

Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country Planning Act 1990
relating to land at

Dated

2023

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DATE

2023

PARTIES:

- (1) **BUCKINGHAMSHIRE COUNCIL** of The Gateway, Gatehouse Road, Aylesbury, in the County of Buckinghamshire (“Council”)
- (2) §(company number) whose registered office is § (“Owner 1”)
- (3) §(company number) whose registered office is § (“Owner 2”)
Owner 1 and Owner 2 § shall together be known as “**the Owner**”]
- (4) §(company number) whose registered office is § (“Mortgagee”)

1 INTRODUCTION

- 1.1 The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 1.2 The Owner is the freehold owner of the Habitat Site.
- 1.3 The Mortgagee is the chargee of the Habitat Site under Legal Charge dated § registered as Entries § and § in the Charges Register of title.
- 1.4 § has a legal/beneficial interest in the Habitat Site through §§.
- 1.5 The Parties have agreed to enter into this Deed in order to secure the provision management and maintenance of Biodiversity Units on the Habitat Site as set out in the planning obligations contained in this Deed, having regard to the provisions of the Council’s respective development plan the NPPF and the Environment Act 2021
- 1.6 The Council has entered into this Deed pursuant to an exercise of delegated authority by the Development Manager
- 1.7 The Parties to this Deed have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (to the extent relevant to the obligations in this Agreement) and the advice set out at paragraphs 56 and 57 of the NPPF

NOW THIS DEED WITNESSES AS FOLLOWS:

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

Expression

Meaning

“1980 Act”

the Highways Act 1980

“the 1982 Act”

the Local Government (Miscellaneous Provisions) Act 1982

“1990 Act”	the Town and Country Planning Act 1990 (as amended)
“Application”	an application to the Council for full or outline planning permission or the approval of Reserved Matters
“Biodiversity Gain Site”	land as defined by section 100 of the Environment Act 2021 where works are required for the purpose of habitat enhancement which enhancement is required to be maintained for at least thirty years after the completion of those works
“Biodiversity Gain Site Register”	the register of Biodiversity Gain Sites to be established and maintained by Natural England
“Biodiversity Metric”	the mechanism with reference to biodiversity metric [4.0] approved by the Government’s Department for Environment Food and Rural Affairs (“DEFRA”) current at the date of this Deed to quantify impacts on biodiversity that allows a Biodiversity loss and/or a Biodiversity gain affecting different habitats to be compared and ensures the biodiversity offsetting proposed is sufficient to compensate for any residual losses of biodiversity or provide the required biodiversity net gain for any development scheme
“Biodiversity Unit”	a unit of biodiversity value as calculated by the Biodiversity Metric [4.0] approved by the Government’s Department for Environment Food and Rural Affairs current at the date of this Deed and expressed as an Area Habitat Biodiversity Unit (AHBU), Hedgerow Biodiversity Unit (BHU) and / or River Biodiversity Unit (RBU)
“Biodiversity Unit Cost”	the cost in pounds sterling of a biodiversity unit when sold or transferred
“Bundling”	the sale of a single Habitat Unit representing several different environmental benefits, but which does not involve Double Counting, as referred to in the Nature Markets Publication
“Commencement Notice”	a written notice served by the Owners on the Council, which identifies the date of commencement of Habitat Creation and Enhancement Works on the first Biodiversity Unit on the Habitat Site to be created or enhanced
“Competent”	holding a minimum of Membership of the Chartered Institute of Ecology and Environmental Management or a cognate body with a professional code of conduct and/or in line with definitions provided by the British Standard on Biodiversity Net Gain (8683: 2021) and any relevant Natural England or Defra Guidance
“Development”	development pursuant to an Application

