

DATED

SECTION 106 AGREEMENT

TOWN & COUNTRY PLANNING ACT 1990

RELATING TO LAND AT [ADDRESS]

3rd Floor 8 York Road
Bognor Regis PO21 1LW

Parties:

FRANK SOLAN LTD

and

ARUN DISTRICT COUNCIL

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THIS DEED is dated [DATE]

- (1) **FAKON SOLAR LTD** incorporated and registered in England and Wales with company number [REDACTED] whose registered office is at **8 YONL ROAD BOGNOR NEWIS WEST SUSSEX PO21 1LW** Owner; and
- (2) Arun District Council of Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF Council

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner owns the Property.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) In consideration of Pagham Harbour policy ENV DM2 of the emerging Local Plan 2011-2031, and Cabinet's approval of the tariff based system on 20 July 2015, the Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Access Management Contribution: the sum of £ **871** towards the cost of delivering measures to avoid, or mitigate to an acceptable level, the harm caused to Pagham Harbour by the Development.

Base Rate: the higher of [5%] and the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 [but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.]

Commenced and Commences shall be construed accordingly.

Default Interest Rate: [4%] per annum above the Base Rate.

Development: the development of the Property by [CHANWU USE FROM COMMERCIAL OFFICE TO RESIDENCE] as described in the Planning Application.

Pagham Harbour: A Special Protection Area, also known as a Natura 2000 site, based in Pagham, West Sussex in the District of Arun, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds.

Plan: the plan attached to this deed.

Planning Application: an application for planning permission registered by the Council under reference number [NUMBER]. BR/303/18/PL

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Property: the freehold land at 8 YONK ROAD, shown edged red on the Plan and registered at HM Land Registry with absolute title under title number(s) [NUMBER(S)].

TCPA 1990: Town and Country Planning Act 1990

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in [England OR Wales].

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses are to the clauses of this deed.
- 1.13 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2. STATUTORY PROVISIONS**
- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.
- 3. THE OWNER'S COVENANT WITH THE COUNCIL**

The Owner covenants with the Council to pay the Access Management Contribution to the Council on the execution of this deed.

4. THE COUNCIL'S COVENANT WITH THE OWNER

In the event that clause 6 applies, the Council covenants to repay the Access Management Contribution to the Owner that paid the Access Management Contribution upon receipt of a written request for repayment.

5. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

6. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

7. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

8. INTEREST ON LATE PAYMENT

If the Access Management Contribution has not been paid to the Council on the execution of this deed, the Owner shall pay the Council interest on the Access Management Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the date the deed was executed until and including the date of payment.

9. COUNCIL'S COSTS

The Owner shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

10. NOTICES

10.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

10.2 Any notice [or other communication] to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at: Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF marked for the attention of the Planning Department and quoting the Planning Application number;
- (b) to the Owner at: 8 YORK ROAD marked for the attention of KEVIN FOX

10.3 Any notice or other communication given in accordance with clause 10.1 and clause 10.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the address] provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (b) if sent by pre-paid first class post or other next working day delivery service at [9.00 am] on the second Working Day after posting.

10.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

10.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

12. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

KEVIN JOHN FOX

Signed as a Deed by [OWNER
FULL NAME]

MARTIN STUBBS

OWNER SIGNATURE

WITNESS SIGNATURE

In the presence of:-
[WITNESS FULL NAME]

[WITNESS FULL ADDRESS]

43 Middleton Rd.
Felpham, W. Sussex PO22 6BW

[WITNESS OCCUPATION]

Signer.

Executed as a Deed by affixing
THE COMMON SEAL of }
ARUN DISTRICT COUNCIL in the
presence of:- }

Authorised Signatory

Signature

Name.....

Job Title.....

Seal Book No.

Title Number : WSX371352

This title is dealt with by HM Land Registry, Durham Office.

The following extract contains information taken from the register of the above title number. A full copy of the register accompanies this document and you should read that in order to be sure that these brief details are complete.

Neither this extract nor the full copy is an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy.

This extract shows information current on 24 SEP 2018 at 14:59:24 and so does not take account of any application made after that time even if pending in HM Land Registry when this extract was issued.

REGISTER EXTRACT

Title Number : WSX371352

Address of Property : 8 and 10 York Road, Bognor Regis (PO21 1LW)

Price Stated : £450,000 plus £11,000 VAT

Registered Owner(s) : FALCON SOLAR LIMITED (Co. Regn. No. 07702318) of Unit 19, Elbridge Farm, Chichester Road, Bognor Regis PO21 5EF.

Lender(s) : Barclays Security Trustee Limited

Title number WSX371352

This is a copy of the register of the title number set out immediately below, showing the entries in the register on 24 SEP 2018 at 14:59:24. This copy does not take account of any application made after that time even if still pending in HM Land Registry when this copy was issued.

This copy is not an 'Official Copy' of the register. An official copy of the register is admissible in evidence in a court to the same extent as the original. A person is entitled to be indemnified by the registrar if he or she suffers loss by reason of a mistake in an official copy. If you want to obtain an official copy, the HM Land Registry web site explains how to do this.

A: Property Register

This register describes the land and estate comprised in the title.

WEST SUSSEX : ARUN

- 1 The Freehold land shown edged with red on the plan of the above title filed at the Registry and being 8 and 10 York Road, Bognor Regis (PO21 1LW).
- 2 (24.10.2001) The land has the benefit of the following rights granted by a Conveyance of the land tinted yellow on the title plan and other land dated 7 November 1944 made between (1) Anderson Colin Talbot Edwards and Eileen Talbot Grange (Vendors) and (2) William Arthur Wade (Purchaser) :-

"TOGETHER with full and free right and liberty in common with others having the like right to pass and repass over and along the passage or back road at the rear of the said premises and for all purposes hereafter upon the owner or owners thereof paying a rateable proportion of the expense of keeping the said passage or back road in good repair and condition"

NOTE: Copy Plan filed under WSX259017.

- 3 (16.04.2015) The land has the benefit of the rights granted by but is subject to the rights reserved by the Transfer dated 29 September 2014 referred to in the Charges Register.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (16.04.2015) PROPRIETOR: FALCON SOLAR LIMITED (Co. Regn. No. 07702318) of Unit 19, Elbridge Farm, Chichester Road, Bognor Regis PO21 5EF.
- 2 (16.04.2015) The price stated to have been paid on 29 September 2014 was £450,000 plus £11,000 VAT.
- 3 (16.04.2015) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the Charge dated 3 October 2014 in favour of Barclays Security Trustee Limited referred to in the Charges Register.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (16.04.2015) A Transfer of the land in this title dated 29 September 2014 made between (1) Roger Turner and others and (2) Falcon Solar

C: Charges Register continued

Limited contains restrictive covenants.

-NOTE: Copy filed.

- 2 (16.04.2015) REGISTERED CHARGE dated 3 October 2014.
- 3 (16.04.2018) Proprietor: BARCLAYS SECURITY TRUSTEE LIMITED (Co. Regn. No. 10825314) of P.O. Box 16276, One Snowhill, Snowhill Queensway, Birmingham B2 2XE.

End of register

