing)
 - 1.3 Not to use the Construction Access for access or egress to or from the Solar Farm Site from the Date of First Use
- 2 The Owners hereby covenant with UDC as follows (unless otherwise agreed in writing by UDC):
 - 2.1 Not to Commence the Development unless and until the Construction Access is Practically Complete and is available for use for all construction traffic and deliveries required for the Development during the Construction Period
 - 2.2 Not to carry out the Development otherwise than in accordance with the Construction Access Scheme

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

EXECUTED as a DEED by)
[REDACTED] in)
the presence of:) _____

Witness signature) _____

Name) _____

Address) _____

Occupation:) _____

EXECUTED as a DEED by)
[REDACTED] in)
the presence of:) _____

Witness signature) _____

Name) _____

Address) _____

Occupation:) _____

EXECUTED as a DEED by)
[REDACTED] in)
the presence of:) _____

Witness signature) _____

Name) _____

Address) _____

Occupation:) _____

EXECUTED and DELIVERED)
as a Deed by **ENDURANCE ENERGY**)
WICKHAM HALL LIMITED)
acting by a director in the presence of:)

.....

Director

Signature of witness.....

Name of witness (block capitals).....

Witness address.....

.....

Witness occupation.....

EXECUTED AS A DEED for and on behalf of)

CLYDESDALE BANK plc (trading as Clydesdale Bank and)

Yorkshire Bank and Virgin Money))

acting by its duly authorised signatory)

.....

Authorised signatory

In the presence of)

.....

Witness

.....

Full name: