Dated 2025

1. **Owner**
2. ***Mortgagee (if land legally charged)***
3. **DORSET COUNCIL**

**BNG LANDBANK**

**DEED OF PLANNING OBLIGATION s106 TOWN & COUNTRY PLANNING ACT 1990**

**Land at**

 **Dorset**



**THIS DEED OF PLANNING OBLIGATION** is made on 2025

# BETWEEN:

1. (“**the Owner”)**
2. ***(“the Mortgagee”)***
3. **DORSET COUNCIL** of County Hall, Dorchester, Dorset, DT1 1XJ (“**the Council”)**

# Introduction

* 1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Biodiversity Gain Site is situated.
	2. The Owner is the freehold owner of the Biodiversity Gain Site which is registered at the Land Registry under Title Numbers [ ]subject to the entries disclosed in the register *including a legal charge in favour of the Mortgagee*
	3. In order that the objectives set out in Schedule 7A of the 1990 Act may be achieved the Owner has agreed with the Council to convert intensively grazed pasture to a low density grazing system with hay cutting, to increase and enhance such areas, to create ponds, to carry out tree planting along some field margins, to enhance existing hedgerows, too enhance the watercourses by limiting poaching, enhancing vegetation and adding woody debris and berms as set out in the HMMP in order to secure the following Biodiversity Units

 Habitat Units: { }

 Hedgerow Units: { }

 Watercourse Units: { }

**N O W T H I S D E E D W I T N E S S E S** as follows: -

# Definitions

* 1. For the purposes of this Deed, the following expressions shall have the following meanings, unless the context requires otherwise:

|  |  |
| --- | --- |
| **“1990 Act”** | means the Town and Country Planning Act 1990; |
| **“2021 Act”** | means the Environment Act 2021 |
| “Activation Date” | means in respect of each and every Phase, the date of service on the Council of the first Allocation Notice relating to that Phase or if earlier the service of a Commencement Notice relating to that Phase  |
| “Allocation” | means attributing any BNG Capacity, whether in respect of Biodiversity Units or a Phase or Phases (or parts thereof), by the Owner toward a development's requirement to deliver biodiversity (and Allocate and Allocated and Allocations shall be construed accordingly). |
| “Allocation Notice” | a notice served on the Council by the Owner in accordance with Paragraph 1.1 of Schedule 3  |
| “Area Habitat Units”  | means areahabitat units as measured by the Biodiversity Metric  |
| **“Biodiversity Gain****Site”** | means the land known as [ ] which is shown edged red on the Biodiversity Gain Site Plan |
| **“Biodiversity Gain Objective”** | has the meaning ascribed to it within paragraph 2 of Schedule 7A of the 1990 Act |
| **“BNG Monitoring Additional Fees”** | any additional monitoring costs incurred by the Council calculated in accordance with the BNG Monitoring Fee Scale as a result of carrying out further inspections and reviewing further reports arising from the need for remedial action or a Default Notice being served in accordance with Schedule 6 |
| **“BNG Monitoring Fee Scale”** | the scale of charges set out in Annex B as Index Linked  |
| **“Biodiversity Gain Site Register”**  | means the statutory biodiversity gain site register created under regulation 3 of the Biodiversity Gain Site Register Regulations 2024 or any other equivalent regulations. |
| **“Biodiversity Gain Site Plan”** | means the plan attached hereto with the legend indicating the “Site boundary” |
| **“Biodiversity Metric”** | means the statutory biodiversity accounting tool published by DEFRA or Natural England from time to time that must be used to measure the biodiversity value or relative biodiversity value of habitat or habitat enhancement for the purposes of biodiversity net gain. |
| **“Biodiversity Net Gain” or “BNG”**  | means an increase in Biodiversity Units resulting from implementing the Habitat Management and Monitoring Plan (asmeasured usingthe Biodiversity Metric) that can be Allocated to a development to fulfil its requirement to create or enhance biodiversity under Schedule 7A of the 1990 Act. |
| **“Biodiversity Unit(s)”**  | means the quantum of biodiversity as measured by the Biodiversity Metric**.** |
| “BNG Capacity”  | means the total Biodiversity Units offering comprising of:* + - 1. Area Habitat Units;
			2. Hedgerow Units; and
			3. Watercourse Units,
 |
| **“Capital Works”** | means in respect of each Phase listed in Column 1 on the table in Annex D of this Deed the works and other matters set out in relation to that Phase in column 4 including any amendments to Annex D approved in writing by the Council |
| **“Certificate of Completion”**  | means a written certificate of completion confirming that the Capital Works on a Phase have been completed to the reasonable satisfaction of the Council as at the date of such certificate |
| **“Commencement Notice”** | means a written notice served on the Council by the Owner that it intends that the HMMP will be implemented on a Phase |
| **“Completion Date “** |  means the date of completion of the Capital Works as specified in a Certificate of Completion relating to a Phase issued by the Council |
| **“Completion Notice”** | means written notice to the Council inviting the Council to inspect the Capital Works on a Phase served in accordance with the terms hereof which shall include the proposed date for completion of the Capital Works |
| **“DEFRA”**  | means the public body known as the Department for Environment, Food & Rural Affairs or any successor body which acts as the Government's advisor for the natural environment, food or rural affairs in England. |
| **“Duration”** | the period of 30 years from the Completion Date in respect of a Phase |
| **“Habitat Creation and Enhancement Works”** | means the action, works, restriction, or any other thing which together constitute the habitat creation and enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Management and Monitoring Plan) |
| **“Habitat Management and Monitoring Plan”** or**(“HMMP”)** | mean the Habitats Monitoring and Maintenance Plan which is attached hereto at Annex A or any amendment thereof agreed between the Council and the Owner and any habitats maintenance and monitoring plan replacing it in accordance with the terms hereof |
| **“Hedgerow Units”**  | means hedgerow units as measured by the Biodiversity Metric  |
| **“Index”** | means the All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organization or if it ceases to be published the nearest equivalent index |
| **“Index Linked”** | means an adjustment in the amount of any of the sums paid under this Deed in accordance with the provisions set out in clause 12 and “Index Linking” shall be similarly construed; |
| **“Insolvency Event”** | means, in respect of the Owner:* 1. a winding up order is made by the Court;
	2. an administrator is appointed under the provisions of Schedule B1 of the Insolvency Act 1986;
	3. a receiver, liquidator, provisional liquidator, administrative receiver is appointed in respect of it, or any of its assets;
	4. a resolution is passed for its winding up, liquidation or reorganisation (save for the purposes of a solvent reorganisation);
	5. an order is made for a moratorium under Part A1 and Schedule ZA1 of the Insolvency Act 1986; or
	6. a bankruptcy order is obtained against an individual under part IX of the Insolvency Act 1986.
 |
| **“Initial Monitoring Fee”** | The sum of [ ] |
| **“Interest”** | means 4% above the base lending rate of Lloyds Bank from time to time; |
| **“Monitoring Report”** | means a written report which provides an assessment of the performance and efficacy of the HMMP in the period preceding the relevant Monitoring Report Date being twelve months or such longer period as shall have lapsed since the previous Monitoring Report |
| **“Monitoring Report Date”** | For each Phase the first, second, third, fifth, tenth, fifteenth, twentieth, twenty-fifth and thirtieth anniversaries of the date of the Certificate of Completion of such Phase |
| **“Natural England”** | means the public body known as Natural England or any successor body which acts as the Government's advisor for the natural environment in England. |
| **“Nominee”** | means a body nominated by the Council to be responsible for the maintenance and management of the Biodiversity Gain Site or any Phase thereof  |
| **“Phase(s)”** | means Phase 1 or Phase 2 or Phase 3 or Phase 4 (as the context requires) |
| **“Phase 1”** | That part of the Biodiversity Gain Site labelled “F1” on the Phasing Plan which is intended to secure a minimum of:1. [ ] Area Habitat Units
2. [ ] Hedgerow Units
3. [ ] Watercourse Units
 |
| **“Phase 2”** | That part of the Biodiversity Gain Site labelled “F2” on the Phasing Plan which is intended to secure a minimum of:[ ] Area Habitat Units1. [ ]Hedgerow Units
2. 0[ ]Watercourse Units:
 |
| **“Phase 3”** | That part of the Biodiversity Gain Site labelled “F3” on the Phasing Plan which is intended to secure a minimum of:1. [ ] Area Habitat Units
2. [ ] Hedgerow Units
3. [ ] Watercourse Units:
 |
| **“Phase 4”** | That part of the Biodiversity Gain Site labelled “F4” on the Phasing Plan which is intended to secure a minimum of:i. [ ] Area Habitat Unitsii. [ ] Hedgerow Unitsiii. [ ] Watercourse Units: |
| **“Phase 1 BNG Monitoring Fee”** | means the sum of £[ ] Index Linked in respect of the Council’s reasonable and proper fees for checking and monitoring the obligations set out in the HMMP in relation to Phase 1 |
| **“Phase 2 BNG Monitoring Fee”** | means the sum of £[ ] Index Linked in respect of the Council’s reasonable and proper fees for checking and monitoring the obligations set out in the HMMP in relation to Phase 2 |
| **“Phase 3 BNG Monitoring Fee”** | means the sum of £[ ] Index Linked in respect of the Council’s reasonable and proper fees for checking and monitoring the obligations set out in the HMMP in relation to Phase 3 |
| **“Phase 4 BNG Monitoring Fee”** | means the sum of £[ ] Index Linked in respect of the Council’s reasonable and proper fees for checking and monitoring the obligations set out in the HMMP in relation to Phase 4 |
| **“Phasing Plan”** | means the plan attached hereto marked “Phasing Plan” |
| **“Register”** | means act of applying for Registration on the Biodiversity Gain Site Register**.** |
| **“Registration”** | means the record on the Biodiversity Gain Site Register of the Biodiversity Gain Site the BNG Capacity, the Remaining BNG Capacity, and any Allocations (as applicable). |
| **“Relevant Event”** | means any of the following events:(1) a change in the law and/or national policy; or(2) a decision of a Court, tribunal, Secretary of state or other decision maker with competence,(3) that results in Biodiversity Net Gain or any part thereof not being required by law or the Biodiversity Gain Site or any part thereof no longer being considered to be an effective form of Biodiversity Net Gain. |
| **“Remaining BNG Capacity”** | means the available BNG Capacity on the Biodiversity Gain Site Register which can be Allocated to a development  |
| **“Transfer”** | means the disposal of any legal or beneficial interest in the Biodiversity Gain or any part thereof including a freehold transfer, grant of any lease tenancy or licence, or creation of any easement legal charge or mortgage in respect of the same and “to Transfer” “Transferred” “Transferee” and cognate expressions shall be construed accordingly |
| **“Variation Event”** | means any of the following events that would have a material impact on the calculation of any un-Allocated Biodiversity Units on a Phase:(1) a change in Natural England's guidance or policies;(2) a change in scientific opinion based on evidence;(3) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve Biodiversity Net Gain;(4) the Biodiversity Metric is amended, updated, or replaced by Natural England and/or DEFRA;(5) the Biodiversity Gain Site becomes designated under law or is otherwise encumbered by any right which would be incompatible with the Biodiversity Net Gain or any existing Allocation; or(6) such other event as may be agreed between the Parties as constituting a Variation Event. |
| **“Watercourse Units”** | means watercourse habitat units as measured by the Biodiversity Metric  |
| **“Working Day”** | means Monday to Friday inclusive excluding Bank or public holidays. |

