

DATED 26 November 2018

GASCOINES GROUP LIMITED (1)
to
SCARBOROUGH BOROUGH COUNCIL (2)

UNILATERAL UNDERTAKING
pursuant to section 106
of the Town and Country Planning Act 1990 (as amended)
relating to the development of land adjacent to Limestone Road Burniston
Scarborough North Yorkshire

Legal Services
Scarborough Borough Council
Town Hall
St Nicholas Street
Scarborough
YO11 2HG

GAC/000673

THIS UNDERTAKING is made the 26 day of November 2018

FROM: -

(1) GASCOINES GROUP LIMITED (Company No. 00340076) whose registered office is situate at 1 Church Street Southwell Nottinghamshire NG25 0HQ (the "Owner")

TO:-

(2) SCARBOROUGH BOROUGH COUNCIL of Town Hall, St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG (the "Borough Council");

WHEREAS:

- (A) The Borough Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and by whom the obligations contained in this Undertaking are enforceable.
- (B) The Owner is registered at the Land Registry as proprietor of the Land with absolute freehold title under Title Number NYK295859
- (C) The Owner has submitted the Planning Application to the Borough Council for permission to carry out the Development on the Land.
- (D) The Owner submitted the Appeal to the Planning Inspectorate on 28 June 2018 due to non-determination of the Planning Application.
- (E) The Owner by giving this Undertaking does so to create planning obligations in favour of the Borough Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Undertaking.

NOW THIS DEED WITNESSES as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Undertaking the following words and expressions shall where the context so requires or admits have the following meanings: -

"Act" means the Town and Country Planning Act 1990 (as amended);

"Appeal" means the appeal reference APP/H2733/W/18/3205993 submitted to the Planning Inspectorate by the Owner on 28 June 2018 against the refusal of the Planning Application by the Borough Council;

"Commencement of Development" means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the Act **save that** the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office or erection of fencing to site boundary and reference to **"Commence Development"** and **"Commencement of Development of each Phase of the Development"** shall be construed accordingly;

"County Council" means North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton,

North Yorkshire DL7 8AD, the body responsible for education for the area in which the Land is situated;

"Development"

means the development to be carried out on the Land pursuant to the Planning Permission;

"Drainage Impact Assessment"

means the Drainage Impact Assessment reference JG/AD/JF/35267-Rp004 Rev A unless appropriately updated by a suitably qualified expert, as may be necessary;

"Dwelling"

means a residential unit that may be built on the Land as part of the Development and reference to "Dwellings" shall be construed accordingly;

"Ecological Enhancement Works Scheme"

means the great crested newt mitigation solution specified by sections 8, 9, 10, 11, 12,13 and 14 (unless appropriately updated by a suitably qualified expert, as may be necessary) of the submitted Great Crested Newt Survey and Mitigation Strategy dated 23 February 2018;

"Ecological Enhancement Works"

means any works required on the Land to implement, facilitate, or maintain the Ecological Enhancement Works Scheme;

"Headwall"

means the Headwall located on the Land shown edged Blue on the Plan;

"Headwall Maintenance"

means any works to the Headwall which are

Works Scheme"

required to manage the risk of blockages of the Headwall and which are specified in the Drainage Impact Assessment;

"Headwall Maintenance Works"

means works to implement, facilitate or maintain the Headwall to be carried out on the land edged blue on the Plan in accordance with the Headwall Maintenance Works Scheme;

"Index"

means the Building Costs Information All in Tender Price Index published by the Royal Institution of Chartered Surveyors (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution thereof;

"Index Linked"

means increased on an annual basis or pro rata per diem from the date of this Undertaking until such time that payment of any sum in this Undertaking is made such index linking to be equivalent to any inflationary increase in such sums taking as the basis for the measure of inflation the Index last published before the date of this Undertaking or any publication substituted for it;

"Interest"

means interest at the rate of 2% above the base lending rate of the Bank of England in force at the due date which shall mean the date when interest first becomes payable;

"Land"

means the land adjacent to Limestone Road Burniston Scarborough which is for the purposes of identification shown edged in red and blue on the Plan

"Management Company"

means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner and for the purposes of carrying out future maintenance of the Headwall Maintenance Works and Ecological Enhancement Works as detailed in the Headwall Maintenance Works Scheme or Ecological Enhancement Works Scheme and: -

1. which is incorporated in England and Wales or Scotland;
2. which has a registered office in England or Scotland; and
3. whose primary objects permit it to maintain and renew the Headwall Maintenance Works and Ecological Enhancement Works;

"Parties"

means the parties to this Undertaking;

"Plan"

means the plan attached at the First Schedule;

"Planning Application"

means the outline application submitted by the Owner to the Borough Council and validated by the Borough Council on 13 March 2018 for residential development on the Land and

allotted reference 18/00505/OL;