“Development Manager”	the Council’s senior development management officer or any other officer to whom they delegate some or all of their functions under this Deed
“Double Counting”	the Sale or Transfer of the same Habitat Unit more than once as the basis for duplicated claims of Biodiversity Gain as referred to in the Nature Markets Publication
“Expert”	an independent and suitable person holding appropriate professional qualifications to be appointed by agreement between the Parties
“Financial Update Report”	a written report by the Owner to the Council to demonstrate its continuing ability to cover the full costs of compliance with the requirements of the Habitat Management and Monitoring Plan for the remainder of its duration
“Force Majeure Event”	a circumstance not within the control of the Owner comprising an act of God such as a drought, flood or other natural disaster
“Habitat Creation and Enhancement Works”	those works set out in the Habitat Management and Monitoring Plan which are required to be carried out in order to create and/or enhance the Habitat Site or the relevant part thereof suitable for the provision of Biodiversity Units
“Habitat Management and Monitoring Plan”	a plan for the Habitat Site which includes details of its provision; any improvement works required in order to demonstrate how it will provide Biodiversity Units; a programme for its management and maintenance for not less than thirty (30) years from the date of approval by the Council of its laying out; a plan showing the number and location of all Biodiversity Units; the payment schedule for the Management Plan Monitoring Fee; and the methodology format and frequency of Habitat Monitoring Reports to be provided to the Council together with access and inspection arrangements to facilitate such monitoring; which plan has been submitted to and approved in writing by the Council and is appended hereto and any amendments thereto which have been agreed in writing by the Council and the Owner
“Habitat Monitoring Report”	a written report to be provided on an annual basis for the first five years on each anniversary of the Management Plan Effective Date, and thereafter every five years on the tenth, fifteenth, twentieth, twenty-fifth and thirtieth anniversaries respectively of the Management Plan Effective Date, which sets out: <ul style="list-style-type: none"> (a) the results of a review of the operation and effectiveness of the Habitat Management and Monitoring Plan since the previous Habitat Monitoring Report; and (b) any remedies or measures that are required to be implemented to meet the requirements of the Habitat Management and Monitoring Plan;

“Habitat Site”	the land known as § and registered at Land Registry under title number BM§ against which this Deed may be enforced as shown edged red on Plan 1 and which comprises a Biodiversity Gain Site approved by the Council for the provision of Biodiversity Units in connection with development in its administrative area
“Habitat Site Manager”	means an organisation, company or individual appointed or to be appointed by the Owner in respect of the Habitat Site who will have responsibility for the implementation management and maintenance of the Habitat Management and Monitoring Plan
“Habitat Unit or Area Biodiversity Unit (AHBU)”	Habitat a Biodiversity Unit that relates to area habitats (which may include: woodland, grassland, wetland, coastal, intertidal or other habitat types) as defined by the Biodiversity Metric User Guide
“Hedgerow Unit or Biodiversity Unit (HBU)”	Hedgerow a Biodiversity Unit that relates to area habitats (which may include: woodland, grassland, wetland, coastal, intertidal or other habitat types) as defined by the Biodiversity Metric User Guide
“Interest”	interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time
“Legal Additionality Test”	the requirement that a Habitat Unit is not provided to meet an existing regulatory obligation on the part of the Owner as referred to in the Nature Markets Publication
“Management Plan Effective Date”	the date of the Council’s written approval of the Habitat Management and Monitoring Plan
“Management Plan Monitoring Fee”	the sum of [pounds (£)] calculated in accordance with the Habitat Management and Monitoring Report and payable by the Developer to the Council in accordance with the payment schedule set out therein as a contribution towards the Council’s costs of monitoring compliance with and funding for the Habitat Management and Monitoring Plan and reviewing Habitat Monitoring Reports
“Nature Markets Publication”	the publication entitled “Nature markets: A framework for scaling up private investment in nature recovery and sustainable farming” published by the Government in March 2023
“NPPF”	the National Planning Policy Framework published in July 2021 or such policy document as supersedes or replaces it;
“Occupation” and “Occupied” and “Occupier”	occupation for the purposes permitted by the Planning Permission.

