

DATED 22nd APRIL 2024

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL (1)

and

RICHARD TEMPLER TOWNLEY (2)

and

THE WILDLIFE TRUST FOR BEDFORDSHIRE CAMBRIDGESHIRE AND NORTHAMPTONSHIRE (3)

**SECTION 106 AGREEMENT relating to BIODIVERSITY NET
GAIN HABITAT SCHEME at Flack Field, adjacent to
Fulbourn Fen, Cambridgeshire**

THIS AGREEMENT is made the 22 day of APRIL 2024

BETWEEN:-

- (1) SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL of South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA ("the District Council");
- (2) RICHARD TEMPLER TOWNLEY of Fulbourn Manor, Manor Walk, Fulbourn, Cambridge CB21 5RJ ("the Owner"); and
- (3) THE WILDLIFE TRUST FOR BEDFORDSHIRE CAMBRIDGESHIRE AND NORTHAMTONSHIRE a company limited by guarantee and incorporated and registered in England and Wales with charity number 1000412 whose registered office is at The Wildlife Trust, The Manor House, Broad Street, Great Cambourne, Cambridge CB23 6DH ("the Provider")

WHEREAS :-

- (1) The Owner is the owner in fee simple of the Habitat Site under title number CB480639.
- (2) The Provider benefits from a lease of the Habitat Site which is to be registered at HM Land Registry and is the Provider of the Biodiversity Units.
- (3) The District Council is the local planning authority for the area in which the Habitat Site is located.

1.0 DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

"1990 Act"	means the Town and Country Planning Act 1990;
"2021 Act"	means the Environment Act 2021 (as amended);
"Allocated"	means a proportion of the Biodiversity Units to be dedicated by the Provider to a development which requires off-site habitat creation and management in order to achieve the biodiversity net gain requirements applicable to the development under planning law and "Allocate" and "Allocation" shall be construed accordingly;
"Biodiversity Units"	means the Biodiversity Units or a fraction thereof calculated by reference to the habitat

	value of the land within the Habitat Site as calculated by the Statutory Biodiversity Metric;
"District Council Monitoring Fee"	means the sum of two thousand two hundred pounds (£2,200) being a contribution towards the monitoring of the proper and timely performance of the Provider's obligations under the terms of this Agreement;
"District Council Ecologist Monitoring Fee"	means instalments of three hundred and thirty five pounds (£335) pounds Indexed Linked to be paid to the District Council as set out in paragraph 1.11 of Schedule One to cover the cost of monitoring the Habitat Site and reviewing the Management Plan and the Monitoring Report for a period of thirty (30) years from completion of the Habitat Creation Works;
"Expert"	means a person of at least ten (10) years post qualification experience in the subject matter of the dispute and shall in the case of habitat matters be accredited by the Chartered Institute of Ecology and Environmental Management and in all other matters accredited by the relevant professional body;
"Force Majeure Event"	means any circumstance not within the Provider's reasonable control including, without limitation (a) acts of God, flood, drought, fire earthquake, or other natural disaster (b) epidemic or pandemic; (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; or (d) nuclear, chemical or biological contamination;
"Habitat Creation Works"	means the works to be undertaken to the Habitat Site to create new habitats and make it available for the provision of Biodiversity Units;
"Habitat Creation Works Commencement Date"	means the calendar date on which the Habitat Creation Works commenced;
"Habitat Creation Works Commencement Certificate"	means a certificate issued by the District Council certifying that the Habitat Creation Works have commenced;
"Habitat Data Information"	means the biodiversity net gain data information to be attached to the Monitoring Report;
"Habitat Data Information Form"	means the form provided by the District Council to the Provider in accordance with clause 1.2 of Schedule Two which form shall only require such information as is required in order for the Council to monitor compliance with the Management Plan;
"Habitat Site"	means the Habitat Site at Flack Field, adjacent to Fulbourn Fen, Cambridgeshire on which the Biodiversity Units will be secured as shown on the Habitat Site Plan;
"Habitat Site Plan"	means the Habitat Site as outlined in red on the plan and appended at Schedule Three;
"Index"	means the All Items Index of Consumer Prices published by the Office for National Statistics or its successor body should it