# Construction of this Deed

* 1. Where reference is made to any clause, paragraph, schedule or recital, such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
	2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
	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.
	4. Where more than one person is obliged to observe or perform an obligation, the obligation can be enforced against all such persons jointly and against each individually unless there is an express provision otherwise.
	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 validly from it.
	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 any local authority shall include the successors to its various statutory functions.
	7. Any covenant in this Deed, whereby a party is not to do any act or thing, shall be deemed to include an obligation not to cause allow permit, suffer or to procure such act or thing to be done.
	8. The clause headings contained in this Deed are indicative of the meaning and intent of the clauses to which they respectively refer and are intended to assist in the interpretation of this Deed and may be taken into account accordingly.
	9. References to Phases shall not be taken to apply sequentially so as to prevent them being brought forward or implemented in any particular sequence

# Legal basis

* 1. This Deed is made as a deed pursuant to the following:
		1. Section 106 and Schedule 7A of the 1990 Act;
		2. Section 98 of the 2021 Act;
		3. Section 1 of the Localism Act 2011;
		4. Section 33 of the Local Government (Miscellaneous Provisions) Act 1982
		5. Section 111 of the Local Government Act 1972; and
		6. all other enabling powers
	2. The obligations, covenants, and undertakings on the part of the Owner in this Deed are planning obligations for the purposes of section 106 of the Act which bind the Owner’s interest in the Biodiversity Gain Site.
	3. Subject to Clause 4 and 7, the obligations, covenants and undertakings on the part of the Owner are entered into with the intent that they are enforceable by the Council not only against the Owner but against any successors in title or assigns of the Owner and any person claiming through or under the Owner an interest or estate in the Biodiversity Gain Site or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it

# Effective Date

* 1. This Deed shall come into effect on the date hereof subject to 4.2 and 4.3 below
	2. The covenants contained in the Schedules to this Deed shall only take effect in respect of any Phase on the relevant Activation Date or if earlier the service of the relevant Commencement Notice PROVIDED THAT if the express provisions or the context of any Schedule provide for any matter or action to be done or carried out before an Allocation Notice or Commencement Notice is served this sub-clause 4.2 shall not operate so as to prevent such provision from taking effect
	3. At the end of the Duration in respect of each Phase the obligations of the Owner in respect of such Phase shall cease PROVIDED THAT the Owner is not in material and continuing breach of his obligations in relation to such Phase at that date.
	4. Where a Relevant Event occurs, the obligations in this Deed shall not apply in relation to any part of the Biodiversity Gain Site which has not been Allocated at the date of the Relevant Event save to the extent that the Council shall notify the Owner that they continue to apply to the whole or any part or any Phase of the Biodiversity Gain Site
	5. If an Insolvency Event occurs the Council may by written notice require the Owner not to make any further Allocation and the Owner shall thereafter make no further Allocation unless and until the Council withdraws such notice by further notice in writing to that effect served on the Owner
	6. The cesser to apply or pausing of this Deed under clause 4.4 shall not affect any accrued rights and liabilities or any rights or remedies of the parties for breach, non-observance of non-performance of the obligations under this Deed.