"Parties"	the parties to this Agreement and the word "Party" shall mean any one of them
"Plan 1"	the plan attached to this Deed and marked Plan 1
"Planning Permission"	the planning permission subject to conditions granted by the Council pursuant to an Application
"Reserved Matters"	has the same meaning as in The Town and Country Planning (Development Management Procedure) (England) Order 2015;
"River Unit or River Biodiversity Unit (RBU)"	a biodiversity unit that relates to rivers and streams as defined by the Biodiversity Metric User Guide
"S106 BNG Set Up Fee"	the sum of [] pounds (£) to be paid by the Owner to the Council as a contribution towards the Council's initial costs of agreeing the details in this Deed
"S106 Monitoring Fee"	the sum of [] pounds (£) to be paid by the Owner to the Council towards the Council's costs of monitoring the obligations in this Deed
"S106 Monitoring Officer"	the Council's S106 Monitoring Officer for the time being or their successor post or any other officer to whom they delegate their S106 monitoring functions
"Sale"/"Sold"	the exchange of any Biodiversity Unit or part thereof to a third party for a monetary value
"Stacking"	the use of different credits or units for different ecosystem services for the same piece of land to achieve multiple environmental outcomes, but which does not involve Double Counting, as referred to in the Nature Markets Publication
"Transfer"/"Transferred"	the exchange of any Biodiversity Unit or part thereof to a third party for any arrangement other than a monetary value

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule 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 interchangeable in that manner.

- 2.4 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 against each individually 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 deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Any obligation, covenant, undertaking or agreement by any party to this Deed not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit, procure or allow the doing of that act or thing

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act and section 111 of the Local Government Act 1972 and section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and section 1 of the Localism Act 2011 with the intention that it shall bind the Parties interests in the Habitat Site
- 3.2 The covenants, restrictions and requirements imposed upon the Parties under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Parties and to the extent that any of the obligations are not planning obligations within the 1990 Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and section 1 of the Localism Act 2011 and all other enabling powers

4 CONDITIONALITY

- 4.1 This Deed shall come into effect upon the date at the head of this Deed

5 THE OWNER'S COVENANTS AND MORTGAGEE'S ASSENT

- 5.1 The Owner covenants with the Council:
 - 5.1.1 as set out in the First Schedule;
 - 5.1.2 not to encumber or otherwise deal with their interest in the Habitat Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Agreement are rendered impossible to carry out;

- 5.1.3 that there are no interests (legal or equitable) required for the purposes of section 106 of the 1990 Act in the Habitat Site other than detailed in this deed;
- 5.1.4 that no part of the Habitat Site is subject to any constraints, including but not limited to restrictive covenants, planning conditions, hydrology, flooding, archaeology and/or contamination which would be reasonably capable of affecting its suitability as a Habitat Gain Site and the habitat works and management required to achieve the target habitat, which have not been disclosed in writing to the Council prior to the completion of this deed
- 5.2 The Owner shall indemnify the Council for any reasonable expenses or liability necessarily incurred as a result of a breach by the Owner of any obligations contained in this Agreement
- 5.2 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Habitat Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Habitat Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Habitat Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner
- 6.1.1 as set out in the Second Schedule
- 6.1.2 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Deed (which for the avoidance of doubt does not include any payments made by a developer or applicant for planning permission to the owner of the Habitat Site):
- (a) to place the payments or financial contributions on deposit in the Council's Bank accounts (as the Council in its sole discretion shall decide) and to attribute a rate of interest thereon; and
 - (b) to apply such payments or financial contributions only for the purposes specified in this Deed provided that the Council will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Owner and for the avoidance of doubt the Council may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Deed.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council in the negotiation, preparation and execution of this Deed, the S106 BNG Set Up Fee and the S106 Monitoring Fee.

