

DATED

2022

EAST LINDSEY DISTRICT COUNCIL

and

ENVIRONMENT AGENCY

A G R E E M E N T

**Under Section 30
Anglian Water Authority Act 1977
relating to**

Colonnade Pleasure Gardens, Sutton on Sea, Mablethorpe, Lincolnshire

Environment Agency
Kingfisher House, Goldhay Way
Orton Goldhay, Peterborough, PE2 5ZR

THIS AGREEMENT is made the _____ day of _____ 2022

BETWEEN

- (1) **EAST LINDSEY DISTRICT COUNCIL** of Tedder Hall, Manby Park, Louth, Lincolnshire, LN11 8UP (“the Owner” which expression shall include its successors or assigns); and
- (2) **ENVIRONMENT AGENCY** of Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, PE2 5ZR (“the Agency” which expression shall include its successors or assigns)

Individually referred to as “the Party” and together referred to as “the Parties”.

WHEREAS:-

- (1) The Owner is the registered proprietor with title absolute of ALL THAT Property known as Colonnade Pleasure Gardens, Sutton on Sea, Mablethorpe, Lincolnshire registered under title number LL253415 and is shown for the purposes of identification only edged red on the attached Plan (“the Property”).
- (2) The sea defence (“the Sea Defence”) runs through and is adjacent to part of the Property as shown for the purposes of identification only, edged blue on the attached Plan. The Sea Defence is under the jurisdiction of the Agency and thus subject to the provisions of the Environmental Permitting (England and Wales) Regulations 2016.
- (3) Under the Environmental Permitting (England and Wales) Regulations 2016 (“the EP Regulations 2016”), an environmental permit is required from the Agency to carry out a Flood Risk Activity, unless such activity is excluded or exempt.
- (4) The Owner wishes to construct structures on and adjacent to the Sea Defence. This activity is a Flood Risk Activity under paragraph 3(h)(ii) of Part 1 of Schedule 25 to the EP Regulations 2016 as it is an activity within 16 metres of the base of a sea defence which is likely to interfere with the Agency’s access

to or along the sea defence and therefore the Owner requires an environmental permit.

(5) The Agency is concerned that the position of these structures may restrict the Agency's access to the Sea Defence and/or may limit construction options and may require the Agency to incur Additional Expenditure in exercising its powers to carry out Flood Defence Works.

(6) The Owner has agreed to enter into this Agreement to address these concerns.

Accordingly **IT IS AGREED** between the parties as follows:-

1. In this Agreement:

1.1 The following expressions shall, unless the context otherwise requires, have the following meanings:

Actual Cost	The actual costs and expenses incurred by the Agency in carrying out Flood Defence Works in relation to the Sea Defence as duly certified by the Finance Manager.
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Additional Expenditure	The difference between the Actual Cost and the Alternative Cost, where the Actual Cost exceeds the Alternative Cost PROVIDED ALWAYS THAT Additional Expenditure shall only relate to costs incurred during the Financial Liability Period and the total Additional Expenditure payable shall not exceed the Financial Liability Cap.
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Additional Expenditure Notice	means written notice provided to the Owner in accordance with clause 2.5 setting out the
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amount of the Additional Expenditure and the associated evidence required in accordance with clause 2.6.

Agreement	This agreement.
Alternative Cost	The estimated cost of carrying out such Flood Defence Works had the Structure not interfered with the Agency's access to or along the Sea Defence and/or construction options.
Beach Huts	means the beach huts and supporting structure to be constructed by way of indication on the Plan hatched green
Bond	means in the event of a disposal in accordance with clause 12 of this Agreement an agreement with a bondsman or guarantor will be entered into with the Agency to secure the Financial Liability Cap sum (or such reduced sum as to account for any payments made to the Agency under clause 2 of this Agreement)
Colonnade	means the colonnade structures proposed to be constructed on the Property at the location as shown by way of indication on the Plan edged in green
Commencement Date	means the date of this Agreement
Council Surety	means in the event of a disposal in accordance with clause 12 of this Agreement East Lindsey District Council will enter into a further agreement

to act as a surety to the new owner and remain a party to this Agreement accordingly