# The Owner’s and the Mortgagee’s Covenants and Obligations

* 1. The Owner and the Mortgagee covenant with the Council to observe and perform the planning obligations and all other provisions set out in this Deed and covenant with the Council as set out in the schedules.PROVIDED THAT this clause shall only apply to the Mortgagee when it is in possession or has control of the BNG Site or any part thereof
	2. The Owner shall pay the Initial Monitoring Fee within 10 Working Days of the date hereof
	3. The Owner shall on the date hereof pay the Council’s legal costs in the sum of [ ]

5.3 General

* 1. No provisions of this Deed are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Deed, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed.
	2. The Owner acknowledges that this Deed shall be registrable as a local land charge by the Council.
	3. Where in this Deed the approval, consent or expression of satisfaction is required by one party from another party under the terms of this Deed, such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed, and (if given) shall be given in writing (and shall be of no effect unless given in writing).
	4. Any such agreement, approval, consent or expression of satisfaction shall unless otherwise stated in this Deed be only valid if given on behalf of the Council by the Head of Planning or other appropriate manager or officer with relevant delegated or nominated power within the Council.
	5. 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.

# Limitation of Liability

* 1. No person shall be liable for any breach of any of the obligations in this Deed after it shall have parted with its entire interest in the Biodiversity Gain Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
	2. This Deed shall not be enforceable against any statutory undertaker holding an existing estate or interest in the Biodiversity Gain Site (or part thereof) nor against plant equipment conduits or structures located there for its operational purposes
	3. No party shall carry out any development on the Biodiversity Gain Site (whether or not express planning permission or any permission is required for such works) without the written consent of the Council save in an emergency and subject to the party carrying out such works making good any damage to any habitat arising from such works

# Disputes

* 1. In the event of any dispute or difference arising between the parties to this Deed such dispute or difference may within 28 days be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an Deed) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares. A person appointed pursuant to this clause shall act as an independent expert and not an arbitrator. It shall be a term of appointment that a timetable for determination of the dispute shall be fixed at the outset of the matter provided that such timetable shall provide that:
		1. Each party to the dispute must submit its first representations to the person appointed under clause 8.1 above within 28 days of the person appointed writing to the pretties requesting such representations; and
		2. Once the parties to the dispute have received the first representations that each has submitted to the person appointed under clause 8.1.1 above, they shall have a further 14 days to submit to the person appointed their response to these first representations.
	2. The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief; injunction; specific performance; payment of any sum; damages; any other means of enforcing this Deed and consequential and interim orders and relief.
	3. This clause 8 does not apply to disputes in relation to matters of law which will be subject to the jurisdiction of the courts.
	4. This clause 8 does not apply to any dispute which may arise in relation to any matter which is expressly to be agreed or approved or determined by any party in its absolute discretion pursuant to this Deed or in relation to any failure or delay by such a party in agreeing or approving or determining any such matter.
1. Notices
	1. Any notices to be served on the Council under the provisions of this Deed shall be sent by first class post and to its address given above marked for the attention of the Head of Planning, c/o the Natural Environment Team and the Infrastructure and Delivery Planning Teams. unless otherwise provided for in a particular clause or paragraph in this Deed and shall be deemed to have been served the day after it was posted
	2. Without prejudice to the requirements of Clause 9.1 above if from time to time the Council notifies the Owner of an email address to which notices should be copied the Owner shall also send a copy of the notice to such address at the same time as posting the notice
	3. Any notices to be served on the Owner or any other party under the provisions of this Deed shall be sent by first class post or hand delivered to the Owner at its address written above and shall be deemed to have been served the day after it was posted or on the day when it is hand delivered
	4. For the avoidance of doubt this clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any method of dispute resolution.

# Waiver

No waiver (whether express or implied) by any party to this Deed of any breach or default in performing or observing any of the provisions of this Deed by any other party shall constitute a continuing waiver, and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.

# Severability

 Each clause, sub-clause, Schedule or paragraph shall be separate, distinct and severable from each other to the extent only that if any clause, sub-clause, Schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause, Schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, sub-clause, schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause, schedule or paragraph contained herein.