- 7.2 No provisions of Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registerable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given by the Development Manager unless otherwise stated.
- 7.5 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.
- 7.6 No person 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 entire interest in the Habitat Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest provided that the notice required by Clause 9 has been given.
- 7.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Habitat Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed PROVIDED THAT should such planning permission be granted prior to the coming into force of paragraph 7 of Part 1 of Schedule 7A to the 1990 Act the Parties agree that the Council shall be entitled, within three months of the implementation of such planning permission to:
- 7.8.1 the provision by the Owner of replacement Biodiversity Unit(s) on the Habitat Site (or if this is not practicable on land in the Council's administrative area, the precise location of which is to be agreed in writing by the Council) in place of all those Habitat Units (if any) which had previously been Sold or Transferred and which will be lost as a result of development pursuant to such planning permission, which replacements shall be of an equivalent number, type and level of enhancement to those so lost;
- 7.9 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Habitat Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.
- 7.10 The obligations contained in this Deed shall not be binding upon nor enforceable against any statutory undertaker or other person who acquires any part of the Habitat Site or interest therein for the purposes of the supply of electricity gas water drainage or telecommunication services PROVIDED THAT if a statutory undertaker acquires any part of the Habitat Site for such purposes the parties agree that the Council shall be entitled within three months of such acquisition to:
- 7.10.1 the provision by the Owner of replacement Biodiversity Unit(s) on the Habitat Site (or if this is not practicable on land in the Council's administrative area, the precise location of which is to be agreed in writing by the Council) in place of any lost as a result of such acquisition which had previously been Sold or Transferred (which shall be of an equivalent number, type and level of enhancement to those lost);

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council 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 the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

- 9.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Habitat Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Habitat Site or part thereof purchased by reference to a plan

10 INTEREST

- 10.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

11 VAT

- 11.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12 JURISDICTION

- 12.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

13 DELIVERY

- 13.1 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.

14 NOTICES

- 14.1 In this Clause:

14.1.1 'The Council's address' means the address of the Council shown on the first page of this Deed or such other address as the Council may from time to time notify to the Owner and its successors as being its address for service for the purposes of this Deed

14.1.2 'The address of the Owner' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed

14.1.3 'The address of the Mortgagee' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed

14.2 Any notice or other communication given or made in accordance with this Deed shall be in writing and:

14.2.1 may (in addition to any other effective mode of service) be delivered personally or sent by registered or recorded delivery or prepaid first class letter post or its equivalent;

14.2.2 shall in the case of a notice or other communication to the Council be served on the Council at the Council's address addressed to its Planning S106 Monitoring Officer;

14.2.3 shall in the case of a notice or other communication to the Owner be served on the Owner at the address of the Owner; and

14.2.4 shall in the case of a notice or other communication to the Mortgagee be served on the Mortgagee at the address of the Mortgagee

14.3 Notices shall not be sent by email or DX

15 DISPUTE RESOLUTION

15.1 The Parties shall act in good faith to resolve any dispute, claim or proceeding arising out of or relating to this Deed. In the event that any dispute cannot be resolved by the Parties within a period of twenty-eight (28) days after the date upon which the dispute or breach was first notified in writing by one Party to another then either Party shall be free to commence legal proceedings or where clause 15.2 applies to refer the dispute to an Expert for resolution in accordance with clauses 15.3 to 15.10.

15.2 In the event of:

15.2.1 a dispute as to whether or not a Party is, where applicable, performing its obligations, or exercising its rights, in accordance with the Habitat Management and Monitoring Plan; and

15.2.2 any other type of dispute where the parties agree that Expert dispute resolution is appropriate Clauses 15.3 to 15.10 shall apply

15.3 If a dispute to which clause 15.2 applies has not been resolved within the period mentioned in clause 15.1 either Party may refer the dispute to 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 in such proportion as the Expert shall determine and failing such determination shall be borne by the Parties in equal shares.

15.4 In the absence of an agreement as to the appointment or suitability of the person to be appointed as an Expert pursuant to clause 15.3 then such dispute may be referred by either Party to the president for the time being of the Royal Town Planning Institute for him to appoint an Expert and their decision shall be final and binding on the Parties in the absence of manifest error and his costs shall be payable by the Parties in such proportion as the Expert shall determine and failing such determination shall be borne by the Parties in equal shares.

15.5 Unless the Expert shall direct to the contrary, not more than 28 days after his appointment the Parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon

15.6 The Expert shall be at liberty to visit the land relevant to the dispute unaccompanied and to call for such written evidence from the Parties as he may require

15.7 The Expert shall not, unless he directs to the contrary, hear oral representations from any Party to the dispute

15.8 The Expert shall fully consider all submissions and evidence when making his decision

15.9 The Expert shall give his decision in writing and shall give reasons for it

15.10 The Expert shall use all reasonable endeavours to give his decision and the reasons for it as speedily as possible and in any event within 42 days of this appointment.

