

Dated this 24<sup>th</sup> day of July 2018

PLANNING OBLIGATION BY WAY OF  
UNILATERAL UNDERTAKING UNDER  
SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990

Relating to Land at Site 6, Felpham  
North of Shirley Drive Bognor Regis

Parties :

Applicant KINGSOAK HOMES LIMITED

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THIS DEED IS DATED THE 24<sup>th</sup> DAY OF July 2018

FROM:

- (1) KINGSOAK HOMES LIMITED *a company incorporated and registered in England and Wales (Company No 01993976)* whose registered office is at Barratt House Cartwright Way Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF (**"the Applicant"**)

In Favour of

ARUN DISTRICT COUNCIL of Arun  
Civic Centre, Maltravers Road,  
Littlehampton, West Sussex, BN17 5LF  
(**"the Council"**)

## RECITALS

- (1) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area in which the Property is situated
- (2) Felpham Consortium Limited (Company No 04052082) made the Planning Application, in respect of the Property.
- (3) The Council refused to grant planning permission on 30 November 2004.
- (4) Felpham Consortium Limited issued the Appeal and on 22 November 2006 the Planning Permission was granted.
- (3) The Applicant is now the freeholder of the Property.
- (4) The Applicant has entered into this Undertaking and agreed to comply with the terms of it.
- (5) This Undertaking is made by way of deed.

## AGREED TERMS

### 1 INTERPRETATION

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

|        |                                                                                                       |
|--------|-------------------------------------------------------------------------------------------------------|
| Appeal | means the appeal against the Council's refusal of the Planning Application registered under reference |
|--------|-------------------------------------------------------------------------------------------------------|

APP/C3810/V/04/1170039

|                       |                                                                                                                                                                                                                                                                                                          |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Base Rate             | means the higher of 4% and the base rate from time to time of Barclays Bank plc                                                                                                                                                                                                                          |
| Default Interest Rate | means 4% per annum above the Base Rate                                                                                                                                                                                                                                                                   |
| Development           | means the development of the Property for residential development and associated uses forming part of policy site 6. Construction of the Bognor Regis Northern Relief Road from A259 at Felpham to A29 (This application is accompanied by an environmental statement and affects a public right of way) |
| Planting              | means the planting of the Trees in appropriate soil and at the necessary depth to ensure, so far as reasonably practical that the Trees grow and "plant" and "planted" shall be construed accordingly                                                                                                    |
| Planning Application  | means an application for planning permission registered by the Council under reference number FP/92/04                                                                                                                                                                                                   |
| Planning Permission   | means the planning permission granted on appeal by the Planning Inspector dated 30 November 2004                                                                                                                                                                                                         |
| Property              | means the freehold land north of Felpham, Bognor Regis, West Sussex and registered at HM Land Registry with absolute title under title number(s) WSX313127                                                                                                                                               |
| Trees                 | means the Trees the details of which are set out in Schedule 1                                                                                                                                                                                                                                           |
| Tree Plan             | means drawing number BDWS20444 12B showing the Trees annexed to this Deed                                                                                                                                                                                                                                |
| TCPA 1990             | Town and Country Planning Act 1990                                                                                                                                                                                                                                                                       |
| Working Day           | means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England                                                                                                                                                                                                           |

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- 1.2 Clause headings shall not affect the interpretation of this deed
- 1.3 A person includes a natural person, a corporate or unincorporated body (whether or not having a separate legal entity)
- 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 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 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 shall not include faxes or email
- 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 This undertaking shall come into effect on the date at the beginning of this deed
- 2.3 The obligation contained in clause 3 of this deed shall be enforceable by the Council in accordance with section 106 of the TCPA 1990.
- 2.4 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 Applicant with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns

### 3 THE APPLICANT'S COVENANT WITH THE COUNCIL

The Applicant covenants with the Council to:

- 3.1 replace any Trees which ~~within 5 years from 28 February 2019~~ die, are removed or become seriously damaged or diseased unless the Council gives written consent to any variation.
- 3.2 replace any Trees as necessary under clause 3.1 during the planting season between November and February of the year the Trees are deemed to be dead, removed, damaged or seriously diseased.
- 3.3 plant the Trees listed in Paragraph 1.2 of the First Schedule during the planting season between November 2018 and February 2019.
- 3.4.5 notify the Council in writing within 5 working days to confirm when the Trees are planted and if necessary when any of the Trees are replanted
- 3.6 to comply with the covenants in clause 3.1, 3.2, 3.4 and 3.5 until 28 February 2024.

### 4 COUNCIL'S COSTS

The Applicant shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs in the sum of £500.00 together with any disbursements incurred in connection with the preparation and completion of this deed.

### 5 NOTICES

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

- 5.1.1 delivered by hand; or
  - 5.1.2 sent by pre-paid first class post or next working day delivery service
- 5.2 Any notice of other communication to be given under this deed must be sent to the relevant parties as follows:
  - 5.2.1 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 reference number;
  - 5.2.2 to the Applicant at Barratt House Cartwright Way Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF marked for the attention of Gary Webster
- 5.3 Any notice or other communication given in accordance with clause 8.1 and clause 8.2 above shall be deemed to have been received:
  - 5.3.1 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 09:00 am on a Working 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 shall be deemed to have been received at 09:00 am on the next Working Day;
  - 5.3.2 If sent by pre-paid first class post or other next working day delivery service at 09:00 am on the second Working Day after posting
- 5.4 A notice or other communication given under this deed shall not be validly given if sent by fax or email
- 5.5 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.

## 6 LOCAL LAND CHARGE

This Undertaking is a Local Land Charge and shall be registered as such by the Council.

## 7 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.

8 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

OWNERSHIP

9.

The Applicant warrants that no person other than the Applicant has any legal or equitable interest in the land marked as open space on the Tree Plan.

First Schedule

**The Trees**

- 1.1 8 Quercus Robur that have been Planted at the points circled red on the open space land shown on the Tree Plan
- 1.2 5 Quercus Robur to be Planted at the points circled blue on the open space land shown on the Tree Plan

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

SIGNED as a DEED on behalf  
of  
KINGSOAK HOMES LIMITED  
by

[redacted]  
and

[redacted]  
powers  
conferred on them by a  
Power of Attorney

Gary Webster

(Authorised Attorney)

(Authorised Attorney)

[redacted]  
Tollbar House  
Tollbar Way  
Hedge End  
SO30 2UH  
Toni Thorne

[redacted]  
Tollbar Way  
Hedge End  
SO30 2UH  
Toni Thorne