# Indexation

 All sums of money payable to the Council under this Deed shall be increased (as at the date or dates on which each payment is made) in accordance with the following formula:

# C = £Y x B

**A**

where:

1. is the value of the Index specified in the provision concerned or, if none is specified, the Index, last published before the date of this Deed;
2. is the Index last published before the date on which the payment in question is made;
3. is the total amount to be paid; and

**£Y** is the sum to which this formula is applied.

provided that if the Index shall cease to exist, there shall be substituted such other index of building costs as shall be specified by the Council and provided further that if the application of this calculation produces a reduction in the sum in question, such sum shall remain unchanged.

# Interest

 If any payment due to the Council under this Deed is paid late, Interest will be payable from the date that the payment is due to the date that payment is received by the Council and compounded annually.

# Change in Ownership

 The Owner agrees with the Council to give the Council written notice of any change in ownership of any of its interests in the Biodiversity Gain Site occurring before all the obligations under this Deed have been discharged within 20 Working Days of any such change. Such notice to give details of the transferee’s name and registered office (if a company or usual address if not).

# VAT

 All payments under this Deed to be made by the Owner to the Council shall unless stated be exclusive of any value added tax properly payable.

# Flood Risk

#  For the avoidance of doubt the Owner shall take all such steps as are necessary in carrying out the Habitat Creation and Enhancement Works and in otherwise complying with the terms hereof to alleviate and eliminate any risk of flooding being caused by the same and the Owner indemnifies the Council against all claims, costs, demands, actions, proceedings and other financial liabilities arising out of any failure by the Owner to prevent flooding arising as result of carrying out the Habitat Creation and Enhancement Works and otherwise complying with the terms hereof

# Warranty

#  The Owner warrants to the Council that it has full rights and title and interest over the Biodiversity Gain Site and that no party can prevent or prohibit it from complying with the terms hereof and it is agreed that if the Owner is for any reason prevented from complying with this deed it shall cease to be registered on the Register and shall not Allocate any Biodiversity Units

# Statutory Consents

#  The Owner shall apply for and secure any necessary consents required from any statutory body, government department or minister, and non-governmental organization and any private person or body which are necessary for or to comply with the terms of this Deed before it Allocated any Biodiversity Units

# Good Faith

* 1. The parties to this Deed agree that this Deed is entered into to:
		1. achieve the Biodiversity Gain Objectives
		2. ensure that an adequate number of Biodiversity Units is produced; and
		3. enable the Biodiversity Gain Site to be recorded in the Biodiversity Gain Site Register in accordance with paragraph 3 of Schedule 1 below.

 (together, the ‘**Common Purposes’).**

19.2The Owner and the Council agree to act in good faith to achieve the Common Purposes and the Council shall, at the reasonable cost of the Owner, promptly provide such assistance as the Owner shall require to enable the registration of the Biodiversity Gain Site on the Biodiversity Gain Site Register.

19.3The Owner and the Council (subject to its powers, duties and functions as a local authority and local planning authority and subject to Section 106A of the 1990 Act) further agree to vary this Deed where necessary to achieve any one or more of the Common Purposes.

# Jurisdiction and Legal Effect

 This Deed is subject to and shall be construed in all respects in accordance with English law.

**Schedule 1 Plans**

Plan1

Biodiversity Gain Site

Plan 2

Phasing Plan

**Schedule 2**

**Phases**

**Owner’s Covenants**

1. The Owner covenants with the Council so as to bind each Phase of the Biodiversity Gain Site separately as follows:

1. * + 1. The Owner shall not commence the Habitat Creation and Enhancement works on any Phase until it has served a Commencement Notice in respect of such Phase on the Council
			2. No later than 12 months after service of the first Allocation Notice relating to a Phase the Owner shall commence the Habitat Creation and Enhancement Works (including the Capital Works) and shall not further Allocate if it fails to do so
			3. Following commencement of theHabitat Creation and Enhancement Works (including the Capital Works) on a Phase to proceed diligently with them in accordance with the HMMP and meet the timings set out in Column 3 of Annex D (unless otherwise agreed in writing by the Council) and comply with the monitoring site visiting and other requirements for that Phase in accordance with and in order to give effect to Annex C (unless otherwise agreed in writing by the Council) and allow the Council to carry out the inspections referred to in Schedule 4
			4. To pay the Phase 1 BNG Monitoring Fee to the Council prior to the Commencement Date for that Phase and not to commence theHabitat Creation and Enhancement Works on that Phase (including the Capital Works) until the Council has received the Phase 1 BNG Monitoring Fee
			5. To pay the Phase 2 BNG Monitoring Fee to the Council prior to the Commencement Date for that Phase and not to commence theHabitat Creation and Enhancement Works on that Phase (including the Capital Works) until the Council has received the Phase 2 BNG Monitoring Fee
			6. To pay the Phase 3 BNG Monitoring Fee to the Council prior to the Commencement Date for that Phase and not to commence theHabitat Creation and Enhancement Works on that Phase (including the Capital Works) until the Council has received the Phase 3 BNG Monitoring Fee
			7. To pay the Phase 4 BNG Monitoring Fee to the Council prior to the Commencement Date for that Phase and not to commence theHabitat Creation and Enhancement Works on that Phase (including the Capital Works) until the Council has received the Phase 4 BNG Monitoring Fee
			8. As soon as reasonably practicable after the completion of all the Capital Works on a Phase to serve a Completion Notice for those Capital Works on the Council.
			9. The Owner shall manage and maintain each Phase in accordance with the HMMP for the Duration relating to such Phase so as to secure the Biodiversity Gain Units intended to be secured in respect of that Phase

**Schedule 3**

**Allocation**

1. The Owner covenants with the Council :

1.1 to notify the Council within 10 Working Days when:

1. All or part of the BNG Capacity on any Phase is Allocated; and
2. All of the BNG Capacity on any Phase has been fully Allocated.

and to provide the details of such Allocation including the date of Allocation, the Phase relating to such Allocation, the number of Habitat Units, Hedgerow Units and Watercourse Units Allocated, and the development to which they have been Allocated with such notice.

1.2 Not to Allocate any BNG Capacity while an application to amend the Registration is pending unless the BNG Capacity as recorded on the Biodiversity Gain Site Register is sufficient to fulfil any such an Allocation. For the avoidance of doubt the first Allocation may be made before or at the same time as the registration of the Biodiversity Gain Site on the Biodiversity Gain Site Register.

1.3 The Owner shall not serve any Allocation Notice on the Council and any such purported service shall not be valid where the Council has served a Default Notice under Schedule 6 or a Progress Notice under Schedule 7 unless the Council expressly consents to Allocation Notices being served after service of such Default Notice or Progress Notice

**Biodiversity Gain Site Register**

1. The Owner covenants with the Council:

2.1 To Register the Biodiversity Gain Site on the Biodiversity Gain Site Register no later than when the first application to Register any Allocation on any Phase is made PROVIDED THAT the Council is hereby authorised to apply to revise the Registration in line with any determination by the Expert;

2.2 To pay the Council's reasonable costs in respect of any application by it to amend the Registration.

2.3 To notify the Council in writing of the date of any Registration within 10 Working Days of it occurring;

2.4 If an application to Register the Biodiversity Gain Site is unsuccessful, as soon as reasonably practicable:

* + - * 1. notify the Council in writing;
				2. remedy the defects in the application;
				3. re-apply to register the Biodiversity Gain Site on the Biodiversity Gain Site Register (if required); and
				4. continue to notify the Council and remedy defects in any application until the Biodiversity Gain Site is Registered;
				5. apply to amend the Registration if directed by the Expert under Clause 8

2.5 Not to amend the Registration without the Council's prior written approval, other than to Register Allocations or where necessary to comply with this Deed.

**Habitat Management and Monitoring Plan**

1. The Owner covenants with the Council:

3.1 To notify the Council of any requested amendment to the Habitat Management and Monitoring Plan, such notice to include:

* + - 1. the proposed amended Habitat Management and Monitoring Plan;
			2. a statement of reasons for such amendment; and
			3. confirmation (with reasons) that the amendment would not prejudice: the use or management of the Biodiversity Gain Site in a manner inconsistent with its function to deliver Biodiversity Net Gain; and the continued functioning of the Biodiversity Gain Site for Biodiversity Net Gain or any existing Allocation.

3.2 Where the Council agrees (or the Expert determines) that an amended Habitat Management and Monitoring Plan is approved, to:

a. apply to amend the Registration as soon as reasonably practicable where necessary to reflect the BNG Capacity or Remaining BNG Capacity under the amended or replacement Habitat Management and Monitoring Plan; and

b. keep the Council informed of the progress of the application and take all reasonable steps to conclude it (including correcting and re-submitting it where necessary).

**Recalculation of BNG Capacity**

1. The Owner covenants with the Council:

4.1 Where a Variation Event occurs and there is un-Allocated BNG Capacity on a Phase:

* + - 1. not to further Allocate any Remaining BNG Capacity on a Phase until the Remaining BNG Capacity on a Phase is agreed under sub-paragraph 4.1b of this Schedule (or determined by the Expert under Clause 8);
			2. to notify the Council of its calculation of the Remaining BNG Capacity on a Phase taking into account the Variation Event and submit it to the Council for approval;
			3. that in the event of dispute over the calculation of the Remaining BNG Capacity on a Phase under sub-paragraph 4.1b of this Schedule, either party may refer the matter to an Expert for determination;
			4. upon receipt of written approval from the Council for the calculation submitted under sub-paragraph 4.1b of this Schedule or by the Expert's determination it is accepted thereafter that the Remaining BNG Capacity on a Phase shall be deemed to be the amounts agreed and the Owner shall:
1. Allocate only up to the Remaining BNG Capacity on a Phase on this revised basis; and
2. ensure the Biodiversity Gain Site Register in respect of the Biodiversity Gain Site reflects the revised Remaining BNG Capacity as soon as reasonably practicable.

 **Schedule 4**

**Covenants by the Council**

The Council covenants with the Owner:

1. Not to use the BNG Monitoring Fee for anything other than the evaluation, monitoring, measuring of, overseeing and compliance with the HMMP and other obligations in this Deed.
2. Where notice is served on the Council pursuant to paragraph 2 of Schedule 5 the Council shall confirm its written consent to the Transfer or reasons for refusing to give its consent to the Transfer within 20 Working Days

The Council further hereby acknowledges and agrees with the Owner that:

1. The management of the Biodiversity Gain Site in full compliance with the HMMP and terms hereof would generate the number of Biodiversity Units per Phase as set out in the Definition relating to such Phase
2. The service of an Allocation Notice shall be sufficient evidence that the relevant development has acquired the number of Biodiversity Gain Units stated therein PROVIDED THAT:
	1. this Deed and/or the relevant Phase and/or Biodiversity Gain Site to which the Allocation Notice relates is registered on the Biodiversity Gain Site Register; and
	2. the Allocation detailed in the Allocation Notice is registered on the Biodiversity Gain Site Register;
3. It has no reason to believe that the management of the Biodiversity Gain Site pursuant to the HMMP would not meet the criteria necessary for the scheme to be registered on the Biodiversity Gain Site Register.
4. In the event that this Deed cannot be registered on the Biodiversity Gain Site Register, then clauses 19.2 and 19.3 shall apply
5. The parties hereto acknowledge that the number and type of Biodiversity Units generated by the management of the Biodiversity Gain Site pursuant to the HMMP may increase over time. The Owner may submit to the Council an updated HMMP for approval to enable any increase in the number of Biodiversity Units generated by the Biodiversity Gain Site, PROVIDED THAT this clause does not breach the Act or the Environment Act (as in force from time to time).

**Inspection of the Capital Works**

1. To inspect the Capital Works following receipt of the Completion Notice;

8.1 Where Capital Works are inspected

 i. to issue a Certificate of Completion if the Capital Works have been completed to the reasonable satisfaction of the Council.

ii. to notify the Owner of any defects, if the Council determines that the Capital Works have not been completed; and

iii. where the Owner issues a subsequent Completion Notice following completion of any remedial works required by the Council following notice given under paragraph 8.1(ii). to re-inspect the Capital Works in accordance with paragraph 8 of this Schedule and to comply with paragraph 8.1. of this Schedule until it issues the Certificate of Completion.

**Schedule 5**

**Transfer of Biodiversity Gain Site**

The Owner covenants with the Council.

* 1. Not to Transfer the whole of any part of the Biodiversity Gain Site where the proposed Transfer relates to an area which constitutes part only of the Biodiversity Gain Site or would divide it into separate parcels without the written consent of the Council pursuant to a notice served on it by the Owner requesting such consent
	2. A notice to the Council under paragraph 1 of this schedule shall include:
		1. a detailed plan on a scale approved by the Council showing the area of the Biodiversity Gain Site to be transferred.
		2. details of the transferee including its name and address or if a company details of its directors and shareholders.
		3. details of the experience of the transferee in nature conservation
		4. details of how the transferee will fund the obligations of the Owner hereunder.
		5. the terms and conditions of the proposed Transfer

# Schedule 6

#  Default

The Owner covenants with the Council:

1. To allow the Council (including all persons duly authorized by it) to enter the Biodiversity Gain Site after its having given two Working Days’ notice (which need not be given if the Council considers that matters are occurring which would if continued destroy or seriously damage a habitat) at all reasonable times for the purposes of monitoring compliance with the HMMP and other requirements of this Deed,
2. In the event that the Council (acting reasonably) considers that the Owner is in substantial breach of the HMMP or any terms hereof the Council may serve notice (“Default Notice”) on the Owner setting out the breach which it considers to have occurred or be occurring, such steps which it considers necessary to remedy such breach and time period during which it requires such breach to be remedied which shall be not less than 30Working Days. and will be such reasonable period as the Council considers necessary having regard to the nature of the breach
3. In the event that the Council serves a Default Notice on the Owner the Owner shall remedy the breach within the relevant period prescribed for such purpose in the Default Notice
4. If at the end of the period specified in a Default Notice to remedy a breach the same has not been remedied to the satisfaction of the Council, the Council may enter the Biodiversity Gain Site with such officers, employees, contractors, agents, vehicles, plant, machinery and equipment as it deems necessary, and carry out such actions as it deems necessary to remedy such breach
5. The Owner shall pay to the Council all costs and expenditure of any kind which it incurs under paragraph 4 above within 20 Working Days of receiving notice of a demand for such payment.
6. In the event of a breach resulting in the service of a Default Notice, the Owner shall pay to the Council any BNG Monitoring Additional Fee which it incurs within 20 Working Days of receiving notice of a demand for such payment
7. If the Council after serving more than two (2) Default Notices which have not been complied with may exercise its rights set out in this Schedule through a Nominee.