15.11 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute.

16 TERMINATION

16.1 the Council may terminate this Agreement on the condition that each of the following has occurred:

16.1.1 the Owner has breached one or more of its obligations in this Deed; and

16.1.2 the Owner has failed to remedy such breach within twenty eight (28) days after the Council has issued written notice of the breach (except where the Owner challenges a notice of breach through the provisions in clause 15 in which case remedy is required within twenty eight (28) days after notice of the determination under clause 15.9 that a breach has occurred).

16.2 This Agreement may be terminated by agreement in writing between the Parties

16.3 This agreement may be terminated by the Owner in respect only of any Habitat Units which have yet to be Sold or Transferred

16.4 If this Agreement is terminated under clause 16.1 above the Owner shall within thirty (30) days of such termination pay to the Council the monies in accordance with the payment schedule set out in the Habitat Management and Monitoring Plan

16.5 If this Agreement is terminated under clause 16.2 the Council and the Owner may by agreement in writing determine how any sums paid to the Council in accordance with the Management Plan Monitoring Fee payment schedule contained in the Habitat Management and Monitoring Plan shall be applied after such termination

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

THE FIRST SCHEDULE

Owner's Covenants with the Council

The Owner covenants with the Council as follows:

1. To provide the Council with the Commencement Notice and to pay the first instalment of the Management Plan Monitoring Fee to the Council in accordance with the payment schedule in the Habitat Management and Monitoring Plan no less than one month prior to the date of commencement of the Habitat Creation and Enhancement Works for the first Biodiversity Unit to be created or enhanced on the Habitat Site and not to commence any Habitat Creation and Enhancement Works until the Commencement Notice has been provided to the Council and the said first instalment of the Management Plan Monitoring Fee has been paid to the Council;

2. to complete the Habitat Creation and Enhancement Works in accordance with the Habitat Management and Monitoring Plan by no later than [DATE – to be no more than 12 months from Commencement of Development of the relevant scheme] (“the Habitat Creation and Enhancement Works Completion Date”) and for a period of no less than thirty (30) years from the Habitat Creation and Enhancement Works Completion Date to either:
 - 2.1 manage and maintain the Habitat Site in accordance with the Habitat Management and Monitoring Plan and for no other purpose inconsistent with the requirements of the Habitat Management and Monitoring Plan; or
 - 2.2 to procure such the management and maintenance of the Habitat Site in accordance with the Habitat Management and Monitoring Plan and for no other purpose inconsistent with the requirements of the Habitat Management and Monitoring Plan;and to continue to do so for as long as this Agreement is in effect;

3. not to cause or permit the Sale or Transfer of any Biodiversity Unit until it has appointed a Habitat Site Manager who is Competent and whose experience and qualifications it shall have previously provided in writing to the Council; and thereafter to retain a Habitat Site Manager who is Competent throughout the duration of this agreement, having notified any changes to their identity or contact details to the Council in writing within twenty-eight (28) days of any such change taking place;

4. not to :

4.1 create or cause or permit any encumbrance to the registered title to the Habitat Site; or

4.2 execute, renew or extend (nor cause or permit the execution, renewal or extension of) any lien, license or similar interest

that may reasonably affect the maintenance of the Habitat Site in accordance with the Habitat Management and Monitoring Plan, without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed;

5. to ensure that in accordance with government guidance, , all Biodiversity Units Sold or Transferred, or available for sale or Transfer, on the Habitat Site shall at all times meet the Legal Additionality Test and that there is no Double Counting of any Biodiversity Unit PROVIDED THAT FOR THE AVOIDANCE OF DOUBT Bundling or Stacking of environmental credits or units will be permitted;

6. to allow access to the Habitat Site on reasonable notice and at reasonable times to persons duly authorised by the Council for the purposes of monitoring compliance with the Habitat Management and Monitoring Plan and this Deed; subject to appropriate health and safety measures if livestock are on the Habitat Site