Expert

means a person appointed by the Parties by engineers nominated by the President for the time being of the Institute of Civil Engineers qualified to act as an expert in relation to the dispute having not less than ten years' professional experience

Emergency Works

Works required to be carried out as a result of an event declared under the Civil Contingencies Act 2004 requiring an immediate response that necessitates any works of maintenance, repair, improvement, renewal or replacement to or in relation to the Sea Defence

Escrow Account

means in the event of a disposal in accordance with clause 12 of this Agreement an escrow account to hold a sum equal to the Financial Liability Cap (or such reduced sum as to account for any payments made to the Agency under clause 2 of this Agreement)

Exceptional Event

means any circumstance not within a Party's reasonable control including, without limitation:
(a) acts of God, flood, drought, earthquake or other natural disaster;

(b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(c) nuclear, chemical or biological contamination or sonic boom;

(d) collapse of buildings, fire, explosion or accident;

Final Additional Expenditure Cost means:

= where the Owner does not request any validation in accordance with either clause 2.7 or 2.8, the amount set out in the Additional Expenditure Notice; OR

= where the Owner has requested validation under either clause 2.7 or 2.8 the amount set out in the Additional Expenditure Notice as revised by changes to the Actual Cost and/or the Additional Cost in accordance with the validation process followed under clauses 2.7 and/or 2.8

PROVIDED ALWAYS that this cost shall be subject to the Financial Liability Cap

Finance Manager

Defra Business Finance Operations Manager.

Financial Liability Area	The extent of land where the liability to pay the Additional Expenditure applies, as shown by way of indication on the Plan edged orange
Financial Liability Period	means 50 years from the date of this Agreement
Financial Liability Cap	the sum of £750,000 (seven hundred and fifty thousand pounds) which shall be the maximum total sum payable by the Owner over the Financial Liability Period
Flood Risk Activity	An activity listed under paragraph 3, Part 1 of Schedule 25 to the EP Regulations 2016 .
Flood Defence Works	Means any works of maintenance, repair, improvement, renewal or replacement to or in relation to the Sea Defence carried out by the Agency
Plan	means the plan showing the Property, Financial Liability Area, the Sea Defence, the Colonnade and Beach Huts appended at Schedule 1 to this Agreement.
Removal Date	means the date that the whole of the part of the Structure which is above ground level is removed

Structure means the Colonnade and the Beach Huts to be constructed on the Property at the location as shown by way of indication on the Plan edged in green

Termination Date means:
= the Removal Date;

Validation Notice means a notice provided to the Owner by the Agency setting out the Final Additional Expenditure Cost following completion of the validation processes under clause 2.7 and 2.8

Working Day means any day apart from a Saturday Sunday or any statutory bank holiday in England.

1.2 Words importing one gender include all other genders and words importing the singular include the plural and vice versa; words importing persons include firms partnerships companies and corporations and vice versa.

1.3 Where any Party to this Agreement for the time being comprises two or more persons obligations expressed or implied to be made by or with that Party are deemed to be made by or with the persons comprising that party jointly and severally.

1.4 Any reference in this Agreement to a clause paragraph or schedule without further designation is to be construed as a reference to the clause paragraph or schedule of this Agreement so numbered.

1.5 In the event that any provision of this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement.

1.6 Any reference to an enactment includes a reference to it as amended (whether before, or after the date of this Agreement) and to any other enactments which may, after the date of this Agreement, directly or indirectly replace it, with or without amendment.

1.7 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.

2. Expenditure related to Flood Defence Works

2.1 Prior to carrying out any Flood Defence Works within the Financial Liability Area and Financial Liability Period that will create any Additional Expenditure the Agency shall:

2.1. 2. take into account any representations made by the Owner; and

2.1.3 provide the Owner with costed estimates of the Additional Expenditure likely to be incurred

2.2 The Agency will use reasonable endeavours to minimise any Additional Expenditure and minimise the area of Structure to be removed WITHOUT PREDJUDICE to the reservation by the Agency of the right to carry out any Flood Defence Works deemed necessary regardless of the costs incurred

2.3 Having complied with clause 2.1 and 2.2 above the Agency shall provide written notice (“the Confirmation Notice”) to the Owner seeking confirmation of whether the Owner intends to:

2.3.1 remove the Structure (or the relevant part of it) at their own expense; or

2.3.2 pay the costs of the Additional Expenditure.