"Planning Obligation"

means the obligations imposed on the Owner and contained in Schedule 2;

"Planning Permission"

means a planning permission subject to conditions granted pursuant to the Appeal bearing reference APP/H2733/W/18/3205993, and any subsequent reserved matters or condition discharge applications;

"Practical Completion"

means the issue of a certificate(s) of practical completion in relation to any aspect of the Development by an architect or such other person who has been supervising the Development;

"Working Day"

means any day except Saturdays Sunday or a bank holiday and reference to **"Working Days"** shall be construed accordingly.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Undertaking 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 Undertaking.
- 2.2 Words importing the singular meaning shall 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 severally 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 References to any party to this Undertaking shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Borough Council the successors to its statutory functions.

2.7 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

3.1 This Undertaking is made pursuant to Section 106 of the Act and all other powers so enabling.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Undertaking create planning obligations pursuant to Section 106 of the Act and are enforceable by the Borough Council as local planning authority against the Owner and any person deriving title under him.

4 CONDITIONALITY

4.1 The planning obligations contained in this Undertaking shall not become effective until the following conditions are satisfied: -

4.1.1 the Planning Permission has been granted; and

4.1.2 unless otherwise stated the Commencement of Development

save for the provisions of clauses 9, 13 and 14 which shall come into effect immediately upon completion of this Undertaking.

5 CIL 123 LIST

- 5.1 if the Secretary of State in his decision letter concludes that any of the Planning Obligations set out in this deed (or relevant part of a Planning Obligation) are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly expressly states in his decision letter that he attaches no weight to that Planning Obligation in determining the Appeal then the relevant Planning Obligation(s) (or part of the Planning Obligation(s) as appropriate) shall from the date of the decision letter immediately cease to have effect and the Owner shall be under no obligation to comply with that Planning Obligation (or the relevant part of the Planning Obligation as appropriate) but the remaining Planning Obligations shall remain in full force and effect; and
- 5.2 if, after the date of this deed, but prior to the Planning Permission being issued by the Secretary of State, Community Infrastructure Levy ("CIL") is applicable to the Development then, in so far as it is lawful to do so, the parties to this deed shall use Reasonable Endeavours to agree variations to this deed with the intent that the Owner is not required to contribute (whether by financial contribution or in kind or both) more than once for any item of infrastructure (as defined by the Community Infrastructure Levy Regulations 2010 and / or as amended applied and / or supplemented by any relevant charging schedule adopted including any related document issued by the Council from time to time during the delivery of the Development) through both the terms of this deed and through CIL **PROVIDED THAT** nothing in this clause 5.2 shall: -
- 5.2.1 fetter the discretion of the Council acting as local planning authority; nor
- 5.2.2 require the Council to act contrary to law in the charging, collecting or spending of CIL.

6 THE OWNER'S COVENANTS

The Owner hereby covenants with the Borough Council so as to bind the Land to perform the obligations and observe the restrictions specified in the Second Schedule.

7 MISCELLANEOUS

7.1 NOT USED

7.2 This Undertaking does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.

7.3 This Undertaking shall be registrable as a local land charge by the Borough Council.

7.4 Following the performance and satisfaction of all the planning obligations contained in this Undertaking the Borough Council shall following receipt of a written request forthwith effect the cancellation of all related entries in the Register of Local Land Charges in respect of this Undertaking.

7.5 This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.6 Insofar as any clause or clauses of this Undertaking 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 Undertaking.

7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Undertaking after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 7.8 The covenants contained in this Undertaking shall not be enforceable against:
- (a) owner-occupiers tenants or occupiers of Dwellings nor against those deriving title from them;
 - (b) a statutory undertaker after the transfer or lease of the statutory apparatus and any land upon or in which the statutory undertaker's apparatus is situated by the Owner to that statutory undertaker;
 - (c) any mortgagee or chargee which shall have the benefit from time to time of a mortgage or charge of or on part or parts of the Land unless such mortgagee or charge has entered into possession of the Land or any part thereof to which such obligation relates
- 7.9 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.
- 7.10 Nothing contained or implied in this Undertaking shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.11 Any notice agreement consent acknowledgment or approval required to be given under this Undertaking shall not be unreasonably withheld or delayed and shall be in writing and shall be delivered personally or sent by pre- paid first class recorded delivery post or facsimile transmission.
- 7.12 The address for service of any such notice consent acknowledgment or approval as aforesaid shall: -
- 7.12.1 in the case of service upon the Borough Council be at its address aforesaid or such other address for service as shall have been previously notified by the Borough Council;

7.12.2 in the case of service upon the Owner be at its address aforesaid or such other address for service as shall have been previously notified by the Owner; and

7.13 A notice agreement consent acknowledgment or approval under this Undertaking shall be deemed to have been served as follows: -

7.13.1 if personally delivered at the time of delivery;

7.13.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

7.13.3 if sent by facsimile transmission at the time of successful transmission on the day of transmission if sent before 3.30pm otherwise the following working day;

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.

8 WAIVER

No waiver (whether expressed or implied) by the Borough Council (or the Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Borough Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Borough Council to give the Borough Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Undertaking have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

10 INDEXATION

Any sum referred to in the Second Schedule shall be Index Linked.

11 INTEREST

If any payment due under this Undertaking is paid late, Interest shall be payable from the date payment is due to the date of payment.

12 VAT

The amount of all considerations, contributions and payments referred to in this Undertaking shall be increased by any value added tax properly payable on the consideration, contribution or payment.

13 JURISDICTION

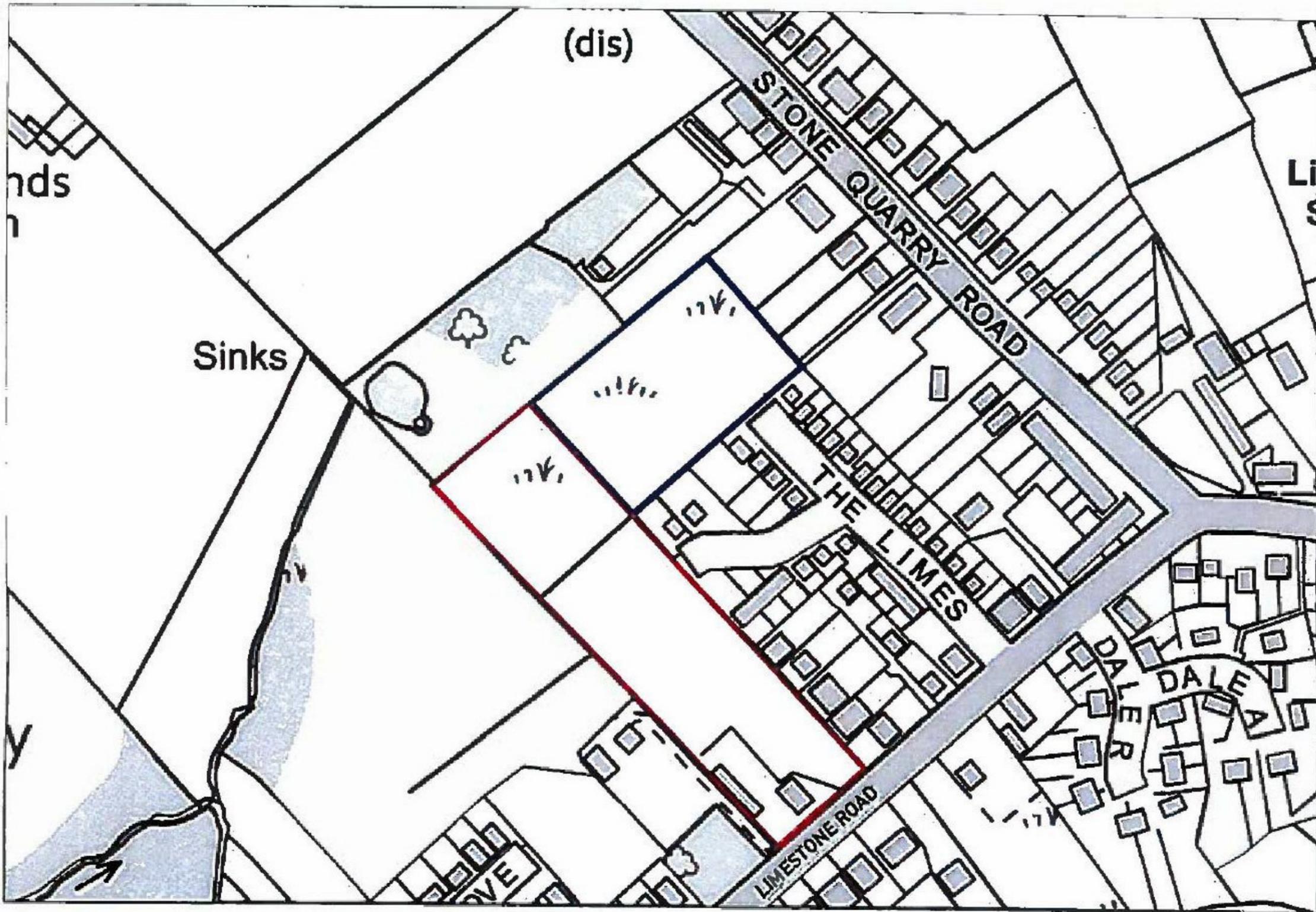
This Undertaking is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

14 DELIVERY

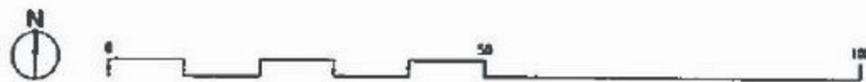
The provisions of this Undertaking (other than this clause which shall be of immediate effect) shall be of no effect until this Undertaking has been dated.

IN WITNESS whereof this Undertaking has been duly executed by the Owner the day and year first before written

FIRST SCHEDULE
The Plan



- KEY
- SITE BOUNDARY (1.196 HAI)
 - EXTENT OF OWNERSHIP (13.682 HAI)



LIMESTONE ROAD, BURNISTON, NORTH YORKSHIRE - SITE LOCATION

Pegasus
Design

SECOND SCHEDULE

Owner's Covenants

The Owner hereby covenants with the Borough Council as follows: -

- 1 To notify the Borough Council in writing seven Working Days prior to Commencement of Development

2 HEADWALL MAINTENANCE WORKS SCHEME

- 2.1 Upon the Headwall Maintenance Works Scheme being completed in accordance with the Planning Permission and approved plans the Owner will either: -

- 2.1.1 maintain and manage in perpetuity the Headwall Maintenance Works in accordance with the approved Headwall Maintenance Works Scheme (or any variations that may be agreed in writing from time to time between the Borough Council and the Owner) **IN DEFAULT OF WHICH** the Borough Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Owner to carry out any maintenance works reasonably required to the Headwall Maintenance Works and recover the proper and reasonable costs and expenses involved from the Owner; or

- 2.1.2 Within 6 months of completion of the Headwall Maintenance Works transfer title (or part thereof) of the land necessary for undertaking the Headwall Maintenance Works to a Management Company (having supplied to the Borough Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company in consultation with the Borough Council and all further maintenance shall be thereafter carried out by the Management Company **PROVIDED THAT** it shall be a term of the transfer that the Management Company will maintain and manage in perpetuity the Headwall Maintenance Works in accordance with the approved Headwall Maintenance Works Scheme or any variations that may be agreed in writing by the Borough Council from time to time In Default of Which the Borough Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Management Company to carry out any maintenance works reasonably required to the Headwall Maintenance Works and recover the proper and reasonable costs and expenses involved from the Management Company

2.2 Upon the tenth anniversary of the practical completion of the Headwall Maintenance Works the Owner may invite the Borough Council to accept a transfer of the Headwall Maintenance Works at nil cost and on the terms to be agreed between the Owner and the Borough Council. In the event that the Borough Council does not accept the transfer of the Headwall Maintenance Works the Owner will continue to maintain and manage the Headwall Maintenance Works in perpetuity in accordance with the Headwall Maintenance Works Scheme.

3 ECOLOGICAL ENHANCEMENT WORKS SCHEME

3.1 Upon the Ecological Enhancement Works being completed in accordance with the Planning Permission and approved plans the Owner will either: -

3.1.1 maintain and manage in perpetuity the Ecological Enhancement Works in accordance with the approved Ecological Enhancement Works Scheme (or any variations that may be agreed in writing from time to time between the Borough Council and the Owner) IN DEFAULT OF WHICH the Borough Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Owner to carry out any maintenance works reasonably required to the Ecological Enhancement Works and recover the proper and reasonable costs and expenses involved from the Owner; or

3.1.2 Within 6 months of completion of the Ecological Enhancement Works transfer title (or part thereof) of the land necessary for undertaking the Ecological Enhancement Works to a Management Company (having supplied to the Borough Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company in consultation with the Borough Council and all further maintenance shall be thereafter carried out by the Management Company PROVIDED THAT it shall be a term of the transfer that the Management Company will maintain and manage in perpetuity the Ecological Enhancement Works in accordance with the approved Ecological Enhancement Works Scheme or any variations that may be agreed in writing by the Borough Council from time to time In Default of Which the Borough Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Management Company to carry out any maintenance works reasonably required to the Ecological Enhancement Works Scheme and recover the proper and reasonable costs and expenses involved from the Management Company; The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 the Ecological Enhancement Works has not been dedicated to the public nor is any use by the public of any part of the Ecological Enhancement Works to be taken in any way as an intention by the Owner to dedicate the same as highway.

3.2 Upon the tenth anniversary of the practical completion of the Ecological Enhancement Works the Owner may invite the Borough Council to accept a transfer of the Ecological Enhancement Works at nil cost and on the terms to be agreed between the Owner and the Borough Council. In the event that the Borough Council does not accept the transfer of the Ecological Enhancement Works the Owner will continue to maintain and manage the Ecological Enhancement Works Scheme in perpetuity in accordance with the Ecological Enhancement Works Scheme.

**EXECUTED as a DEED (but not
Delivered until the date hereof) by
GASCOINES GROUP LIMITED**

acting by:

a director and the company secretary; or
by two directors; or by a director in the
presence of: -



Witness signature

name

address

.....

occupation