

Nine tenth
Date: November 2015

ARUN DISTRICT COUNCIL (1)

WEST SUSSEX COUNTY COUNCIL (2)

KINGSOAK HOMES LIMITED (3)

Section 106 and 106A Deed of Supplementation of Planning Obligations
under the Town and Country Planning Act 1990

Relating to Kingsoak Site At Felpham, Bognor
Regis, West Sussex

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THIS DEED is made the

day of

Nineteenth

November

2015

BETWEEN:

- (1) **ARUN DISTRICT COUNCIL** of Arun Civic Centre Maltravers Road Littlehampton West Sussex BN17 5LF (the "**Council**");
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall West Street Chichester West Sussex PO19 1RQ (the "**County Council**"); and
- (3) **KINGSOAK HOMES LIMITED** (Company Registration No. 1993976) whose registered office is at Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF ("**Kingsoak**")

WHEREAS:

A. **Purpose of Deed**

- A.1 This Deed is an agreement made under Sections 106 and 106A of the Town and Country Planning Act 1990 ("the Act")
- A.2 This Deed is supplemental to:-
 - (a) the Initial Undertakings; and
 - (b) the Section 106 Agreementto the extent only that they relate to the Kingsoak Site
- A.3 The provisions of this Deed bind the Kingsoak Site (and each and every part of it) the parties and except where provided in this Deed their successors in title

B. **Interests in the Kingsoak Site**

Kingsoak owns the Kingsoak Site and is registered as the owner pursuant to title number WSX313127.

C. **Statutory Authorities**

- C.1 The Council remains the district planning and housing authority for the area within which the Kingsoak Site is situated and a local planning authority for the purposes of the Act
- C.2 The County Council remains the education authority for the area within which the Kingsoak Site is situated and a local planning authority for the purposes of the Act

C.3 This Deed is made pursuant to the provisions Section 106 and 106A of the 1990 Act Section 111 of the Local Government Act 1972 the Housing Acts and all other powers enabling

C.4 The Council and the County Council are the planning authorities by whom provisions of this Deed are enforceable

D. **Planning**

This Deed will apply in the event that Commencement takes place pursuant to the New Planning Permission and is supplemental to the Section 106 Agreement

IT IS AGREED as follows:

1. DEFINITIONS

1.1 Save as otherwise stated expressions in this Deed shall have the meanings given in the Section 106 Agreement

1.2 Where the context so admits words in this Deed shall be interpreted in accordance with Clause 2 of the Section 106 Agreement

1.3 On and from the date of this Deed (including the Recitals) the following additional definitions shall (to the extent that they relate to the Kingsoak Site only) have the following meanings:

“Section 106 Agreement”

means

(a) the two deeds dated 5 August 2005 and made between the Muriel Helen Arbuckle and Roger Charles Philpott and others, the County Council, Felpham Consortium Limited and Hallam Land Management Limited pursuant to s106 of the 1990 Act;

(b) the deed dated 19 December 2005 and made between the Owners (as defined therein), Felpham Consortium Limited, Hallam Land Management Limited and the County Council pursuant to s106 of the Act;

(c) the deed dated 18 September 2006 and made between the Council, the Owners (as defined therein), Hallam Land Management Limited and Felpham Consortium Limited

- (d) the Deed dated 10 March 2010 and made between Kingsoak, the County Council and the Council pursuant to s106 of the Act;
- (e) the deed dated 31 January 2012 and made between the Council, the County Council and Kingsoak
- (f) the deed dated 15 February 2012 and made between the Council, the County Council and Kingsoak
- (g) the deed dated 20 June 2012 and made between the Council, the County Council and Kingsoak
- (h) the deed dated 17 August 2012 and made between the Council, the County Council and Kingsoak
- (i) the deed dated 11 February 2014 and made between the Council, the County Council and Kingsoak

“Further Affordable Housing Commuted Sum”

means SIX THOUSAND SEVEN HUNDRED AND NINETY FIVE POUNDS (£6,795) to be used by the Council for the provision of Affordable Housing within its area in lieu of the provision of additional affordable housing within the Kingsoak Site

“Further Additional Education Contribution”

means the sum of FORTY ONE THOUSAND ONE HUNDRED AND ONE POUNDS (£41,101) for education purposes

“Further Fire and Rescue Contribution”

means the sum of THREE HUNDRED AND NINETY POUNDS (£390) for community fire link smoke detectors for vulnerable persons homes within the parish of Felpham

“Further Healthcare Contribution”

means the sum of FIVE HUNDRED AND NINETEEN POUNDS AND TWENTY FIVE PENCE (£519.25)

“Further Library Contribution”

means the sum of THREE THOUSAND SIX HUNDRED AND EIGHTY SIX POUNDS (£3,686) for a tier 7 library facility within the community building on the Devleopment.