	ceased to be published or the basis of calculation be materially altered such other index as may be agreed between the parties;
"Index Linked"	means the indexation to be applied and adjusted pursuant to clause 10 and by reference to the Index and to be linked to the specified Contribution payments as set out in Schedule One and the term "Indexation" shall be construed accordingly;
"The Management Plan"	means the Management Plan which will include details for the delivery of the Habitat Creation Works, and the ongoing management and monitoring of the Habitat Site throughout the agreed term;
"The Monitoring Report"	means the Monitoring Report which will include the Habitat Data Information and detail the monitoring survey results and any requirements for amending the Management Plan going forward;
"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"	means any of the following events: (a) a change in the law and/or national policy; or (b) a decision of a Court, tribunal, Secretary of State or other decision maker with

	competence THAT results in biodiversity gain not being required by law or the Habitat Site the subject of this Agreement no longer being considered to be an effective form of biodiversity gain;
"Statutory Biodiversity Metric"	means the biodiversity metric tool that is used to calculate biodiversity value for the purposes of biodiversity net gain;
"Variation Event"	means any of the following events: (a) a change in Natural England's custom or practice; or (b) a change in scientific opinion based on evidence; or (c) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve biodiversity gain; or (d) such other event as may be agreed between the parties as constituting a Variation Event;
"VAT"	means Value Added Tax or such similar tax as shall replace it or be payable in addition to it;
"Working Days"	means Monday to Friday inclusive except Christmas Day Good Friday and any bank and public holidays for the time being in England;
"Year One"	means the first anniversary of the Habitat Creation Works Commencement Date;
"Year Two"	means the second anniversary of the Habitat Creation Works Commencement Date;

"Year Three"	means the third anniversary of the Habitat Creation Works Commencement Date;
"Year Four"	means the fourth anniversary of the Habitat Creation Works Commencement Date;
"Year Five"	means the fifth anniversary of the Habitat Creation Works Commencement Date;
"Year Ten"	means the tenth anniversary of the Habitat Creation Works Commencement Date;
"Year Fifteen"	means the fifteenth anniversary of the Habitat Creation Works Commencement Date;
"Year Twenty"	means the twentieth anniversary of the Habitat Creation Works Commencement Date;
"Year Twenty-Five"	means the twenty fifth anniversary of the Habitat Creation Works Commencement Date;
"Year Thirty"	means the thirtieth anniversary of the Habitat Creation Works Commencement Date;

2.0 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement 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 Agreement.
- 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 Reference to any party to this Agreement 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 District Council the successors to their respective statutory functions.
- 2.7 Nothing in this Agreement 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 Agreement.
- 2.8 If the Provider disposes of part or the whole of its interest in the Habitat Site, the Provider will be released from its obligations in this Agreement which will no longer be enforceable against the Provider in relation to the Habitat Site or that part of the Habitat Site disposed of, except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar and without prejudice to any subsisting liability for any antecedent breach arising before parting with that interest.
- 2.9 The obligations contained in this Agreement shall not be binding or enforceable against:
- 2.9.1 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, telecommunications services or public transport;
- 2.9.2 anyone whose only interest in the Habitat Site is in the nature of the benefit of an easement or covenant only; or
- 2.9.3 any mortgagee or chargee of the Habitat Site from time to time unless it is a mortgagee in possession of the whole or any part of the Habitat Site where it becomes bound by the obligations as if it were a person deriving title from the Provider PROVIDED THAT any mortgagee or charge shall only be liable for any breach that itself has caused whilst mortgagee in possession and shall not be liable for pre-existing breaches but FOR THE AVOIDANCE OF DOUBT any successor in title to any mortgagee or charge will be responsible as successor in title to the Provider for (i) any obligation(s) still to be performed and (ii) any obligation(s) which has not been satisfied in full because there has been a breach which has not been remedied or only partially remedied.

3.0 LEGAL BASIS

- 3.1 The covenants, restrictions and requirements imposed upon the Provider under this Agreement create obligations and are enforceable by the District Council as local planning authority against the Provider.
- 3.2 This Agreement is entered into pursuant to Section 106 of the 1990 Act Part 6 of the 2021 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers that may be relevant to the enforcement of the obligations contained in this Agreement.
- 3.3 Any time or other limitation upon the Habitat Site imposed by this Deed upon the Provider shall be capable of being varied by agreement with the District Council as the District Council shall think fit for the purposes of facilitating the performance of the obligations on the part of the Provider.

4.0 VAT

- 4.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable but which shall be paid in addition where a valid VAT invoice is supplied addressed to the paying party.

5. NO FETTER OF DISCRETION

- 5.1 Nothing (contained or implied) in this Agreement shall fetter or restrict the District Council's statutory rights powers discretions and responsibilities.

6.0 JURISDICTION

- 6.1 This Agreement is governed by and interpreted in accordance with the law of England.

7.0 DISPUTE RESOLUTION

- 7.1 If any dispute arises between any or all of the parties with respect to a matter falling for determination under this Agreement (other than over an issue of law or interpretation of this Agreement), and the dispute persists 6 weeks after it is raised in writing by any party then the dispute may at the instance of any disputing party be referred to an Expert;
- 7.2 An Expert shall;
 - 7.2.1 not be liable in the making of his or her decision save to the extent in law as provided in relation to the decisions of an expert;
 - 7.2.2 give each disputing party the opportunity to comment on the representations of the other;
 - 7.2.3 make a decision that is final and conclusive as between the disputing parties to such dispute (except in regard to matters of law or in the case of manifest error);

7.2.4 be replaced by a fresh appointee in the event of him or her becoming at any time unable or unwilling for any reason to proceed to discharge his or her functions such fresh appointee to be appointed in the manner prescribed in clause 7.1; and

7.2.5 make his or her decision within six (6) weeks of being appointed.

7.3 The costs of appointing an Expert under clause 7.1 shall be shared equally by the parties involved in the dispute except where the Expert takes the view that one party has acted unreasonably in which case the Expert shall have binding discretion as to apportionment of those costs.

8.0 LOCAL LAND CHARGE

8.1 This Agreement will be registered as a Local Land Charge by the District Council.

8.2 Upon written agreement between the Provider and the District Council that all obligations under this Agreement have been satisfied or discharged or if land is released or if this Agreement ceases to have effect the District Council will cancel all entries made in the Register of Local Land Charges relating to this Agreement.

9.0 RELEASE OF HABITAT SITE

9.1 For the avoidance of doubt and subject to the other provisions of this Clause any part of the Habitat Site shall cease to be subject to the provisions of this Agreement on the date that is the thirtieth (30th) anniversary of completion of the Habitat Creation Works.

9.2 The Provider will provide to the District Council written notification advising if any part of the Habitat Site that has not previously been Allocated will no longer be used for the purposes of habitat mitigation and such land shall cease to be subject to the terms of this Agreement upon provision of such notification.

9.3 In the event of a Relevant Event the provisions of this Agreement shall automatically terminate in relation to any land within the Habitat Site which has not been Allocated AND FOR THE AVOIDANCE OF DOUBT all that land within the Habitat Site which has been Allocated at the date of the Relevant Event will remain subject to the terms of this Agreement.

9.4 In the event of a Variation Event the Provider and the District Council may by agreement make such changes to this Agreement (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.

9.5 Provided it has complied with Clauses 9.6 and 9.7 below, if the Provider is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event the Provider shall not be in breach of or otherwise liable for any such failure or delay in the performance of such obligations.

9.6 The Provider shall as soon as reasonably practicable after the start of the Force Majeure Event notify the District 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 Agreement.

9.7 The Provider shall use Reasonable Endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

10.0 INDEXATION

Each of the sums payable under Schedule One shall be adjusted in accordance with movements in the Index from the date of this Agreement until the date on which the final payment is made.

11.0 LEGAL COSTS

The Provider shall pay on completion of this Agreement the reasonable and proper legal costs of the District Council incurred in the negotiation and execution of this Agreement.

12.0 FAILING TO COMPLY

12.1 In the case of material default of compliance with the terms of this Agreement by the Provider as to the Habitat Site the District Council shall have the rights (but shall be under no obligation in respect thereof), so far as shall be reasonably necessary to rectify any default in addition to all or any statutory powers it might have in this regard, and to do any of the following in respect of the Habitat Site having first given written notice to the Provider of its intention so to exercise the said rights of any of them PROVIDED THAT the District Council shall have first given to the Provider a written notice confirming what default has occurred and what works are required in order to rectify such default and (other than in the case of emergency works where no such notice shall be required) given the Provider a reasonable period of time in which to exercise such works as are specified in the written notice (such period to be not less than twenty eight (28) Working Days) and also the opportunity to discuss the alleged default with the District Council and the works required to rectify it (and in the event that the Provider disputes some or all of the works are required and the parties are unable to agree either the Provider or District Council may request that the matter be referred for determination by the Expert to be appointed pursuant to the mechanism in clause 7 of this Agreement):-

