

**DATED**

**2026**

**PLANNING AGREEMENT**

**between**

**(1) SOUTH KESTIVEN DISTRICT COUNCIL**

**and**

**(2) GEORGE CAMERON BREMNER**

**Agreement under**

**Section 106 Town & Country Planning Act 1990 (as amended)**

**relating to land at Manor Farm, Wilsthorpe, Stamford, PE9 4NX**

Legal Services Lincolnshire  
County Offices  
Newland  
Lincoln  
LN11YS

Planning Ref: [       ]  
LSL Ref: SK200.[     ]

**THIS DEED** is made the

day of

2024

**BETWEEN**

- 1) **SOUTH KESTIVEN DISTRICT COUNCIL** of Council Offices St Peters Hill Grantham Lincolnshire NG31 6PZ ("the Council"); and
- 2) **GEORGE CAMERON BREMNER** of Manor Farm, Wilsthorpe, Stamford, Lincolnshire PE9 4NX ("the Owner").

**RECITALS**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Biodiversity Areas is situated and by whom the obligations and covenants contained in this Deed are enforceable
- (B) The Owner is the freehold owner of the Biodiversity Areas which is registered at HM Land Registry under part of title number LL331116
- (C) The Owner intends to create Biodiversity Net Gain Units on the Biodiversity Areas for the purpose of satisfying Biodiversity Net Gain Obligations for developments and is responsible for delivering the habitat enhancements and managing and maintaining the Biodiversity Areas in accordance with the Habitat Management Plan.
- (D) The Owner and the Council agree that the Biodiversity Areas can provide Biodiversity Net Gain Units and can provide biodiversity enhancements. The parties enter into this Deed to secure the planning obligations contained in it and to bind the land.

**OPERATIVE PART**

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. In this Deed the following terms and expressions shall have the following meaning:

"the 1990 Act"	means The Town and Country Planning Act 1990 (as amended)
"the 2011 Act"	means The Localism Act 2011 (as amended)
"Allocated"	means Biodiversity Net Gain Units specified in the Habitat Management and Monitoring Plan which have been allocated to a development for

	the purposes of satisfying Biodiversity Net Gain Obligations for that development
"Area Habitat Units"	means 97.79 area habitat units (total onsite uplift) as measured by the Biodiversity Metric comprising creation of the following habitat types: 13.1596 other neutral grassland (good condition), 2.152ha of traditional orchard (moderate condition) and 1.2327ha of other woodland broadleaved (moderate condition) and enhancement of 0.3945ha of other neutral grassland (from poor to good condition)
"Biodiversity Areas"	means the Parcels shown edged in red on the BNG Location Plan, comprising the Biodiversity Net Gain Units
"Biodiversity Net Gain Obligations"	means any requirements or obligations in respect of a development in relation to achieving a net gain in Biodiversity Value, whether pursuant to the requirements of the Environment Act 2021, Schedule 7A of the 1990 Act, or any other requirements of a local planning authority or commitments made by a developer in relation to the same
"Biodiversity Net Gain Units"	means a unit of Biodiversity Value measured in accordance with the BNG Metric which may include Area Habitat Units and or Hedgerow Units and or Watercourse Units
"Biodiversity Site Register"	means the Natural England register to be established and maintained pursuant the Biodiversity Gain Site Register Regulations 2024 (as amended)
"Biodiversity Value"	means the unit quantification of the size and the distinctiveness, quality and condition of a habitat to provide a measure of its ecological value as assessed using the BNG Metric
"BNG Metric"	means the latest biodiversity metric published by DEFRA for measuring the biodiversity value

	or relative biodiversity value of habitat or habitat enhancement pursuant to the Environment Act 2021 and any regulations relating to biodiversity net gain made thereunder or such other metric as may from time to time be produced and published by the Secretary of State
"BNG Location Plan"	means the plan attached at [Appendix 2] marked ENVIRO 23002-A BNGA2 or such other plan as agreed pursuant to paragraph 2.4 of Schedule Three
"Compliance Visit"	means a site visit undertaken by a trained ecologist which may for the avoidance doubt include the inspection of more than 1 Parcel
"Compliance Visit Fee"	means the sum of £700 (or such other reasonable fee as may be levied by the Council in the future) per Compliance Visit which may for the avoidance doubt include the inspection of more than one Parcel
"Comply"	means comply, perform, fulfil and/or discharge or procure compliance, performance, fulfilment and/or discharge, and "Compliance" shall be construed accordingly
"Covenant Expiry Date"	means the date which is the expiration of the period of 30 years from the Covenant Start Date
"Covenant Period"	means the period from the Covenant Start Date to the Covenant Expiry Date
"Covenant Start Date"	means the date that the Council issues the Phased Completion Certificate
"DEFRA"	means the Department for Environment Food & Rural Affairs
"Details Submitted"	means the [document] attached to this Deed at Appendix [ ]
"Force Majeure Event"	means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, fire earthquake, or other natural disaster;

	<p>(b) epidemic or pandemic;</p> <p>(c) 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; and</p> <p>(d) nuclear, chemical or biological contamination</p>
"Habitat Management and Monitoring Plan"	<p>means the plan as set out in Appendix [ ] to this Deed for creating and enhancing the habitat at the Biodiversity Areas and managing, maintaining and monitoring the Biodiversity Net Gain Units delivered or such updated plan as may be agreed with the Council in writing pursuant to paragraph 7.1 of Schedule Three, such agreement not to be unreasonably withheld or delayed</p>
"Hedgerow Units"	<p>means 3,89 hedgerow units (total onsite uplift) as measured by the Biodiversity Metric comprising species-rich native hedgerow with trees</p>
"Index"	<p>means the RICS BCIS TPI (Royal Institute of Chartered Surveyors Building Cost Information Service Tender Price Index) and in the event that the relevant Index ceases to exist or is replaced or rebased then reference to the relevant Index shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed"</p>
"Interest"	<p>means interest at four per centum (4%) above the base lending rate of the Bank of England from time to time</p>
"Land Bound"	<p>means all of the Biodiversity Areas</p>

“Natural England”	means the executive non-departmental public body, sponsored by DEFRA
“Parcel”	means one of the individual parcels of land comprising the Biodiversity Areas as shown on the BNG Location Plan (or any revised plan agreed with the Council from time to time) and “Parcels” shall be construed accordingly
“Permitted Use”	means in respect of the Biodiversity Areas such uses of the land as are in accordance with and/or not prejudicial to the implementation and operation of the Habitat Management and Monitoring Plan subject to any necessary consents being obtained
“Phased Biodiversity Net Gain Monitoring Contribution”	means the sum of £7,333 for each of the first two Parcels and the sum of £7,334 for the third Parcel to be paid by the Owner to the Council pursuant to paragraph 6.2 of Schedule Three to be applied by the Council as a financial contribution towards the Council’s costs of monitoring compliance with the Owner’s obligations under this Agreement in respect of Biodiversity Net Gain Obligations for a period of 30 years from the Covenant Start Date of each Parcel.
“Phased Completion Certificate”	means the notice issued by the Council following a Compliance Visit approving the habitat establishment works for each Parcel
“Phased Dissatisfaction Notice”	means the notice to be issued by the Council in the event that the Council is not reasonably satisfied that the habitat establishment works have been carried out and completed to the Council’s reasonable satisfaction and which shall set any steps that the Council considers

	that the Owner must take to complete the establishment works to their reasonable satisfaction
"Reasonable Endeavours"	means attempt to fulfil the relevant obligation by expending effort and money as in all the circumstances may be reasonable to expect, which may include engaging professional and other advisers as appropriate but does not require a party to take proceedings (including any appeal) in any court, public inquiry, or other hearing (unless specified to the contrary)
"Relevant Event"	<p>means any of the following events:</p> <ul style="list-style-type: none"> <li>(a) a change in the law and/or national policy in respect of the requirement to secure biodiversity net gain in respect of development; or</li> <li>(b) a decision of a Court, tribunal, Secretary of State or Natural England (or such similar body) that results in Biodiversity Net Gain Obligations not being required by law and/or which determines that the Land Bound no longer being considered to be an effective form of satisfying the Biodiversity Net Gain Obligations</li> <li>(c) compulsory purchase</li> <li>(d) a change in scientific opinion based on evidence</li> <li>(e) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve the Biodiversity Net Gain Obligations</li> <li>(f) the Biodiversity Metric is amended, updated, or replaced by Natural England and/or DEFRA</li> <li>(g) the Biodiversity Areas (or any Parcel comprising the Biodiversity Areas) becomes</li> </ul>

	<p>designated under law or is otherwise encumbered by any right which would be incompatible with the Biodiversity Areas' requirement to create and/or enhance biodiversity under Schedule 7A of the 1990 Act; or</p> <p>(h) such other event as may be agreed between the parties to this Deed as constituting a Relevant Event</p>
"Report"	<p>means the completed "Habitat Monitoring Report Template" appended at Appendix [ ]. The completed documents submitted to the Council need to reflect the relevant year's survey season April to September (subject to the habitat and seasonal weather patterns) and must be submitted prior to the 1<sup>st</sup> December of the year of reporting.</p>
"Revised Phased Biodiversity Net Gain Monitoring Contribution"	<p>means the fee as calculated by the Council pursuant to paragraph 7.2 of Schedule Three</p>
"Unallocated"	<p>means those Biodiversity Net Gain Units which have not yet been Allocated to a development</p>
"Unallocated Capacity"	<p>means the quantum of Biodiversity Net Gain Units which remain available for Allocation</p>
"Variation Event"	<p>means any of the following events in regards to statutory Biodiversity Net Gain Obligations:</p> <ul style="list-style-type: none"> <li>(a) a change in Natural England's custom or practice;</li> <li>(b) a change in scientific opinion based on evidence;</li> <li>(c) 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 Obligations; or</li> </ul>

	(d) such other event as may be agreed between the parties as constituting a Variation Event
"Working Day"	means any day from Monday to Friday (inclusive in each week except for Statutory holidays and any day in the period from Christmas Eve to New Year's Day (inclusive))

- 1.2. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital or plan in this Deed
- 1.3. Clause headings are for reference only and shall not affect the interpretation of this Deed
- 1.4. Where in any schedule or part of any schedule reference is made to a paragraph such reference shall (unless the context requires otherwise) be to a paragraph of that schedule or (if relevant) part of that schedule
- 1.5. References to any party to this Deed shall include reference to their successors in title and assigns and to persons claiming or deriving title through or under them.
- 1.6. Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.7. 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
- 1.8. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established
- 1.9. 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
- 1.10. An obligation in this Deed on a party not to do something includes an obligation not to agree, allow or suffer that thing to be done or procure the doing of that act or thing
- 1.11. 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

- 1.12. A reference to this Deed or any other agreement or document referred to in this Deed is a reference to this Deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time

## 2. **LEGAL BASIS**

- 2.1. This Deed is made pursuant to:

- i. Section 106 of the 1990 Act;
- ii. Part 6 of the Environment Act 2021;
- iii. section 39 of the Wildlife and Countryside Act 1981;
- iv. section 33 of the Local Government (Miscellaneous Provisions) Act 1982; and
- v. section 1 of the 2011 Act, section 111 of the Local Government Act 1972, and all other enabling powers that may be relevant to the enforcement of the obligations contained in this Deed.

- 2.2. The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the 1990 Act and are intended to be enforceable by the Council as local planning authority.

## 3. **CONDITIONALITY**

This Deed shall come into effect immediately upon completion of this Deed.

## 4. **AGREEMENTS AND DECLARATIONS**

The parties agree and declare that:

- a) except in relation to any successors to the parties as defined in this Deed the provisions of this Deed shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999
- b) this Deed shall be registered as a land charge by the Council as local planning authority
- c) following the performance and satisfaction of all of the obligations contained in this Deed the Council shall at the Owner's expense effect the cancellation of all relevant entries made in the register of local land charges in respect of this Deed

- d) no person or party shall be bound by the terms of this Deed or liable for a breach of the restrictions and obligations contained in this Deed occurring after that person or party has parted with all or part of their interest in the Land Bound or the part in respect of which the breach occurs (but without prejudice to any liability for any breach committed prior to such parting) except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar; or
- e) the Owner agrees to give the Council written notice of any change in ownership of their interests in the Land Bound occurring before all the obligations under this Deed have been discharged within twenty (20) Working Days of the same occurring
- f) nothing contained in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and its rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised
- g) if any severable provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired
- h) 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 consent or expression of satisfaction shall not be unreasonably withheld or delayed
- i) any notices requests demands or other written communications pursuant to this Deed shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- j) any payment made pursuant to this Deed shall be Index linked in accordance with the Index from the date of this Deed until the date of payment of each Financial Contribution
- k) if any Financial Contribution due under this Deed is paid late Interest will be payable from the date payment is due until the date payment is made

5. **COUNCIL'S COVENANTS**

The Council covenants to comply with its obligations set out in Schedule Two and (where applicable) in Schedule Three

6. **OWNER'S COVENANTS**

- 6.1 The Owner covenants with the Council so as to bind the Land Bound
- a) to comply with its obligations as set out in Schedule Three
  - b) to pay on the completion of this Deed the reasonable legal costs of the Council incurred in preparing, negotiating and completing this Deed

7. **MORTGAGEE CONSENT**

The Mortgagee and any future mortgagee or chargee shall be bound by the obligations contained in this Deed to the extent they are binding on the Land Bound and the security of any mortgage over any part of the Land Bound shall take effect subject to this Deed PROVIDED THAT the Mortgagee or future mortgagee chargee shall otherwise have no liability under this Deed unless they take possession of the Land Bound (or that part of it which the mortgage relates to) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner PROVIDED FURTHER THAT it shall not in any event be liable for any breach of this Deed arising prior to it becoming a mortgagee in possession of the land and nor shall it be liable for any breach of this Deed unless it shall have caused such breach to have occasioned.

8. **JURISDICTION**

This Deed shall be governed by and interpreted in accordance with the law of England

9. **WAIVER**

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

10. **DISPUTE RESOLUTION**

- 10.1. In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

- a) The parties shall use their reasonable endeavours to resolve the dispute by agreement
- b) If agreement cannot be reached the matter in dispute shall be referred to and settled by a single independent expert ("the Expert") to be nominated by the President of the Royal Institution of Chartered Surveyors on the application of a party after giving notice (in accordance with Clause 4.1 (k)) in writing to the other parties to this Deed
- c) The person to be appointed pursuant to Clause 10.1 (b) shall be a person having five (5) years or more post qualification experience of projects comprising works of the scale and nature of the Development
- d) Notice in writing of the appointment of an Expert pursuant to this clause shall be given by the Expert to the Parties and he shall invite each to submit within a specified period (which will not exceed fifteen (15) Working Days) any written representations each wishes to make to him and any submissions shall be provided to the parties with an invitation to respond within a specified period (not exceeding ten (10) Working Days)
- e) Reference to the Expert shall be on terms that determination shall take place within twenty (20) Working Days of the Expert accepting his instructions or within such extended period as the parties may together allow
- f) The Expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement
- g) The Expert shall have the power to award costs of the determination in favour of any party to the dispute at the expense of another party and failing such determination such costs shall be borne by the parties in equal shares
- h) The Expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- i) The findings of the Expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute
- j) If for any reason the Expert fails to make a decision and give notice in accordance with the clauses of this Deed, any party may apply to the President of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place

- k) Nothing in this clause shall be taken to fetter the parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed

11. **VAT**

All Financial Contributions paid in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

12. **EXECUTION AND DELIVERY**

This document is executed as a deed and is delivered on the date stated at the beginning of this Deed

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

**SCHEDULE ONE**

**DETAILS OF THE OWNER'S TITLE AND DESCRIPTION OF THE LAND BOUND**

That part of the land known as Land at Manthorpe and Wilsthorpe, Bourne being part of the land registered at the Land Registry under title number LL331116 as shown edged red on the BNG Location Plan

DRAFT

**SCHEDULE TWO**  
**THE COUNCIL'S COVENANTS**

**PART A – GENERAL PROVISIONS**

1. The Council covenants at the written request of the Owner that the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

**PART B – BIODIVERSITY NET GAIN**

- 1 The Council covenants and agrees with the Owner as follows:
  - 1.1 Not to unreasonably withhold or delay giving its written approval to any revised or replacement Habitat Management and Monitoring Plan submitted by the Owner to the Council pursuant to paragraph 7.1 of Schedule Three.
  - 1.2 To give not less than 10 Working Days' notice to the Owner of its intention to access the Biodiversity Areas for the purposes of inspection pursuant to paragraph 9.1 of Schedule Three
  - 1.3 The existence at any time of any Unallocated Capacity shall not be taken into account by the Council in the determination of any application for planning permission by the Council without prior written confirmation from the Owner that the Owner has Allocated such Biodiversity Net Gain Units to the development that the application for planning permission is in respect of.
  - 1.4 For the avoidance of doubt, the Council agrees with the Owner that Unallocated Capacity shall be Allocated to developments or otherwise monetised by the Owner in its absolute discretion
  - 1.5 Not to unreasonably withhold or delay giving its written approval to any calculation of Biodiversity Value submitted by the Owner to the Council pursuant to paragraphs 7.1 or 10.2 of Schedule Three.
  - 1.6 The Council covenants to pay the Phased Biodiversity Net Gain Monitoring Contribution into an appropriate interest-bearing section of the Council's combined accounts as soon as reasonably practicable upon receipt from the Owner and to credit all interest so earned on the Phased Biodiversity Net Gain Monitoring Contribution to that account. The Council further covenants to use the Phased Biodiversity Net Gain Monitoring Contribution for its intended purpose and not for any other purpose.

