

Dated

2024

- (1) owner
- (2) developer
- (3) bank
- (4) DORSET COUNCIL

**UNILATERAL DEED OF PLANNING OBLIGATION
s106 TOWN & COUNTRY PLANNING ACT 1990 and
S98 & Schedule 14 ENVIRONMENT ACT 2021**

relating to land at



THIS UNILATERAL DEED OF PLANNING OBLIGATION is made 2024

BETWEEN:

- (1) **SITE OWNER** (Company Number) of (“the Owner”)
- (3) **A DEVELOPER** (Company Number) of (“the Developer”)
- (4) **A BANK** (Company Number) of (“the Mortgagee”)
- (5) **DORSET COUNCIL** of County Hall, Dorchester, Dorset, DT1 1XJ (“the Council”)

Introduction

- (A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Site [and the Additional Land] are situated.
- (B) The Owners is the registered freehold owner of the Site registered at the Land Registry under Title Number []subject to the entries disclosed in the registered title(s).
- (C) [The Owner is also the registered freehold owner of the Additional Land registered at the Land Registry under Title Number []subject to the entries disclosed in the registered title(s).]
- (D) The Owners/Developer have submitted the Application to the Council
- (E) The Council is required under the 2021 Act in granting planning permission to secure the biodiversity gain objective as set out on Schedule 14 thereof.
- (F) The biodiversity gain objective is met in relation to a development for which planning permission is granted if the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage which is set at 10% by the 2021 Act.
- (G) The Owner and Developer proposes to secure 10% Biodiversity Net Gain as follows:
- on-site measures
 - the allocation of Off-site Units
 - the purchase of Credits
- (H) The Owner [and the Developer/with the consent of the Mortgagee[] (have entered this Deed in order to secure that the Development will meet the objective required by Schedule 14 of the 2021 Act for at least the period of the Duration

NOW THIS DEED WITNESSES as follows:-

1. Definitions

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

<p>“1990 Act”</p>	<p>means the Town and Country Planning Act 1990;</p>
<p>“2021 Act”</p>	<p>means the Environment Act 2021</p>
<p>“Additional Land”</p>	<p>means the land edged red on Plan 2</p>
<p>“Biodiversity Gain Land”</p>	<p>All parts of the Site [and the Additional Land] which are required to create achieve maintain and manage the matters set out in the Biodiversity Gain Plan and HMMP as shown edged red on Plan 3</p>
<p>“Biodiversity Gain Plan”</p>	<p>means the scheme to be submitted to and which may be approved by the Council pursuant to Schedule 2 comprising:</p> <ul style="list-style-type: none"> • information about steps taken to minimise impact on onsite habitat on the Site. • the pre-development biodiversity value of the onsite habitats on the Site • any registered offsite biodiversity Units proposed to be allocated to the Development. • any biodiversity Credits proposed to be purchased for the Development. • the post-development biodiversity value of the onsite habitat on the Site [and Additional Land] • the strategy for meeting the biodiversity gain objective set out in the 2021 Act. • arrangements for maintenance of habitat enhancement for the Duration

	include confirmation acquisition of Units or Credits nor maintenance and/or management obligations hereunder
“Credit(s)”	shall have the same meaning credit or credits under Section 101 and schedule 14 of the 2021 Act and which are to be purchased by the Owner for the Development
“Development”	means development of _____ on the Site
“ Duration”	means 30 years or such longer period as may be agreed by the Owner with the Council and commencing on the date of the Completion Certificate
“Element”	A stage of development or requirement of the Biodiversity Gain Plan or HMMP or other related matter set out on Column 2 of the BNG Programme
“HMMP”	<p>means a habitat management and monitoring plan to be submitted to and which may be approved by the Council pursuant to Schedule 2 and which shall set out as far as is relevant to the Biodiversity Gain Plan approved by the Council:</p> <ul style="list-style-type: none"> • a plan to manage the off-site gains or significant on-site enhancements, • arrangements for monitoring habitats • arrangements for monitoring and report the progress of habitat enhancement to the Council. • arrangements for reviewing management proposals. • arrangements for restoration of habitats if the management plan if existing arrangements fail.
“Index”	means the All in Tender Price Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors or an any successor organisation 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;
“Interest”	means 4% above the base lending rate of Lloyds Bank from time to time;
“Nominee”	means a body nominated by the Council to be responsible for the management of the Biodiversity Gain Land under Schedule 5
“Notice of Commencement”	means a notice in writing to advise the Council of the date that Commencement of Development will take place;
“Occupation”	means occupation of a dwelling or other building or facility or land or change of the use of the same for purposes permitted by the Planning Permission or bringing into use any land or facility on such land for the purposes set out in the Planning Permission except occupation for the purposes of construction or fitting out or for security or for marketing and “Occupy” , “Occupier” “Occupier” “Occupation” and “Occupied” shall be construed accordingly;
“Plan 1”	means the plan attached hereto marked plan 1 being the Site as defined below
“Plan 2”	means the plan attached hereto marked plan 2 being the Additional Land as defined above
“Plan 3”	means the plan attached hereto marked plan 3 being Biodiversity Gain Land
“Planning Permission”	means a planning permission or approval of details pursuant to permission in principle or approval of reserved matters or other details thereunder granted by the Council or on appeal pursuant to the Application and the expression Planning Permission shall include all approvals granted pursuant to it;
“Section 73 Permission”	means a planning permission granted by the Council pursuant to an application made under section 73, section 73A or section 73B or Section 96A (to the extent such provisions are in force

	at the time the relevant application is determined) of the 1990 Act;
“Site”	means the land known as _____ edged red on Plan 1
“Trigger”	The stage of the Development set out in Column 1 of the BNG Programme by or at which the corresponding Element is to be achieved discharged or otherwise performed
“Transfer”	means the disposal of any legal or beneficial interest in the Biodiversity Gain Land 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
“Unit(s)”	biodiversity gain units produced on land registered for such purpose calculated using the metric adopted for such purposes under the Act and regulations made under it
“Working Day”	means Monday to Friday inclusive excluding Bank or public holidays.

2. Construction of this Deed

- 2.1. 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.
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4. 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.
- 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 validly 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 references to any local authority shall include the successors to its various statutory functions.
- 2.7. 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.
- 2.8. 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.

3. Legal basis

- 3.1. This Deed is made as a deed pursuant to the following:
 - 3.1.1. Section 106 of the 1990 Act;
 - 3.1.2. Section 98 and schedule 14 of the 2021 Act;
 - 3.1.3. Section 1 of the Localism Act 2011; and
 - 3.1.4. all other enabling powers
- 3.2. 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' respective interest in the Site and the Additional Land.
- 3.3. Subject to Clause 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 Site or Additional Land (as may apply) 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
- 3.4. This Deed shall apply to any Section 73 Permission (and shall be deemed to incorporate such changes as this may give rise to) in the same way as it applies to the Planning Permission provided that for the avoidance of doubt where the Council deems it appropriate the Council may require a further Deed under section 106 of the 1990 Act to secure additional obligations concerning the Section 73 Permission.

4. Effective Date

- 4.1. This Deed shall come into effect on the date hereof save for the obligations contained in the Schedules hereto which shall come into force as follows:
 - 4.1.1. those obligations which expressly require something to be done prior to the Commencement of Development or prohibit the Commencement of Development before something has been done shall come into effect on the date of the Planning Permission; and
 - 4.1.2. all remaining obligations and provisions shall come into effect on the Commencement of Development.

5. The Owner's Covenants

- 5.1. The Owner with the consent of the Mortgagee so as to bind the Site and all other interests owned by him in the Site and Additional Land covenants with the Council to observe and perform the

planning obligations and all other provisions set out in this Deed and covenants with the Council as set out in the schedules.

5.2. The Developer so as to bind any interest it has in the Site or the Additional Land and by way of personal obligation covenants with the Council to observe and perform the planning obligations and all other provisions set out in this Deed.

5.3 The interests of the Owner the Developer and the Mortgagee in the Site [and Additional Land] shall be bound by the terms of this Deed.

6. General

6.1. 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.

6.2. The Owner acknowledge that this Deed shall be registrable as a local land charge by the Council.

6.3. Where the Deed, 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).

6.4. 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 and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered address (as appropriate) of the relevant party.

6.5. 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.

6.6. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed without being re-instated on appeal , revoked or otherwise withdrawn or (without the consent of the Owner or Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development Provided that no monies paid to the Council hereunder shall be repayable.

6.7. Unless specifically stated otherwise nothing in this Deed shall prohibit or limit the right to develop any part of the Site or Additional Land in accordance with a planning permission (other than the Planning Permission granted (whether or not on appeal) after the date of this Deed Provided that alternative provision is made to compensate for any diminution of biodiversity value on the Site or Additional Land caused by such development.

7. Limitation of Liability

7.1. No person shall be liable for any breach of any of the planning obligations after it shall have parted with its entire interest in the Site or the Additional Land (as may apply) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.2. This Deed shall not be enforceable against:

7.2.1. (Unless they become a Transferee for the purposes of schedule 4) an owners or owner-occupiers or tenants of any individual dwelling nor against those deriving title from any of them save to the extent that the Council may recover from them directly (if the Owner fail to observe and perform the terms hereof) any payment or sum which they are required to make on a regular basis to the Owner in respect of the management or maintenance of the Biodiversity Gain Land;

7.2.2. any statutory undertaker holding an estate or interest in the Site or Additional Land (or part thereof) nor against plant equipment conduits or structures located there for its operational purposes; Provided that if they reduce thereby the biodiversity value of the Site or Additional Land they shall make good the same to the satisfaction of the Council and/or provide suitable alternative measures

7.2.3. The Mortgagee shall not be liable to observe and perform the terms of this Deed unless they take possession of the Site or Additional Land or any part thereof or procure the carrying out of the Development or exercise control over the Site and/or the Additional Land or any part thereof.

8. Disputes

8.1. In the event of any dispute or difference arising between the parties to this Deed such dispute or difference may if the Council so consents 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:

8.1.1. 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

8.1.2. 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.

8.2. 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.

8.3. This clause 8 does not apply to disputes in relation to matters of law which will be subject to the jurisdiction of the courts.

8.4. 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.

8.5 This clause shall not be applicable to the number of Units or Credits required for the Development to meet the objectives of the Biodiversity Gain Plan .

9. Notices

- 9.1. Any notices to be served on the Council under the provisions of this Deed shall be served on and marked for the attention of the Head of Planning unless otherwise provided for in a particular clause or paragraph in this Deed.
- 9.2. 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.
- 9.3. The Owner shall serve advance notice on the Council mark at least 8 Working Days prior to each of the matters stipulated below occurring:
 - 9.3.1. the Commencement of Development;
 - 9.3.2. first Occupation;
 - 9.3.3. Triggers
- 9.4. The Owner shall not Commence Development until it has served the notice under clause 9.3.1.
- 9.5. The Owner shall not Occupy until it has served the notice under clause 9.3.2
- 9.6. The Owner shall not allow the Development to proceed beyond or above a Trigger until it has served the notice under clause 9.3.3 .

10. 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.

11. 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.

12. 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:

$$C = \text{£}Y \times \frac{B}{A}$$

where:

- A** 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;
- B** is the value of such Index last published before the date on which the payment in question is made;
- C** is the sum in question after application of this formula; 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.

13. 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.

14. 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 Site or the Additional Land 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).

15. Costs

The Owner covenants that on or before completion of this Deed it will pay to the Council its reasonable and properly incurred legal and administrative costs and disbursements of preparing and completing this Deed.

16. VAT

All payments under this Deed to be made by the Owner to the Council (with the exception of the Council's legal fees under clause 15) shall unless stated be exclusive of any value added tax properly payable.

17. Delivery

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

18. Jurisdiction and Legal Effect

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

Schedule 1

Plans

Schedule 2

The Biodiversity Gain Plan

The Owner shall comply with the following planning obligations and other requirements:

1. Not to Commence the Development until the Biodiversity Gain Plan, the BNG Programme, the CMMP, and the HMMP have been submitted to and approved by the Council.
2. For the Duration to carry out and comply with the provisions of the Biodiversity Gain Plan the HMMP the CMMP and BNG Programme unless otherwise agreed in writing by the Council.
3. Not to Commence the Development until all planning permissions, consents, and approvals of any nature which are necessary to implement the Biodiversity Gain Plan and HMMP have been granted.
4. Not to cause or permit Occupation until the Council has issued the Completion Certificate
5. Not to carry out, continue to carry out, or Occupy the development save in compliance with the Biodiversity Gain Plan, the HMMP the CMMP and the BNG Programme
6. The BNG Programme may be amended from time to time with the written approval of the Council.
7. the Owner may from time to time submit a revised Biodiversity Gain Plan and/or HMMP to the Council and if approved by the Council the revised Biodiversity Gain Plan and/or HMMP shall then be the Biodiversity Gain Plan and/or HMMP for the purposes of this Deed.

Schedule 3

Maintenance and Monitoring

The Owner shall comply with the following planning obligations and other requirements :

1. To maintain, manage, and monitor the Biodiversity Gain Land in accordance with the Biodiversity Gain Plan and the HMMP for the Duration
2. To submit an annual report to the Council starting on the anniversary of this Deed detailing the Elements which have been achieved discharged or otherwise performed in compliance with the corresponding Triggers in the BNG Programme and where there has been any default in compliance any steps taken to remedy such default provided that with the consent of the Council the periods for submission of such report may be extended or waived.
3. To pay the BNG Monitoring Fee to the Council on the date hereof and pay from time to time any additional fees which the Council may demand arising as a result of any failure by the Owner to comply with any matter set out in the Biodiversity Gain Plan or HMMP the CEMP or the BNG Programme, such additional fees to be calculated in accordance with the BNG Monitoring Fee Scale .

Schedule 4

Transfer of Biodiversity Gain Land

The Owner shall comply with the following planning obligations and other requirements.

1. Not to Transfer any part of the Biodiversity Gain Land without the written consent of the Council provided that the Council may refuse to approve a proposed Transfer of an area which constitutes part only of the Biodiversity Gain Land or would divide it into separate parcels.
2. An application to the Council under paragraph 1 of this schedule shall include:
 - 2.1 a detailed plan on a scale approved by the Council showing the area of the Biodiversity Gain Land to be transferred.
 - 2.2 details of the Transferee including its name and address or if a company details of its directors and shareholders
 - 2.3 details of the experience of the Transferee in nature conservation
 - 2.4 details of how the Transferee will fund the obligations of the Owner hereunder.

2.5 the terms and conditions of the proposed Transfer

Schedule 5

Default

The Owner shall comply with the following planning obligations and other requirements:

1. to allow the Council to enter the Site (and Additional Land) to inspect the same at any time.
2. In the event that the Council serves a notice on the Owner or any of them or a Transferee specifying a default or defaults in carrying out or complying with the terms of this Deed ("Default Notice") to take such steps as the Council may prescribe in such Default Notice within such period or periods as the Council may prescribe to remedy the default or defaults (for each of which the Council may prescribe different periods for remediation)
3. If at the end of the period specified in a Default Notice to remedy a default the same has not been remedied to the satisfaction of the Council, the Council may enter the Site or the Additional Land, with such officers contractors agents, vehicles plant machinery and equipment as it deems necessary, and carry out such actions as it deems necessary to remedy such default including:
 - planting,
 - laying out,
 - repairing,
 - replacing
 - maintenance
 - conservation,
 - protection,
 - enhancement,
 - promotion
4. The Owner shall pay to the Council all costs and expenditure of any kind which it incurs under paragraph 3 above.
5. Where owners and occupiers of any dwelling or other built unit or land comprised in the Development are liable to make any periodic payment to the Owner in respect of any matter contained in the schedules hereto, such payments shall (if the Council so required by written notice served on the Owner and owners and occupiers) be made to the Council or its Nominee and the rights to collect the same are hereby assigned to the Council (which may further assign them to its Nominee) until it has received full payment of such costs and expenses as it has incurred under this schedule

6. The Council after serving more than 2 Default Notices which have not been complied with may exercise its rights set out in this Schedule through a Nominee

Schedule 6- Purchase of Units

Where the Biodiversity Net Gain Plan requires the purchase of Units the Owner shall comply with the following obligations:

1. to acquire the Units from a party whose land is
 - a. controlled by an agreement or other deed under Section 106 of the 1990 Act or a conservation covenant made under Schedule 14 of the 2021 Act, and
 - b. has been registered with Natural England for the provision of Units, and
 - c. has been approved by the Council for the purchase of Units in relation to the Development.and such acquisition to be completed before any Trigger for acquisition of the same.
2. not to Commence the Development or continue to carry out the Development or Occupy any building, land, or other part thereof until the Trigger relating to the acquisition of Units has been met.

Schedule 7 -Purchase of Credits

Where the Biodiversity Net Gain Plan requires the purchase of Credits the Owner shall comply with the following obligations

1. to acquire the Credits as set out in the Biodiversity Gain Plan in accordance with the Triggers.
2. not to Commence the Development or continue to carry out the Development or Occupy any building, land, or other part thereof until the Trigger relating to the acquisition of Credits has been met.

IN WITNESS WHEREOF the Owner [the Developer] [the Mortgagee] have executed this instrument as a Deed the day and year first before written

EXECUTED as a DEED by

Annex A -the BNG Monitoring Fee Scale

Annex B – blank form of BNG Programme