“Kingsoak”	means Kingsoak Homes Limited
“Kingsoak Site”	means the land shown edged red on the Kingsoak Site Plan
“the Kingsoak Site Plan”	means the plan labelled as such and attached to this Deed
“Commencement”	means the carrying out of a material operation within the meaning of Section 56(4) of the Act in respect of any of the New Permission PROVIDED ALWAYS that for the purposes of this Deed the following shall not be taken to be a material operation and shall not amount to Commencement; - (a) ground investigation or Kingsoak Site survey work; (b) archaeological investigation; (c) works of decontamination or remediation; and (d) works carried out pursuant to any Planning Permission other than the New Permission and the expression “Commence” and “Commenced” shall be construed accordingly
“Commencement Notice”	means written notice given on behalf of Kingsoak to the Council and the County Council giving 5 working days advance notice that Commencement is about to take place and specifying the date of Intended Commencement
“the Council”	means Arun District Council
“the County Council”	means West Sussex County Council
“Deed”	means this Deed of Agreement
“Development”	means the development of the Kingsoak Site in accordance with the New Planning Permission or (to the extent only that it relates to the Kingsoak Site) the Planning Permission
“Dwelling(s)”	any unit(s) of self-contained residential accommodation within the meaning of Use Class C3(a) of the Town and Country Planning (Use

Classes) Order 1987 as amended including a flat

“Index D”

means the All In Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

“Index Linked (County)”

means (in relation only to any payment or contribution to be made to the County Council pursuant to this Deed) increasing the amount by an amount equal to the proportionate increase in Index D between the quarter preceding the date of payment this Deed and the quarter preceding the date of payment of the relevant contribution

“Initial Undertakings”

means the unilateral undertaking dated 5 August 2005 and made between Muriel Helen Arbuckle and Roger Charles Philpott and others, Hallam Land Management Limited, Felpham Consortium Limited and the Council pursuant to s106 of the Act

“Additional Locally Equipped Area of Play [LEAP] Contribution”

means the sum of TWO THOUSAND FOUR HUNDRED POUNDS (£2,400)

“Market Dwelling”

means any Dwelling within the Kingsoak Site other than an Affordable Dwelling or an Additional Affordable Dwelling

“New Planning Permission”

means the planning permission granted pursuant to the Planning Application

“Planning Application”

means the application given reference FP/55/15 for phases 4 and 5 for erection of 38 dwellings and comprising 10 new dwellings .

“Planning Permission”

means the planning permissions set out in the list at Schedule 3 to this Deed

2. CONDITIONALITY

- 2.1 This Deed is conditional upon the grant of the New Planning Permission PROVIDED ALWAYS THAT this Deed shall have no effect following the expiry or termination of the New Planning Permission save

for payment of sums outstanding but that any sums properly paid prior to expiry or termination of the New Planning Permission shall remain with the party to whom they have been paid.

- 2.2 The restrictions on commencement construction sale and occupation of Dwellings shall remain in force as against all persons with any interest in the Kingsoak Site (or part thereof) and in relation to the commencement, construction, sale and occupation of all or any Dwellings wherever they are located on the Kingsoak Site until the entirety of any outstanding obligations or covenants payments shall have been fully satisfied in accordance with this Deed PROVIDED ALWAYS THAT any purchaser tenant or occupier of any Dwelling shall not be bound by the positive obligations to carry out works or pay monies under the terms of this Deed once the covenants which must be fulfilled prior to occupation of such Dwelling pursuant to this Deed shall have been fulfilled provided the Council shall have confirmed in writing that the said covenants have been fulfilled (and the Council shall respond to any reasonable request in that regard by the Owner Kingsoak or the solicitor or conveyancer acting for a prospective purchaser/tenant or occupier)

3. OBLIGATIONS TO BIND ENTIRE KINGSOAK SITE AND EACH AND EVERY PART OF IT

The provisions of this Deed and the covenants restrictions limitations and obligations given by Kingsoak shall bind and run with the Kingsoak Site and each and every part of it and shall be binding against Kingsoak and its successors in title and assigns to the Kingsoak Site and each and every part of it PROVIDED ALWAYS that

- 3.1 None of the covenants, restrictions, limitations or obligations shall be enforceable against any owner or occupier of an individual dwelling or a Registered Social Landlord or its Mortgagee within the Kingsoak Site; and
- 3.2 This Deed shall not bind any person or persons after they have disposed of their interest in the Kingsoak Site without prejudice to the liability of any such person for any subsisting breach of this Deed which occurred prior to them parting with such interest and
- 3.3 None of the covenants, restrictions, limitations or obligations shall be enforceable against any part of the Land used by a Statutory Undertaker as defined within S262 of the Act as part of its operational Land

4. STATUTORY POWERS

- 4.1 This Deed is made pursuant to the provisions of Section 106 and 106A of the Act Section 111 of the Local Government Act 1972 the Housing Acts and all other powers enabling
- 4.2 The provisions of this Deed are enforceable by the Council and the County Council and any of their duly appointed nominees or agents

5. LAND BOUND AND ENFORCING AUTHORITY

Subject to Clause 3 of this Deed the Planning Obligations relate to and are binding upon Kingsoak and on their interests in the Kingsoak Site and may be enforced against Kingsoak and their successors in title and their assigns or any of them by the Council or the County Council their nominees or agents.

6. OWNERSHIP

Kingsoak warrants to the Council and the County Council that as at the date of this Deed its interest in the Kingsoak Site is as set out in Schedule 2 to this Deed and it has not granted any interest in the Kingsoak Site to any person SAVE THAT Dwellings within the Kingsoak Site have been sold or let to individuals who own or occupy the same but have no liability for the covenants restrictions limitations or obligations imposed on the Owner pursuant to this Deed

7. KINGSOAK COVENANTS

Kingsoak for itself and its successors in title and assigns to the Kingsoak Site and each and every part of it jointly and severally COVENANT in favour of the Council and the County Council to observe perform and abide by the Planning Obligations restrictions limitations and covenants in this Deed (including Schedules 1 and 3) so that the said obligations run with and bind the Kingsoak Site and each and every part of it and as follows:-

7.1 Commencement Notice

Not to Commence or cause or permit Commencement pursuant to the New Planning Permission prior to service of the Commencement Notice

7.2 Financial Contributions

7.2.1 Not to occupy or cause or permit occupation of more than the threshold of Dwelling Occupations appearing in the second column of the table set out in Schedule 1 to this Deed unless and until the contribution appearing in the first column of the table set out in Schedule 1 to this Deed shall have been paid to the Council or the County Council or their agents or nominees as appropriate together with indexation

7.2.2 The payments and contributions appearing in column 3 at Schedule 1 to this Deed shall be varied by the percentage (if any) by which the relevant Index specified in column 4 of the said table shall have increased or decreased between the base date specified in column 3 of the following table and the date for payment of each of the contributions

PROVIDED ALWAYS that:-

- (a) When the most recent index figure which shall have been published as at the date of any payment is a forecast or provisional index figure then that payment shall be calculated initially by reference to that most recent provisional index figure
- (b) Where any sum has been calculated initially by reference to a forecast or provisional index figure then a further adjustment shall be made as and when the final index figure for that period is published and Kingsoak as appropriate shall within 14 days of any written demand make good any under or over payment as appropriate
- (c) Where any index ceases to be published then the sum to which that original index was to be applied shall have the original Index applied to-it up to the date on which the original index is last published and the sum as so recalculated as at that date shall thereafter be subject to indexation based on the nearest equivalent index as may be agreed between Kingsoak and the Council or in the absence of agreement such index as may be determined on the reference of Kingsoak or the Council in accordance with the provisions of Clause 17 of the Section 106 Agreement

7.2.3 To pay the contributions identified in the first column of the table at Schedule 1 to this Deed together with indexation to the Council or the County Council or their nominees or agents prior to occupation of more than the number of Market Dwellings or other trigger point appearing in the second column of the said table

8. CONSENTS AND GOOD FAITH IN RELATION TO THIS DEED

In all dealings with each other under this Deed and in any negotiations necessary with any third parties and any RSL pursuant to the provisions of this deed the parties to this Deed shall act and deal reasonably and in good faith

9. ACKNOWLEDGEMENT RELATING TO AFFORDABLE HOUSING

For the avoidance of doubt the Affordable Housing Commuted Sum is to be paid to the Council by Kingsoak in lieu of any requirement to provide additional affordable housing within the Site pursuant to the New Permission

10. TITLE AND LOCAL LAND CHARGE REGISTRATION

10.1 Kingsoak hereby undertakes with the Council and the County Council:-

- 10.1.1 to co-operate fully in relation to the registration of this Deed and any related Agreements or dispositions at the Land Charges Registry in respect of any land within its ownership which is unregistered; and
- 10.1.2 to co-operate with the Council and the County Council in securing registration of this Deed against its title in the Kingsoak Site

- 10.2 This Deed is registrable by the Council as a local land charge in the Register of Local Land Charges kept by them

11. CONFIRMATION

In all other respects the Parties to this Deed affirm and confirm the content of the Section 106 Agreement

12. COSTS

Kingsoak agrees with the Council and the County Council:-

- 12.1 to pay on completion of this Agreement to the Council £500 and the County Council £500 being their respective legal costs incurred in preparing and entering into this Agreement
- 12.2 For the avoidance of doubt the Council shall be entitled to utilise a proportion of any monetary contributions specified in this Deed for related project costs up to a maximum of 5% of the sum or £15,000 whichever shall be the larger
- 12.3 For the avoidance of doubt the above charges are standard charges and shall not preclude the Council from claiming and receiving any additional monitoring and legal or enforcement costs above and beyond these standard charges when circumstances require that they be incurred in pursuing full compliance with this Deed whether through the courts or otherwise

13 Interest on Late Payments

Kingsoak covenants with the Council and the County Council to pay interest on any sums due to any payee under this Agreement but not paid on the Date Payable from the Date Payable until actual payment. The rate of interest shall be 4% above the HSBC Bank base rate from time to time

IN WITNESS whereof this Deed has been executed as a Deed by the parties hereto the day and year first before written

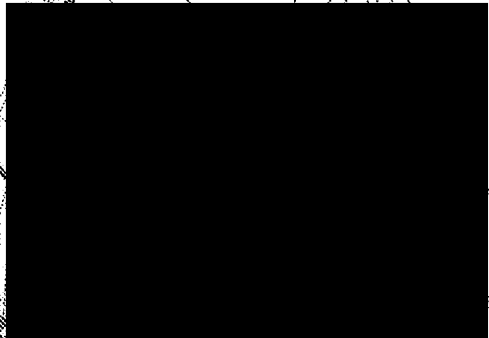
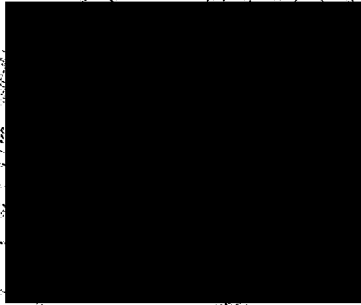
Schedule 1 Additional Financial Contributions

Contribution	Trigger Point for payment Permitted Level of Occupations of Market Dwellings on the Kingsoak Site prior to payment	Index	Base Date
Further Affordable Housing Commuted Sum	Occupation of the 305 th Dwelling	Index D	This Deed
Additional Locally Equipped Area of Play Contribution	Occupation of the 237 th Dwelling	Index D	This Deed
Further Additional Education Contribution	Occupation of the 237 th Dwelling	Index Linked (County)	This Deed
Further Healthcare Contribution payable to National Health Service /Relevant Primary Care Trust or equivalent or successor body]	Occupation of the 237 th Dwelling	Index D	This Deed
Further Library Contribution	Occupation of the 237 th Dwelling	Index Linked (County)	This Deed
Further Fire & Rescue Contribution	Occupation of the 237 th Dwelling	Index Linked (County)	This Deed

Schedule 2 – Land Ownership and Plan

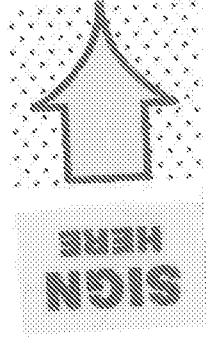
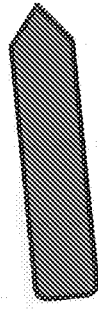
Part 1 Owner Interest in the Kingsoak Site

Kingsoak is the registered proprietor with title absolute of the land shown edged red on the Kingsoak Site Plan under title number WSX313127.



Schedule 3 – Planning Consents

FP/92/04	Application for outline approval for residential development and associated uses forming part of policy Site 6
FP/39/10	
FP/43/09	
FP/128/09/	
FP/166/09	
FP/220/07	
FP/244/07	
FP/251/07	
FP/205/10	
FP/224/11	
FP/90/13	
FP/210/13	



THE COMMON SEAL of)

ARUN DISTRICT COUNCIL)

was hereunto affixed to this deed in)

the presence of:)

[Redacted Signature]

Authorised Signatory



THE COMMON SEAL of)

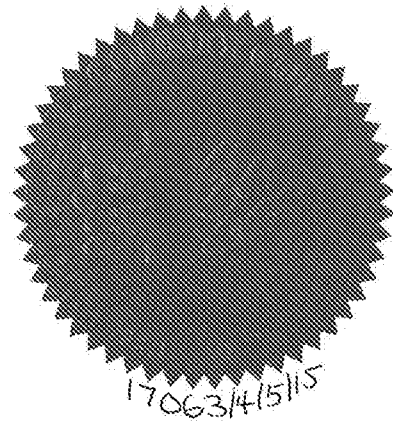
WEST SUSSEX COUNTY COUNCIL)

was hereunto affixed to this deed in)

the presence of:)

[Redacted Signature]

Authorised Signatory



EXECUTED AS A DEED on behalf of)

KINGSOAK HOMES)

LIMITED)

by)

and)

in exercise of the powers conferred on them by a)

Power of Attorney dated 21 January 2015

[Redacted Signature]