2.4 The Owner shall respond to the Confirmation Notice within:

2.4.1 5 Working Days for Emergency Works; and

2.4.2 20 Working Days for all other Flood Defence Works

confirming whether it will remove the Structure (or part thereof) or will pay the Additional Expenditure.

2.5 In the event that the Owner has confirmed to pay the Additional Expenditure (in accordance with clause 2.4 above) and following completion of the Flood Defence Works the Agency will provide the Additional Expenditure Notice to the Owner

2.6 The Additional Expenditure Notice shall include:

2.6.1 evidence of the Alternative Costs in the form of an engineer’s estimate prepared as part of the Flood Defence Works; and

2.6.2 evidence of the Actual Costs certified by the Finance Manager

2.7 If the Owner requires validation of the Alternative Costs provided in accordance with Clause 2.6.1 it may request such validation within 15 Working Days of receipt of the Alternative Costs

2.7.1 Any validation requested shall be provided by:

2.7.1.1 consulting engineers to be appointed by the Parties; or

2.7.1.2. if engineers cannot be agreed and appointed by the Parties by engineers nominated by the President for the time being of the Institute of Civil Engineers.

2.7.2 the Agency shall provide any such information as shall be requested by the consulting engineers

2.8 If the Owner requires validation of the Actual Costs provided in accordance with Clause 2.6.2 it may request such validation within 15 Working Days of receipt of the Actual Costs

2.8.1 Any validation requested shall be provided by:

2.8.1.1 consulting engineers to be appointed by the Parties; or

2.8.1.2. if engineers cannot be agreed and appointed by the Parties by engineers nominated by the President for the time being of the Institute of Civil Engineers.

2.8.2 the Agency shall provide any such information as shall be requested by the consulting engineers

2.9 The Owner shall pay the Final Additional Expenditure Cost within 30 Working Days of the receipt of the Additional Expenditure Notification EXCEPT where the Owner requires validation in accordance with clauses 2.7 and/or 2.8 in which case the Final Additional Expenditure Cost shall be due within 20 Working Days of receipt the Validation Notice

2.10 If the Owner fails to pay the Final Additional Expenditure in accordance with Clause 2.9 then the Owner will also pay interest on the outstanding sum at a rate of 2% above the base lending rate of National Westminster Bank plc from time to time for each day or part day that payment is late until the Additional Expenditure is paid in full.

2.11 Subject to any Exceptional Events no Flood Defence Works that require Additional Expenditure will be carried out before 1 April 2027.

3 BEACH HUTS

3.1. For the avoidance of doubt the Owner shall be able to re-instate the Beach Huts following completion of the relevant Flood Defence Works.

DAMAGE TO AND REPAIR OF THE STRUCTURE

4. If the Structure become dangerous or unstable the Owner shall either:
 - (i) Repair the Structure (or relevant part of it) at their own expense but not as to extend or enlarge the Structure and only to return the Structure to its original state; or
 - (ii) Remove the Structure (or relevant part of it) at their own expense making good any damage caused to the Sea Defence to the reasonable satisfaction of the Agency.

5. For the avoidance of doubt the Owner may decide to remove the Structure at their own expense at any time.

MISCELLANEOUS

6. No compensation shall be payable by the Agency under the provisions of Schedule 21 to the Water Resources Act 1991 or otherwise for any injury sustained to the Structure or Property by reason of the exercise by the Agency of its statutory powers in relation to the Sea Defence where the injury would not have been sustained had the Structure not been constructed and for the avoidance of doubt no compensation shall be payable by the Agency in respect of any economic loss sustained by the Owner as a result of the interference with the Structure.

7. No condoning excusing or overlooking by or on behalf of the Agency of any breach of the covenants provisions conditions restrictions or stipulations contained in this Agreement shall take effect or be binding upon the Agency unless expressed in writing under the authority of the Agency and any waiver so given shall extend only to the particular breach so raised and shall not limit or affect any rights with regard to any other or future breach.
8. Nothing in this Agreement shall affect or limit in any way the exercise by the Agency of its statutory powers and duties under the Environment Act 1995, the Water Resources Act 1991, the EP Regulations 2016, the Anglian Water Authority Land Drainage and Sea Defence Byelaws and all other enabling legislation nor impose upon the Agency any obligation to exercise them in a particular way.
9. This Agreement is made without prejudice to any consent that may be required under the EP Regulations 2016, the Land Drainage Act 1991, or any other relevant legislation. For the avoidance of doubt, an environmental permit will be required under the EP Regulations 2016 for any provisions under the Agreement for the reinstatement, repair or removal of the Structure or any part thereof
10. This Agreement is made under Section 30 of the Anglian Water Authority Act 1977 the terms of which are set out in Schedule 2 to this Agreement and shall (subject to clause 11) be binding (without limit of time) upon the Owner and all persons deriving title to the Property (or any part of it) and the Agreement may be registered by the Agency as a Local Land Charge
11. The obligations in this Agreement shall not be enforceable against a person with a legal interest in the Property after they have disposed of their entire interest in the

Property but not so as to release them from any antecedent breach, non-performance or non-observance of their obligations arising before they part with their interest

12. In the event that the Owner disposes of their freehold interest in the Property the Owner will not complete any such disposal without requiring as a condition of the disposal that the new owner enters into one of the following mechanisms (such mechanism to be determined by the Owner):

12.1 Council Surety; or

12.2 Bond; or

12.3 Escrow Account.

14. The construction validity and performance of this Agreement shall be governed by English law.

15. It is the intention of the Parties that no person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

16. This Agreement shall commence on the Commencement Date and shall continue until the Termination Date when it shall terminate automatically without notice.

17. In the event of any dispute or difference between the parties or any of them arising out of this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Deed) the parties agree that the matter in dispute will on the application of either of them be referred to the Expert and it is further agreed that:

17.1 the determination of the Expert shall be final and binding on the parties save in the case of manifest error;

17.2 the parties shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;

17.3 the Expert's costs shall be borne in such proportions as he/she may direct failing which the parties shall each bear their own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of sides to the reference; and

17.4 the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee shall be appointed in the same manner as the Expert.

18. The Owner will pay the Agency's reasonable and properly incurred legal costs in connection with and incidental to the preparation of this Agreement on completion of this Agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by the Environment Agency acting by:

SARAH WARD, SENIOR LAWYER

Signature:

in the presence of

Signature of witness:

Name of witness:

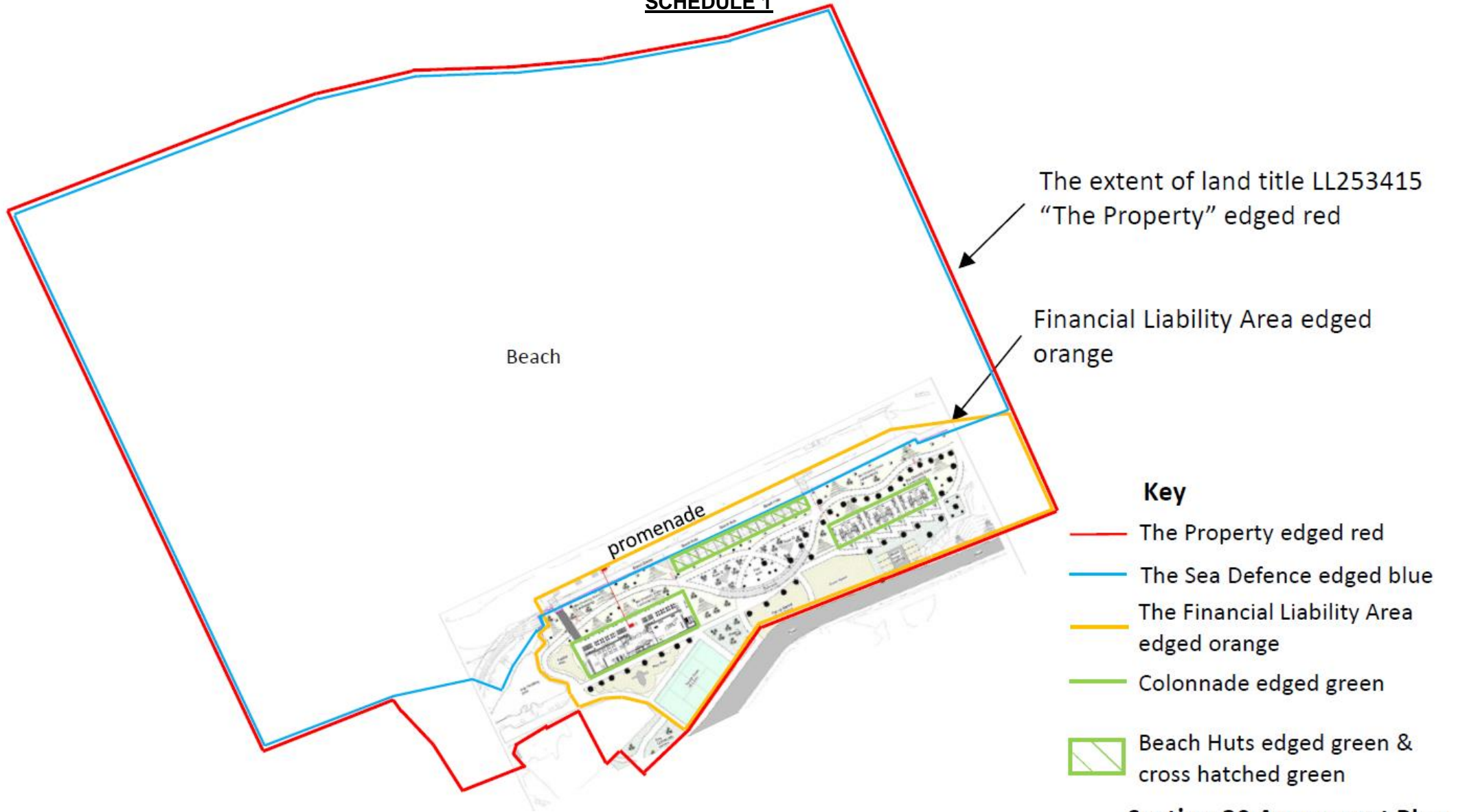
Address of witness:

Occupation of witness:

THE COMMON SEAL of
EAST LINDSEY DISTRICT COUNCIL
was hereunto affixed in the presence of:

Authorised Signatory

SCHEDULE 1



The extent of land title LL253415
"The Property" edged red

Financial Liability Area edged
orange

Key

- The Property edged red
- The Sea Defence edged blue
- The Financial Liability Area edged orange
- Colonnade edged green
- ▧ Beach Huts edged green & cross hatched green

Section 30 Agreement Plan

SCHEDULE 2

SCHEDULE 3 Section 30 Anglian Water Authority Act 1977

(as amended by Section 37 (2) of that Act)

- "30. (1) (a) Every undertaking given to the Authority by the owner of a legal estate in land (hereinafter referred to in this section as "the owner") and every agreement made between the Authority and the owner, being an undertaking or agreement
- (i) given or made in connection with the land; and
 - (ii) expressed to be given or made in pursuance of this section; and
 - (iii) which defines that land as land the legal estate in which at the date of execution is vested in the owner;
- shall be binding (without any limit of time) upon the owner and all persons deriving title by, through or under him
- (b) An undertaking or agreement given or made in pursuance of this Section shall be a local land charge
- (2) Without prejudice to the generality of subsection (1) of this section it is hereby declared that an undertaking or agreement made binding thereby may consist of or include provision
- (a) for covenants by the owner to carry out any works or do anything on or in relation to the land in question (including the making of any payment of a sum or sums of money);
 - (b) whereby the owner for valuable consideration agrees not to exercise a right conferred by any enactment
- (3) Any person against whom such an undertaking or agreement is enforceable shall be entitled to require from the Authority a copy thereof