- 1.7 To monitor the implementation and operation of the Habitat Management and Monitoring Plan by way of periodic physical visits to the Biodiversity Areas by a suitably qualified ecology and environmental management professional to inspect the Biodiversity Areas and to provide as soon as practicable afterwards a written report to the Owner of the findings of their visit such periodic physical visits being at the following intervals from the Covenant Start Date: year 1, year 2, year 3, year 5, year 10, year 15, year 20, year 25, and year 30.
- 1.8 Upon receipt of the request pursuant to paragraph 5.2 of Schedule Three the Council shall carry out a Compliance Visit in a timely manner thereafter and as agreed with the Owner
- 1.9 Within 15 Working Days following a Compliance Visit the Council will issue to the Owner either a Phased Completion Certificate or a Phased Dissatisfaction Notice as appropriate
- 1.10 The Council covenants with the Owner upon the Covenant Expiry Date or in the event of a Relevant Event or following receipt of a written notification pursuant to paragraph 2.4 of Schedule Three to issue a letter of release in substantially the form attached at Appendix [A/B/C] in respect of the relevant land within 20 Working Days (or such other time as agreed by the Council) after the date of the Relevant Event or the date on which it receives the written notification pursuant to paragraph 2.4 of Schedule Three.

### **SCHEDULE THREE**

#### **THE OWNER'S COVENANTS - BIODIVERSITY NET GAIN PROVISIONS**

##### **1. ENFORCEMENT PROTOCOL**

- 1.1 Before taking action to enforce any of the provisions of this Deed the Council will attempt to negotiate with the Owner and may provide a written notice 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 BUT FOR THE AVOIDANCE OF DOUBT the Council can take enforcement action at any time without having negotiated with the Owner or having provided a written notice.
- 1.2 The Council will also give the Owner the opportunity to discuss the breach with the Council and the timescale and steps for remedying it prior to the remedy being carried out. The Council will take into account any reasonable representations made by the Owner. Until such time as the Council is satisfied that there has been no breach from the date of the written notice served pursuant to paragraph 1.1 above the Owner shall not Allocate any further Biodiversity Net Gain Units.
- 1.3 If the Owner does not diligently remedy the breach within the time period agreed under the notice (or such longer period subsequently agreed with the Council) the Council shall take further enforcement action. If the Owner does not use Reasonable Endeavours to remedy the breach within the stated time period (or longer period as prior agreed in writing with the Council) the Council will be able to pursue legal remedies.

FOR THE AVOIDANCE OF DOUBT, references to "breach" in this Schedule Three exclude any Force Majeure Event and/or the outcome/s of any Relevant Event.

##### **2. TERMINATION AND VARIATION OF THIS AGREEMENT**

- 2.1 The provisions of this Deed shall terminate on the Covenant Expiry Date, provided that the Owner is not in material and continuing breach of any terms of this Deed and provided further that the termination of this Deed shall be without prejudice to any accrued rights and liabilities or any rights or remedies of the parties for breach, non-observance, or non-performance of the obligations under this Deed
- 2.2 In the event of a Relevant Event, the provisions of this Deed shall automatically terminate in relation to any part of the Biodiversity Areas which has not been Allocated. For the avoidance of doubt all that land within the Biodiversity Areas which includes Biodiversity Net Gain Units that have been Allocated at the date of the Relevant Event will remain subject to the terms of this Deed.

- 2.3 In the event of a Variation Event, the Owner and the Council may by agreement make such changes to this Deed (with such changes to be documented in a deed of variation to this Agreement) as are reasonably required to take account of the Variation Event.
- 2.4 The Owner may at any time provide the Council with an updated BNG Location Plan and updated BNG Metric confirming that any part of the Biodiversity Areas which includes Biodiversity Net Gain Units that have not already been Allocated will no longer be used for the purposes of habitat mitigation and that part of the Biodiversity Areas shall cease to be subject to the provisions of this Deed on receipt of that notification and the Owner will update Natural England within 5 Working Days of the notification to the Council.
- 2.5 In the event that there has been no creation and enhancement of habitat on certain Biodiversity Areas by the sixth anniversary of the completion of this Deed, the Biodiversity Value attributable to such Biodiversity Areas shall be subject to reassessment.

### **3. NO RESTRICTION OF OWNER'S USE OF RETAINED LAND**

- 3.1 Nothing in this Agreement shall impose or be deemed to impose any restriction on the Owner's use of the Land Bound and the Owner retains rights of light and the ability to develop the Land Bound and use the Land Bound in any way BUT FOR THE AVOIDANCE OF DOUBT the provisions of this paragraph 3 shall always be (where relevant) subject to:
- 3.1.1 compliance with the Habitat Management and Monitoring Plan;
  - 3.1.2 compliance with the provisions of paragraph 5 of this Schedule; and
  - 3.1.3 subject to the approval of any necessary consents or permissions.

### **4. FORCE MAJEURE**

- 4.1 Provided it has complied with this paragraph 4, if the Owner is prevented, hindered, or delayed in or from performing any of its obligations under this Deed by a Force Majeure Event the Owner shall not be in breach of or otherwise liable for any such failure or delay in the performance of such obligations.
- 4.2 The Owner shall as soon as reasonably practicable after the start of the Force Majeure Event notify the Council in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Deed.
- 4.3 The Owner shall use Reasonable Endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

### **5. IMPLEMENTATION OF HABITAT MANAGEMENT AND MONITORING PLAN**

- 5.1 The Owner and the Council agree that the habitat enhancements will be completed in accordance with the Habitat Management and Monitoring Plan BUT FOR THE AVOIDANCE OF DOUBT the habitat establishment works will not be considered to be complete pursuant to this paragraph 5.1.1 until the Owner has received a Phased Completion Certificate from the Council confirming the habitat establishment works for that Parcel have been implemented in full and as required in the Habitat Management and Monitoring Plan and to the satisfaction of the Council.
- 5.2 No later than 30 days ahead of the anticipated date of completion of the habitat establishment works for that Parcel the Owner will request a Compliance Visit and shall pay to the Council the Compliance Visit Fee ahead of the Compliance Visit.
- 5.3 If a Phased Dissatisfaction Notice is issued for a Parcel pursuant to a Compliance Visit then the Owner shall repeat the provisions of paragraph 5.2 until such time as a Phased Completion Certificate for that Parcel is issued to the Owner by the Council
- 5.4 The Owner covenants with the Council:
- 5.4.1 to implement the Habitat Management and Monitoring Plan; and
  - 5.4.2 to maintain, manage and monitor the habitat enhancements at the Biodiversity Areas in accordance with the Habitat Management and Monitoring Plan throughout the Covenant Period; and
  - 5.4.3 not to use the Biodiversity Areas for any purposes that are not in accordance with the Habitat Management and Monitoring Plan PROVIDED THAT the Biodiversity Areas may be used for any or all of the Permitted Uses.

## **6. MONITORING**

- 6.1 The Owner covenants with the Council that:
- 6.1.1 it shall submit to the Council the Report on the outcomes of the monitoring of the Biodiversity Areas undertaken pursuant to paragraph 1.7 of Part B of Schedule Two.5
  - 6.1.2 that if any monitoring report submitted pursuant to paragraph 6.1.1 identifies that remedial and/or corrective measures are reasonably required to the habitat enhancements at the Biodiversity Areas in order to ensure that they meet the standards set out in the approved Habitat Management and Monitoring Plan then such measures shall be undertaken by the Owner in accordance with timescales agreed with the Council.
- 6.2 The Owner shall pay to the Council the Phased Biodiversity Net Gain Monitoring Contribution within 15 Working Days of the date of commencement of the habitat

creation and enhancement works for each Parcel IT BEING AGREED THAT the Owner shall be entitled to, at his discretion, to pay the Phased Biodiversity Net Gain Monitoring Contribution for each parcel (totalling £22,000) on commencement of the habitat creation and enhancement works for the first Parcel.

## **7. REVISION OR REPLACEMENT OF HABITAT MANAGEMENT AND MONITORING PLAN**

- 7.1 The Owner may from time to time submit an updated or replacement Habitat Management and Monitoring Plan to the Council for approval along with the Review Fee which approval shall not be unreasonably withheld or delayed PROVIDED THAT any such revised or replacement Habitat Management and Monitoring Plan shall not prejudice the continued functioning of the Biodiversity Areas and/or any existing Allocation of Biodiversity Net Gain Units.
- 7.2 The Council may as a result of the revised Habitat Management and Monitoring Plan approved pursuant to paragraph 7.1 above impose a Revised Phased Biodiversity Net Gain Monitoring Contribution and thereafter the Owner shall pay the difference between the Phased Biodiversity Net Gain Monitoring Contribution and the Revised Phased Biodiversity Net Gain Monitoring Contribution within 15 Working Days of the Council's approval of the new Habitat Management and Monitoring Plan.
- 7.3 If the revised Habitat Management and Monitoring Plan results in either:
- (a) a change to the broad habitat type , or
  - (b) an increase in Distinctiveness ,

of any Habitats outlined in the current Habitat Management and Monitoring Plan, as defined by the BNG Metric , then the Owner must request a Compliance Visit from the Council within 10 Working Days of approval of the new Habitat Management and Monitoring Plan , and the Covenant Period of 30 years will restart from the date of the new Completion Certificate. FOR THE AVOIDANCE OF DOUBT a Compliance Visit Fee must be paid by the Owner to the Council in advance of the Compliance Visit.

## **8. ALLOCATION OF BIODIVERSITY NET GAIN UNITS**

- 8.1 The Owner shall notify the Council when all of the Biodiversity Net Gain Units in a Parcel are Allocated, and shall provide:
- 8.1.1 details of the development to which the Biodiversity Net Gain Units are Allocated including the planning permission reference number for the development and local authority area within which the development is located;

- 8.1.2 the number of Biodiversity Net Gain Units Allocated to the development; and
- 8.1.3 the remaining number of Biodiversity Net Gain Units which are Unallocated.

## **9. RIGHT TO INSPECT BIODIVERSITY AREAS**

- 9.1 From the date of this Deed the Owner shall at all reasonable times (following reasonable notice given in accordance with paragraph 1.2 of Part B of Schedule Two) allow the Council, its agents, and contractors with or without workmen and equipment to inspect the Biodiversity Areas to monitor compliance with the obligations contained in this Deed.

## **10. RECALCULATION OF BIODIVERSITY NET GAIN**

- 10.1 If during the term of this Deed a new methodology for calculating Biodiversity Net Gain is prescribed by DEFRA or Natural England which differs from that provided through this Agreement then the Owner may:
  - 10.1.1 Within 6 (six) months after the new methodology referenced in paragraph 10.1 of this Schedule Three is prescribed pursuant to the Environment Act 2021 (or such other relevant legislation) produce a written calculation of the Biodiversity Value of the Biodiversity Areas, such calculation to be on the basis of such new methodology, and shall submit the same to the Council for approval in writing;
  - 10.1.2 Upon receipt from the Council of written notice of approval of any calculation submitted pursuant to paragraph 10.1.1 of this Schedule Three the Biodiversity Value shall be deemed for the purposes of this Agreement to be the amount approved pursuant to paragraph 10.1.1. of this Schedule Three; and
  - 10.1.3 In the event that either of the calculation and/or data gathering is not agreed then the Owner or the Council may refer the matter to be determined by the Expert pursuant to clause 10 of this Deed.
- 10.2 The Owner shall at any time and at its sole discretion have the option (but not the obligation) to produce a written calculation of the Biodiversity Value of the Biodiversity Areas, based on the BNG Metric and:
  - 10.2.1 to notify the Council and Natural England of the updated Unallocated Capacity of the Biodiversity Areas; and
  - 10.2.2 to sell and/or Allocate the Biodiversity Net Gain Units within the Unallocated Capacity.
- 10.3 For the avoidance of doubt any recalculation of Biodiversity Value carried out pursuant to paragraphs 10.1 or 10.2 of this Schedule Three shall not invalidate or otherwise prejudice any Allocation of the Biodiversity Net Gain Units made prior to the date on which (i) the Owner is notified by the Council pursuant to paragraph 10.1.1 of this

Schedule that such calculation is approved or (ii) the Council is notified by the Owner pursuant to paragraph 10.2.1 of this Schedule.

10.4 In the event that the new Biodiversity Net Gain methodology referenced in paragraph 10.1 of this Schedule requires the Habitat Management and Monitoring Plan to be amended and/or updated and/or replaced (as the case may be) the Owner shall:

10.4.1 within 6 (six) months of the new Biodiversity Net Gain methodology legally taking effect produce a revised Habitat Management and Monitoring Plan and submit the same to the Council for approval pursuant to paragraph 7.1 of this Schedule; and

10.4.2 upon receipt from the Council of written notice of approval of any revised Habitat Management and Monitoring Plan the Owner shall implement the approved Habitat Management and Monitoring Plan as amended and/or updated and/or replaced (as the case may be).

## **11. REGISTRATION OF BIODIVERSITY NET GAIN ALLOCATION**

11.1 The Owner shall be responsible for submitting on a timely basis relevant information to Natural England for inclusion in the Biodiversity Site Register and for inclusion in any other statutory registers and national records held by Natural England and held by any other regulatory authorities in accordance with applicable laws and shall confirm to the Council the Details Submitted each time the Owner updates Natural England in accordance with this paragraph 11.1.

**APPENDIX [ ] – BNG LOCATION PLAN**

**APPENDIX [ ] - HABITAT MANAGEMENT AND MONITORING PLAN**

**APPENDIX [ ] – DETAILS SUBMITTED**

**APPENDIX [ ] – THE REPORT - HABITAT MONITORING REPORT TEMPLATE**

**APPENDIX [ ] – THE REPORT - HABITAT MONITORING REPORT**

**APPENDIX [ ] – LETTER OF RELEASE (FINAL)**

**TO BE TYPED ON THE COUNCIL'S HEADED NOTEPAPER**

Dear [Owner]

We acknowledge receipt of the [final][revised] monitoring report in respect of the habitat enhancements which were required to be implemented pursuant to the planning obligations imposed upon [the Owner] in the Deed made pursuant to s106 of the Town and Country Planning Act 1990 dated [ ] and made between [ ].

The planning obligations which are specified in the Schedule below have been fulfilled.

Schedule *[Specify released obligations]*

Having considered the [final][revised] monitoring report that you have submitted we agree that the planning obligations referred to in the Schedule above have been fulfilled and hereby release [the Owner and the Biodiversity Areas][the areas identified on the plan attached] from any further liability in respect of those planning obligations.

Yours faithfully

For and on behalf of the Council being duly authorised to do so

**APPENDIX [ ]B – LETTER OF RELEASE (UNALLOCATED UNITS)**

**TO BE TYPED ON THE COUNCIL'S HEADED NOTEPAPER**

Dear [Owner]

We acknowledge receipt of the revised monitoring report in respect of the habitat enhancements which were required to be implemented pursuant to the planning obligations imposed upon [the Owner] in the Deed made pursuant to s106 of the Town and Country Planning Act 1990 dated [ ] and made between [ ].

The planning obligations which are specified in the Schedule below have been fulfilled.

Schedule *[Specify released obligations]*

Having considered the revised monitoring report that you have submitted we agree that the planning obligations referred to in the Schedule above have been fulfilled and hereby release the Owner and the areas identified on the plan attached from any further liability in respect of those planning obligations.

Yours faithfully

For and on behalf of the Council being duly authorised to do so

**APPENDIX [ ]C – LETTER OF RELEASE (RELEVANT EVENT)**

**TO BE TYPED ON THE COUNCIL'S HEADED NOTEPAPER**

Dear [Owner]

Pursuant to paragraph 8.2 of Schedule Three of the S106 Agreement above (a Relevant Event) we agree that the planning obligations referred to in the Schedule no longer bind the Biodiversity Gain Site and hereby release the Owner and the Biodiversity Gain Site from any further liability in respect of those planning obligations.

Yours faithfully

For and on behalf of the Council being duly authorised to do so

THE **COMMON SEAL OF** )  
**SOUTH KESTIVEN DISTRICT COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory

**EXECUTED AS A DEED** by )  
[ ] )

Signed: .....

In the presence of a witness:

Witness

Signature .....

Name .....

Address .....

DRAFT