12.1.1 Enter upon the Habitat Site with or without vehicles and equipment;

12.1.2 Itself or themselves carry out such works as shall be appropriate in respect of the Habitat Site including the removal of any matter or thing on that part of the site

12.1.3 Maintain the Habitat Site and replace any relevant planting; and

12.1.4 Claim all its or their reasonable costs from the Provider of entry to the Habitat Site to enable the carrying out of the required works, the costs of maintenance and of replacement habitat where required and the cost of any Court proceedings PROVIDED THAT the District Council shall be obliged to provide a full break down of the time spent and the cost incurred in undertaking such requirements and PROVIDED FURTHER THAT in exercising any right of entry pursuant to this Clause the District Council shall: (a) cause as little damage as possible to the Habitat Site; (b) cause as little inconvenience as reasonably possible to the Provider; and (c) promptly make good any physical damage caused to the Habitat Site by reason of the District Council exercising the step in rights.

13.0 THE OWNER & PROVIDER'S COVENANTS

13.1 The Provider covenants with the District Council as set out in Schedule One.

13.2 The Owner hereby consents to the Provider entering into this Agreement and acknowledges that from the date hereof the Habitat Site shall be bound by the planning obligations restrictions and undertakings contained herein and if the Provider's lease is terminated or otherwise comes to an end the Owner shall be bound by the provisions of this Agreement and will perform and observe the terms and obligations contained in this Agreement.

14.0 THE DISTRICT COUNCIL'S COVENANTS

14.1 The District Council covenants with the Provider as set out in Schedule Two.

14.2 The District Council covenants with the Provider following a written request/notification from the Provider, made at any time after any obligation under this Agreement has been fulfilled or discharged or land is released, to confirm the same in writing within twenty (20) Working Days of the date it receives the request.

15.0 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

15.1 Nothing in this Agreement will create any rights in favour of or be enforceable by any person who is not a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.

16.0 NOTICES

16.1 Any notice or other written communication to be served on a party or given by one party to any other under the provisions of this Agreement will be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the party on whom it is to be served or to whom it is to be given and will conclusively be deemed to have been received on:-

16.1.1 if delivered by hand, the next Working Day after the day of delivery;

16.1.2 if sent by post, the day two Working Days after the date of posting; or

16.1.3 if sent by recorded delivery, at the time delivery was signed for.

- 16.2 Any notice to the District Council shall be sent to the section 106 monitoring officer, the Natural Environment Team Leader and the Senior Ecology Consultancy Officer at South Cambridgeshire District Council, South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA or to such address and/or for the attention of such person as the District Council may notify to the Provider in writing
- 16.3 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 16.4 A notice or communication will be served or given at the address for the relevant party given in this deed or as notified in writing by the relevant party from time to time.
- 16.5 Notices are not valid if given by fax or email.
- 16.6 Any notice or other written communication to be given by the District Council will be deemed valid and effectual if on its face it is signed on behalf of the District Council by an officer or duly authorised signatory.

17.0 DELIVERY

The provisions of this Agreement shall be of no effect until this Agreement has been dated.

SCHEDULE ONE
Obligations of the Provider

1. The Provider covenants with the District Council:
 - 1.1 To provide evidence to the District Council that the Habitat Creation works have commenced on commencement of those works.
 - 1.2 To provide written confirmation to the District Council of the date of the completion of the Habitat Creation Works within fourteen (14) Working Days of such completion.
 - 1.3 To submit the Monitoring Report and Management Plan in writing to the District Council no later than twenty eight (28) Working Days following the receipt in each year of the Habitat Data Information Form on Year One, Year Two, Year Three, Year Four, Year Five, Year Ten, Year Fifteen, Year Twenty, Year Twenty-Five and Year Thirty.
 - 1.4 If following receipt of the Monitoring Report and Management Plan, the District Council have identified areas requiring action, to provide an updated Monitoring Report and Management within twenty eight (28) Working Days of receipt of the notice from the District Council of the actions required.
 - 1.5 To provide to the District Council evidence of compliance with any actions required by the District Council in its written response to the Provider on the Monitoring Report and Management Plan.
 - 1.6 To be responsible for the delivery, management and monitoring of each part of the Habitat Site in accordance with the Management Plan subject to paragraph 2 below.
 - 1.7 Not to Allocate any part of the Habitat Site as Biodiversity Units unless any required Habitat Creation Works for that part of the Habitat Site have been carried out.
 - 1.8 To be responsible for complying with all relevant regulations of the 2021 Act relating to the delivery and management of the Habitat Site.
 - 1.9 To confirm to the District Council in writing when the Habitat Creation Works for any part of the Habitat Site have been completed and for a period of thirty (30) years after the completion of

the Habitat Creation Works to manage and maintain the relevant part of the Habitat Site in accordance with the Management Plan.

- 1.10 To pay the District Council the District Council Monitoring Fee within fourteen (14) Working Days of Year One.
- 1.11 To pay the District Council the District Council Ecologist Monitoring Fee within fourteen (14) Working Days of Year One, Year Two, Year Three, Year Four, Year Five, Year Ten, Year Fifteen, Year Twenty, Year Twenty-Five and Year Thirty.

2. Allocation

- 2.1 The Provider will make available for purchase both whole or fractions thereof of a Biodiversity Unit and if a fraction is purchased the Provider shall be entitled to charge a minimum price for the purchase of the fraction in order to cover the Provider's full and reasonable costs incurred in processing and administering the transaction, but the cost of a fraction shall otherwise reasonably equate to the cost of a whole Biodiversity Unit.
- 2.2 The Provider shall maintain a record to include details of the Allocation of Biodiversity Units and the number of Biodiversity Units remaining within the Habitat Site and provide a copy of that record annually commencing on Year One to the District Council until such time as all of the Biodiversity Units in the Habitat Site have been Allocated, or until the parties agree that there shall be no further Allocations of Biodiversity Units or until such time as the Provider provides notice pursuant to Clause 9.2 that any remaining capacity in the Habitat Site will cease to be used for habitat mitigation.
- 2.2 The Provider shall not Allocate any part of the Habitat Site as Biodiversity Units unless there is sufficient capacity remaining in the Habitat Site
- 2.3 The existence of any Biodiversity Units shall be confirmed by the Provider within fourteen (14) days of such confirmation being requested by the District Council, such confirmation not to be unreasonably withheld.

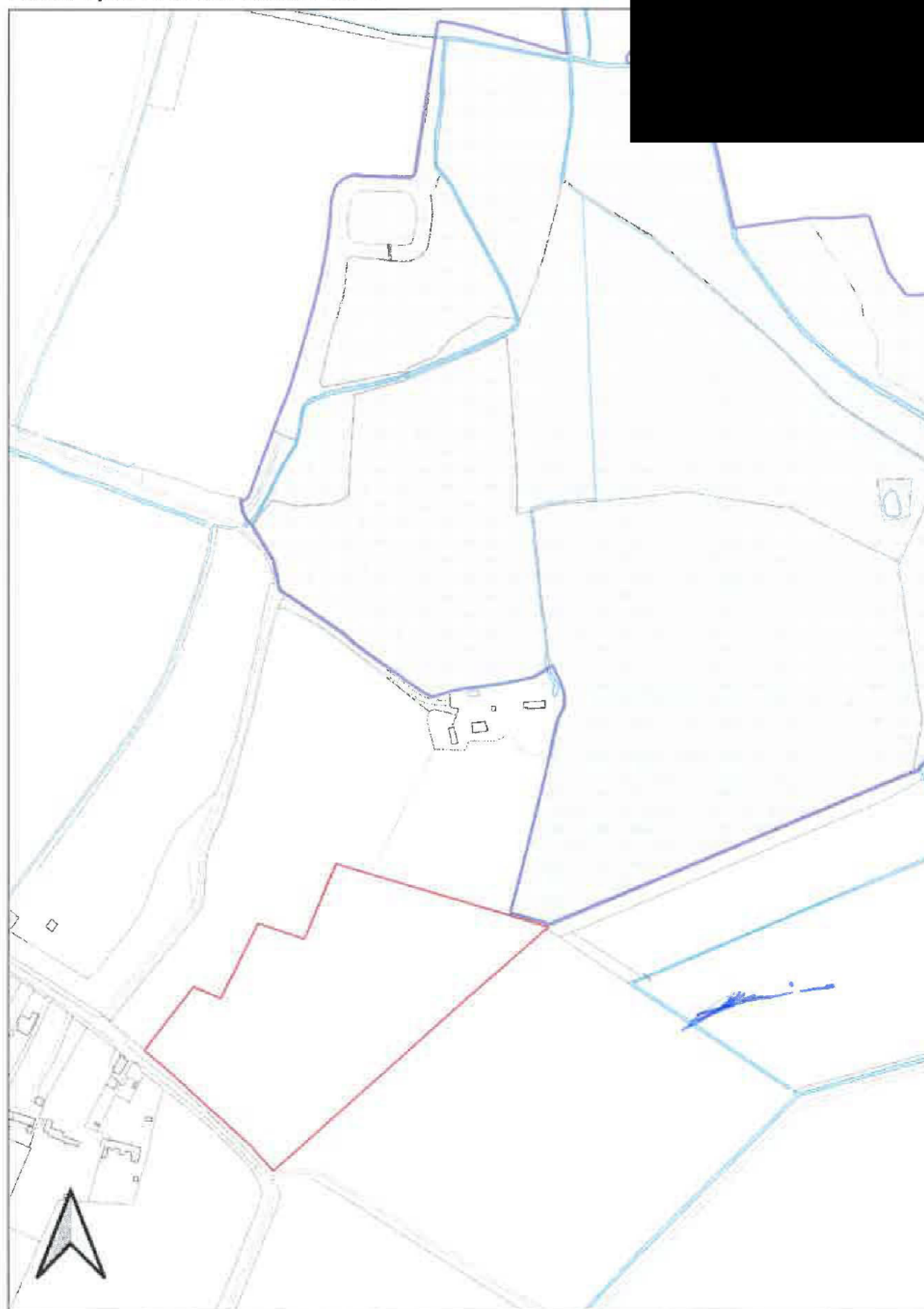
SCHEDULE TWO

Obligations of the District Council

1. The District Council covenants with the Provider in the following terms:

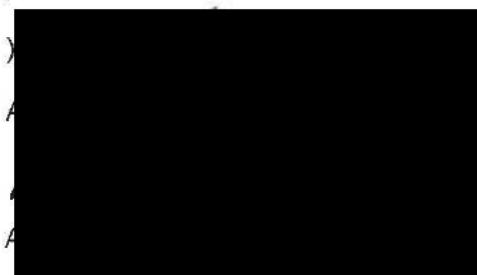
- 1.1 Upon receipt of satisfactory evidence from the Provider of commencement of the Habitat Creation Works to issue the Habitat Creation Works Commencement Certificate.
- 1.2 To provide to the Provider on Year One, Year Two, Year Three, Year Four, Year Five, Year Ten, Year Fifteen, Year Twenty, Year Twenty Five and Year Thirty the Habitat Data Information Form.
- 1.3 Following receipt of both the Monitoring Report and the Management Plan from the Provider the District Council will within six (6) weeks provide a written response to the Provider with any comments on the Monitoring Report and the Management Plan and /or actions required to be taken by the Provider for the management and monitoring of the Habitat Site and shall not unreasonably withhold or delay its written approval to the Monitoring Report and the Management Plan..
- 1.4 To use the District Council Ecologist Monitoring Fee and the District Council Monitoring Fee for their intended purpose and not for any other purpose.

SCHEDULE THREE
HABITAT SITE PLAN

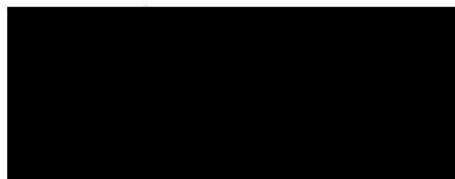
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EXECUTED as a DEED by)
THE WILDLIFE TRUST FOR)
BEDFORDSHIRE CAMBRIDGESHIRE)
AND NORTHAMPTONSHIRE)
acting by two directors/ trustees)



SIGNED as a DEED by)
RICHARD TEMPLER TOWNLEY)
in the presence of:-)



Witness Signature



Witness Name: M.P. BAKER

Witness Address: 35 MALVERN ROAD, CAMBRIDGE

CB1 9LH

Witness Occupation: ECOLOGIST

The COMMON SEAL of SOUTH)
CAMBRIDGESHIRE DISTRICT)
COUNCIL was hereunto affixed)
in the presence of:-)



Authorised Signatory

M008339