**Schedule 7**

**Progress Notice**

1. In the event that the Owner shall have sold Biodiversity Units but in the reasonable opinion of the Council it shall have failed to perform its obligations under the HMMP in a timely manner such as to fail to achieve a reasonable degree of progress the Council may serve on the Owner a notice setting out the matters which it considers should be carried out by the Owner (“Progress Notice”).
2. On receiving a Progress Notice the Owner shall cease forthwith to market, sell, allocate or register any further Biodiversity Units without the consent of the Council
3. The Council may withhold giving its consent under paragraph 2 of this Schedule until such time as it considers that sufficient progress has been made on the implementation of the HMMP to justify its withdrawing the Progress Notice and the Owner may on receipt of a further notice from the Council (“Resumption Notice”) resume the marketing sale and registration of Biodiversity Units.
4. The Council may set out in the Resumption Notice any costs or expenditure which it shall have incurred either as a result of actions which it shall have taken under Schedule 6 and/or serving a Progress Notice and a Resumption Notice and the Council shall be entitled to recover such costs and expenditure from the Owner and the Owner shall pay all monies which it receives it shall have received from the sale of Biodiversity Units before or after the service on it of the Progress Notice or Default Notice as the case may be to the Council until it shall have received such monies in full

IN WITNESS WHEREOF the Owner the Promotor and the Council have executed this instrument as a Deed the day and year first before written.

**EXECUTED as a DEED**

**by**

**Acting by a director**

**In the presence of: …………………………………………………..**

 **PRINT NAME……………………….**

Signature of witness:

Print Name

Name:

Occupation:

**EXECUTED as A DEED by**

**Acting by a director**

**In the presence of: …………………………………………………..**

 **PRINT NAME……………………….**

Signature of witness:

Print Name

Name:

Occupation:

The Common Seal of

**DORSET COUNCIL**

was hereunto

affixed in the presence of

 (Authorised Signatory)

Annex A the HMMP

**Annex B -the BNG Monitoring Fee Scale**

The Council’s Fees will be charged as follows with all sums Index Linked in accordance with the terms set out in the body of the Deed.

1. Senior Ecologist
2. General Hourly Rate [ ] for work associated with monitoring reports and preparation for and post site visit work.
3. Site Visit a minimum of [ ] plus General Hourly Rate for any time spent over and above 4 hours travelling to and from and at Site.
4. Administrative Staff all work [ ]per hour.

**Annex C: Pre-completion Reporting and Post-Completion Monitoring Schedule**

Note: This table sets out the pre-completion reporting (for 2 years) and post-completion monitoring (for 30 years) works needed for each phase.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Project Year | 30-year Monitoring Year | Month Report to be Submitted to Dorset Council | Owner Reporting actions | Dorset Council actions |  DC hours  |
| Pre-completion reporting |
| 1 | - |  | Basic reporting of actions undertaken on site to be sent to DNET. | None anticipated. | 0 |
| 2 | - |  | Reporting of habitat creation activities that constitute the start of the 30 year monitoring period. Report to be sent to DNET. | Review report and provide feedback.  |  |
| Post-completion 30-year BNG monitoring |
| 3 | 1 |  |  |  |  |
| 4 | 2 |  |  |  |  |
| 5 | 3 |  |  |  |  |
| 7 | 5 |  |  |  |  |
| 12 | 10 |  |  |  |  |
| 17 | 15 |  |  |  |  |
| 22 | 20 |  |  |  |  |
| 17 | 25 |  |  |  |  |
| 32 | 30 |  |  |  |  |

**ANNEX D Table of Capital Works by Phase**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Column 1** | **Column 2** | **Column 3** | **Column 4** | **Column 5** |
|  | **Habitat type** | **Year of anticipated completion after commencement of activity.** | **Completion activity** | **HMMP Table name, table reference and row number** |
| **Phase 1** |  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **Phase 2** |  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **Phase 3** |  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**With additional phases added as required.**