7. **Habitat Monitoring Reports**

7.1 to provide Habitat Monitoring Reports to the Council at the frequency as set out in the definition of the same from the first anniversary of the Habitat Creation and Enhancement Works Completion Date for the relevant part of the Habitat Site or in accordance with such other timescale and frequency as shall be set out in the Habitat Management and Monitoring Plan or agreed in writing with the Council;

7.2 to review each Habitat Monitoring Report with the Council and if the Council (acting reasonably) is of the view that a Habitat Monitoring Report indicates that the Habitat Management and Monitoring Plan is not being complied with it shall notify the Owner to that effect setting out its reasons for holding such opinion as soon as reasonably practicable after the review and, in any event, within eight (8) weeks of the review.

7.3 Following receipt of any written notice from the Council pursuant to paragraph 7.2 above, to submit Habitat Management and Monitoring Plan remedial measures that are designed to ensure the aims of the Habitat Management and Monitoring Plan can be met to the Council for approval including such further revisions as are reasonably required by the Council until such time as the Habitat Management and Monitoring Plan remedial measures are approved in writing by the Council PROVIDED THAT the Owner shall implement the approved Habitat Management and Monitoring Plan remedial measures as soon as reasonably practicable after they have been approved by the Council.

8. Financial reporting

8.1 to provide to the Council an annual Financial Update Report for thirty years on each anniversary of the Management Plan Effective Date;

8.2 in its accounts, to show the income and expenditure relating to the Habitat Site as a restricted fund and not to include such income and expenditure in its general funds; and

8.3 to keep separate, accurate and up-to-date accounts and records of the receipt of any income, and the project expenditure in relation to the Habitat Site's funding, and to retain all invoices, receipts, and accounts and any other relevant documents relating to the expenditure on the Habitat Site as required by this Deed for a period of at least seven years following the receipt of any income or the carrying out of any expenditure to which they relate

9. Notification of Sale or Transfer

9.1 to notify the Council of the date of any Sale or Transfer of any Biodiversity Unit generated from the agreed Habitat Management and Monitoring Plan within fourteen (14) days of the date of such Sale or Transfer occurring and to provide the Council on the date of such notification with the following information, in writing:

9.1.1 EITHER: a referenced row in the Biodiversity Metric regarding which type and condition of habitat has been Sold or Transferred OR the following parameters:

- a. the type and condition of habitat Sold or Transferred;
- b. the area in hectares, or, if the Biodiversity is of a type to which a linear measurement applies, the length in metres, of the Biodiversity Unit(s) Sold or Transferred;

- c. whether the habitat Sold or Transferred has been created or enhanced; and
- d. its strategic significance score

9.1.2 the total value in Biodiversity Unit(s) (if known, and assessed in accordance with the Biodiversity Metric) of any Biodiversity Unit Sold or Transferred;

9.1.3 details of each third party to whom any Biodiversity Unit has been Sold or Transferred including the address (which, if the said third party is a company shall be its registered office address) and contact details to include an email address and telephone number;

9.1.4 the Council's planning reference for the application (if any) to which the Sale or Transfer of a Biodiversity Unit relates; and

9.1.5 a unique transaction number and a copy of a certificate which shall have been provided to the party acquiring the Biodiversity Unit;

and thereafter not to cause or permit any further Sale or Transfer of:

- (a) that Biodiversity Unit, nor
- (b) (in cases where the complete Biodiversity Unit value is unknown at the date of Sale or Transfer) any other part of that specific hectare or kilometre (as relevant to the type of Biodiversity Unit) of the Habitat Bank until the precise unit value of the Biodiversity Unit Sold or Transferred is known

10. no later than twenty-eight (28) days from the date of any Sale or Transfer of any Biodiversity Unit, or within any shorter period of time set out in legislation or regulation, to apply to Natural England as the operator of the Biodiversity Gain Site register for registration of the relevant Biodiversity Units on that Register;

11. to submit all ecological records from the Habitat site on an annual basis to Buckinghamshire and Milton Keynes Environmental Records Centre (BMERC);

12. to provide the Council, within fifteen (15) Working Days of the date of a written request for the same, with a schedule setting out all Biodiversity Units on the Habitat Site

which have been Sold or Transferred and specifying whether they are related to development:

- 12.1 within the Council's administrative area;
- 12.2 within the administrative area of a local planning authority adjacent to that of the Council; or
- 12.3 within an area outside of and not adjacent to the Council's administrative area; and
- 12.4 at the same time to provide the Council with a separate schedule of those Biodiversity Units on the Habitat Site which remain available for Sale or Transfer

13. To provide the Council on the first anniversary of the date of the Commencement Notice and thereafter at five yearly intervals on the anniversary of that date a plan at a scale of no greater than 1:1250 clearly identifying the location of each Biodiversity Unit Sold or Transferred (if known)

14. Breach Provisions

14.1 No party shall be liable for breaching a requirement of the Habitat Management and Monitoring Plan which arises as a direct result of a Force Majeure Event

14.2 Notwithstanding the provisions of paragraph 14.3 of this Schedule, but subject to clause 16 of this Deed:

14.2.1 Before taking action to enforce any of the provisions of this Deed the Council will give written notice to the Owner stating the nature of the breach, the steps required to remedy the breach and specifying a reasonable timescale for the Owner for remedying the breach;

14.2.2 The Council will also give the Owner a reasonable opportunity to discuss the breach with it and the timescale and steps for remedying the said breach prior to the remedy being carried out. The Council will take into account any reasonable representations made by the Owner.

14.2.3 If the Owner does not use reasonable endeavours to remedy the breach within the stated time period or longer period as agreed with the Council then without prejudice to paragraph 14.3 below the Council will be able to pursue all legal remedies

14.3 if at any time the Council acting reasonably notifies the Owner in writing that there has been a fundamental breach of the obligations contained in paragraph 1 of this Schedule

which is a breach resulting in habitat destruction or habitat failure in respect of one or more Biodiversity Units (and for the avoidance of doubt this shall not be deemed to have arisen where the Habitat Management and Monitoring Plan has been fully complied with) the Owner shall be required to pay to the Council within fifteen (15) Working Days of the date of such notification either:

14.3.1 the sum which the Council reasonably estimates to be necessary to provide replacement Biodiversity Unit(s) on the Council's land of an equivalent number, type and level of enhancement to those lost; or, if the Council is unable to make such provision

14.3.2 a sum calculated in accordance with the Buckinghamshire Council Financial Contribution Calculator as the value of the said Biodiversity Units which have been lost to be used by the Council for funding long-term conservation projects in the Council's administrative area which will deliver Biodiversity Net Gain

THE SECOND SCHEDULE Council's Covenants

1. THE Council hereby covenants with the Owner:
 - 1.1. To operate abide by and comply with the arrangements terms conditions and obligations for the purposes set out in the First Schedule hereto
 - 1.2. Save for the Management Plan Monitoring Fee (which is designed to be spent over the thirty year lifetime of the Habitat Management and Monitoring Plan) if any sum paid to the Council or any part thereof is not committed for the purposes specified herein ten (10) years after the date of receipt then the Council covenants with the person or persons who makes payment of the same to repay to the person or persons who paid the said sum all or any of the remaining balance that remains unspent together with interest which has

accrued thereon from the date of receipt of payment by the Council to the date of repayment at base rate of the Bank of England.

- 1.3. For the avoidance of doubt, for the purposes of clauses 1.2 above any sum (or part thereof) shall be deemed to have been committed if the Council has entered into any contract or given any undertaking (whether enforceable in law or otherwise) the performance or fulfilment of which will require it to expend funds in the future

APPENDIX A

HABITAT MANAGEMENT AND MONITORING PLAN

APPENDIX B
Payment Schedules

THE COMMON SEAL of)
§)
was affixed to this Deed in the presence of:)

Director

Director/Secretary

SIGNED as a Deed by §)

acting by a director and its secretary or)

two directors)

Director

Director / Secretary

SIGNED as a Deed by)

§)

in the presence of)

Witness Signature:

Name:

Address:

Occupation:

THE COMMON SEAL of)
BUCKINGHAMSHIRE COUNCIL)
was affixed in the presence of:)

Authorised Signatory: