

DATED

13 February

2020

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 RELATING TO**

**QUARRY HOUSE
81 QUARRY HILL ROAD
BOROUGH GREEN
KENT**

between

- (1) TONBRIDGE AND MALLING BOROUGH COUNCIL**
- (2) THE KENT COUNTY COUNCIL**
- (3) CANHAM HOMES LIMITED**

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THIS DEED is dated

13 February

2020

- 1) **TONBRIDGE AND MALLING BOROUGH COUNCIL** of Gibson Buildings Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ (hereinafter called "**the Council**")
- 2) **THE KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ (hereinafter called "**the County Council**")
- 3) **CANHAM HOMES LIMITED** (Co.Reg.No.07412469) whose registered address is Canham Business Centre, 426 Vale Road, Tonbridge, Kent TN9 1SW (hereinafter called "**the Owner**")

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 County Council is the local highway authority in respect of highways and transport in the County of Kent and is also the authority with responsibility for education, libraries, youth and social services matters in the County of Kent.
- (C) The Owner is the freehold owner of the Property free from encumbrances.
- (D) The Council resolved that Planning Permission should be granted for the Development subject to the terms of the Planning Permission and this agreement.
- (E) The Owner and the Council and the County Council agree the need for the planning obligations contained in this deed both for the benefit of the Development and in the interests of the proper planning of the area which the property is situated.

AGREED TERMS

2 INTERPRETATION

2.2 The definitions and rules of interpretation in this clause apply in this deed:

Base Rate: the base rate from time to time of the Bank of England

Commencement of Development: the commencement of any material operation (as defined in the TCPA 1990 section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or

Commencement of Development, Commence and Commences shall be

Commencement Date: the date Development Commences

Community Learning Contribution: the sum derived by multiplying the number of Residential Dwellings by £32.57 (thirty-two pounds and fifty seven pence) payable towards the costs of the provision of additional resources and equipment for the new learners at Tonbridge Adult Education Centre

Date of Practical Completion: the date of issue of a certificate of practical completion by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect

Default Interest Rate: 4% per annum above the Base Rate

Development: the development of the Property authorised by the Planning Permission

Education Contribution: the aggregate of the Primary Education Contribution and the Secondary Education Contribution

Index: the General Building Costs Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or successor organisation or in the event that such index shall no longer be published or that the basis thereof shall be materially altered then the Index shall be such index as the Council or County Council (as appropriate) shall reasonably specify.

Library Contribution: the sum derived by multiplying the number of Residential Dwellings by £55.45 (fifty-five pounds and forty-five pence) payable towards the costs of provisions of additional stock at Borough Green Library.

NPPF: the published National Planning Policy Framework dated June 2019 (or thereafter amended and updated).

Occupation: the physical use of land or buildings for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction or fitting out or occupation for marketing or display or occupation in relation to security operations and **Occupy, Occupied** and **Occupier** shall be construed accordingly.

Party: any of the parties to this deed and **Parties** shall be construed accordingly

Plan: the plan attached as Appendix 1.

Planning Application: the application for planning permission registered by the Council under reference number TM/19/02047/FL.

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

Primary Education Contribution: the sum derived by applying the formula

$A \times £4,535.00$ (four thousand five hundred and thirty-five pounds)

payable towards the costs of the relocation of Platt Primary School.

Property: the land at Quarry House, 81 Quarry Hill Road, Borough Green, Kent shown edged red on the Plan and registered at HM Land Registry with absolute title under title number TT96970

Residential Dwelling: any dwelling, flat or other residential unit of accommodation within the Development.

Secondary Education Contribution: the sum derived by applying the formula
 $C \times \text{£}4115.00$ (four thousand one hundred and fifteen pounds)

Where

C is the number of Residential Dwellings

payable towards the expansion of the Judd School

Social Care Contribution: the sum derived by multiplying the number of Residential Dwellings by $\text{£}146.88$ (one hundred and forty-six pounds and eighty eight pence) payable towards the cost of extra care accommodation within the Borough.

TCPA 1990: Town and Country Planning Act 1990(as amended).

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

Waste Contribution: the sum derived by multiplying the number of Residential Dwellings by $\text{£}237.54$ (two hundred and thirty seven pounds and fifty four pence) payable towards the cost of a new household waste recycling centre in Tonbridge and Malling District

Working Day: a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Youth Services Contribution: the sum derived by multiplying the number of Residential Dwellings by $\text{£}65.50$ (sixty-five pounds and fifty pence) payable towards the costs of additional resources for the Youth Service in Tonbridge and Malling District

- 2.3 Clause headings shall not affect the interpretation of this deed.
- 2.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 8 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council and the County Council the successors to its respective statutory functions.
- 9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the Parties, no such amendment, extension or re-enactment shall apply to this deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 2.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.11 A reference to **writing** or **written** does not include faxes or e-mail.
- 2.12 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 2.13 References to clauses, plans, schedules and appendices are to the clauses, plans, schedules and appendices of this deed.
- 2.14 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 2.15 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.16 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.

3 STATUTORY PROVISIONS

- 3.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 3.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by

- 3.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council and the County Council in accordance with section 106 of the TCPA 1990.
- 3.4 This deed shall not be enforceable against owner-occupiers or tenants of Residential Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants or their mortgagees
- 3.5 The obligations contained in this deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Property or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport.

4 CONDITIONALITY

With the exception of clauses 2, 3, 11, 13, 20, 21 and 24 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission and the obligations contained in Schedule One shall only come into effect on Commencement of the Development, save for those expressly requiring compliance prior to the Commencement of Development, which shall come into effect immediately upon completion of this deed.

5 COVENANTS TO THE COUNCIL AND THE COUNTY COUNCIL

- 5.1 The Owner covenants with the Council to:
- 5.1.1 observe and perform the covenants, restrictions and obligations contained in Schedule 1.
- 5.1.2 give at least 14 (fourteen) Working Days written notice to the Council of the intended Commencement Date.
- 5.2 The Owner covenants with the County Council to:
- 5.2.1 observe and perform the covenants, restrictions and obligations contained in Schedule 2.
- 5.2.2 give at least 14 (fourteen) Working Days written notice to the County Council of the intended Commencement Date.

6 COVENANTS BY THE COUNCIL AND THE COUNTY COUNCIL

- 6.1 The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 3.
- 6.2 The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 4.

7 INDEXATION

- 7.1 Any sums to be paid to the Council under Schedule 1 or the County Council under Schedule 2 shall be increased in the same proportion as the percentage increase in the General Building Cost Index between the monthly index figure of October 2016 and the monthly index figure for the month of the date of actual payment.
- 7.2 Where reference is made to any index in this deed and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) issued or caused to be issued from time to time by the Building Costs Information Service Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Council or County Council (as relevant) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the relevant council shall approve.

8 RELEASE

No person shall be liable for any breach of a covenant, restriction or obligation 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.

9 DETERMINATION OF DEED

The obligations in this deed (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- 9.1 expires;
- 9.2 is varied or revoked other than at the request of the Owner; or
- 9.3 is quashed following a successful legal challenge.

10 LOCAL LAND CHARGE

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

11 COUNCIL'S AND COUNTY COUNCIL'S COSTS

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

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

12 INTEREST ON LATE PAYMENT

Where any sum or amount has not been paid to the Council or the County Council by the date on which it is due, the Owner shall pay the Council or the County Council (as applicable) interest at the Default Interest Rate on that amount for the period from the due date to and including the date of payment.

13 OWNERSHIP

- 13.1 Until the covenants, restrictions and obligations in Schedule 1 and Schedule 2 have been complied with, the Owner will give to the Council and the County Council within 14 (fourteen) Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

13.1.1 the name and address of the person to whom the disposition was made; and

13.1.2 the nature and extent of the interest disposed of

PROVIDED THAT such information shall not be required upon the disposal of Residential Dwellings to individual owners.

14 REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the Council or the County Council under this deed shall not be unreasonably withheld or delayed.

15 CANCELLATION OF ENTRIES

- 15.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge.
- 15.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 9 the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

16 DISPUTES

- 16.1 No party may elect to refer a dispute to the dispute resolution contained in clauses 16.2 to 16.7 unless they shall first have used reasonable endeavours for a period of not less

than one month to mediate the dispute with the other party (or parties) to the dispute through appropriate senior representatives from within the respective organisations.

- 16.2 In the event of any dispute or difference arising between the parties arising out of this agreement such dispute or difference may be referred to an expert, being an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.
- 16.3 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the expert to be appointed pursuant to clause 16.2 or as to the appropriate professional body, within ten working days after any party has given to the other parties to the dispute a written request to concur in the professional qualifications of the expert to be appointed pursuant to clause 16.2 then the question of the appropriate qualifications or professional body shall be referred to a solicitor appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute. Such solicitor shall act as an expert and his decision as to the professional qualifications of such person, or as to the appropriate professional body, shall be final and binding upon the parties and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal measure.
- 16.4 The expert shall act as an expert and not as an arbitrator.
- 16.5 The expert shall be appointed subject to an express requirement that he reaches his determination and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 46 working days from the date of his appointment to act.
- 16.6 The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 (ten) Working Days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter-submissions within a further 15 Working Days. The expert's decision shall be given in writing within 20 Working Days from any counter-submission or in the event there are no counter-submissions within 21 Working Days of receipt of the written submissions, with reasons, and in the absence of manifest material error the expert's decision shall be final and binding upon the said parties.
- 16.7 The expert may award the costs of the dispute resolution in such proportions as he sees fit but in absence of an express award to this effect the costs of the dispute resolution shall be borne by the parties to the dispute in equal shares.

17 **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this deed shall fetter or restrict the Council's or the County Council's statutory rights, powers, discretions and responsibilities.

18 WAIVER

No waiver (whether express or implied) by the Council or the County Council of any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligations of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant terms or conditions contained in this deed or acting on any subsequent breach or default of this deed.

19 FUTURE PERMISSIONS

- 19.1 Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.
- 19.2 In the event that the Owner (or any successor in title) obtains planning permission pursuant to s.73 of TCPA 1990 to vary the Planning Permission then this deed shall be binding upon any such variation obtained as if it were the Planning Permission.

20 NOTICES

- 20.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post or by commercial courier to the Party upon whom it is to be given or as otherwise notified for the purpose of notice in writing.
- 20.2 The address for any notice or other written communication shall be within the United Kingdom.
- 20.3 A notice or communication shall be served or given:
- 20.3.1 on the Owner at the address set out above, or such other address as shall be notified in writing to the Council and the County Council from time to time;
- 20.3.2 on the Council at the address set out above or such other address as shall be notified in writing to the Parties from time to time marked for the attention of the Head of Planning;
- 20.3.3 on the County Council at the address set out above or such other address as shall be notified in writing to the Parties from time to time marked for the attention of the Office of the General Counsel.

- 0.4 Any notice or other communication shall be deemed to have been duly received:
- 0.4.1 if delivered personally, when left at the address and for the contact referred to in this clause;
 - 0.4.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
 - 0.4.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

1 THIRD PARTY RIGHTS

No person other than a party to this deed and their respective successors and permitted assigns, shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

2 SEVERANCE

- 2.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.
- 2.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

3 VALUE ADDED TAX

- 3.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.
- 3.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

4 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.

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

Schedule 1 Covenants to the Council

1. PROGRESS OF DEVELOPMENT

The Owner shall notify the Council:

- 1.1 upon the Commencement of Development, and
- 1.2 upon Occupation of the Development

Schedule 2 Covenants to the County Council

1. PROGRESS OF DEVELOPMENT

The Owner shall notify the County Council:

- 1.1 upon the Commencement of Development, and
- 1.2 prior to first Occupation of any Residential Dwelling
- 1.3 upon the Occupation of the 5th Residential Dwelling

2. PAYMENT OF CONTRIBUTIONS

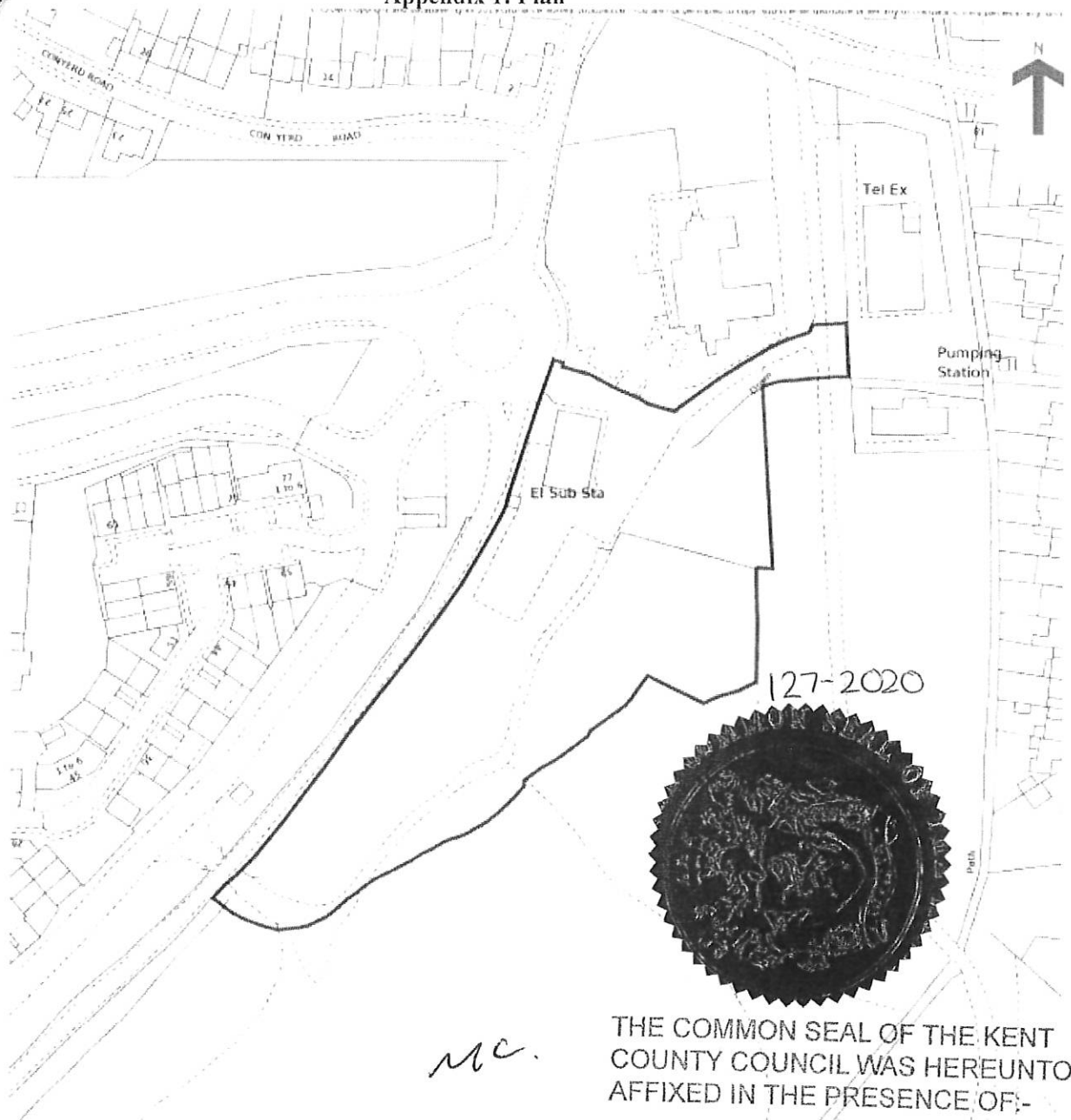
- 2.1 To pay the Education Contribution, the Community Learning Contribution, the Library Contribution, the Social Care Contribution the Waste Contribution and the Youth Services Contribution to the County Council in the following instalments:
 - 2.1.1 50% prior to Occupation of the 1st Residential Dwelling, and
 - 2.1.2 the balance prior to Occupation of the 5th Residential Dwelling.
- 2.2 The Owner shall not Occupy or permit Occupation of any Residential Dwellings until the payment referred to in paragraph 2.1.1 has been made.
- 2.3 The Owner shall not Occupy or permit Occupation of more than 5 (five) Residential Dwellings until the payment referred to in paragraph 2.1.2 has been made.

Schedule 3 Covenants by the County Council

1. CONTRIBUTIONS

- 1.1 the Contributions referred to in this schedule are:-
 - (a) The Community Learning Contribution
 - (b) The Education Contribution
 - (c) The Library Contribution
 - (d) The Social Care Contribution
 - (e) The Waste Contribution
 - (f) The Youth Services Contribution
- 1.2 the County Council covenants to pay the Contributions into separately identified interest-bearing sections of the County Council's combined accounts as soon as reasonably practicable.
- 1.3 The County Council covenants not to use any part of any Contribution other than for the purposes for which it was paid as set out in this deed.
- 1.4 From time to time upon the reasonable written request of the Owner the County Council covenants to provide the Owner with a breakdown of the expenditure of the Contributions
- 1.5 In the event that any Contribution has not been spent or committed for expenditure by the County Council within ten years following the date of receipt of the last instalment of that Contribution the County Council shall refund to the Owner such part of that Contribution which has not been spent or committed for expenditure, together with any accrued interest whether or not such refund has been requested by the Owner or the person who paid the Contribution.

Appendix 1: Plan



mc.

THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-

Authorised Signatory 



EXECUTED as a deed by
affixing The COMMON
SEAL of TONBRIDGE AND
MALLING BOROUGH
COUNCIL in the presence of:



Seal N^o
2152

.....
Authorised Signatory

The COMMON SEAL of
THE KENT COUNTY COUNCIL
was hereunto affixed
in the presence of:



.....
Authorised Signatory

SIGNED as a deed by EXECUTED as a deed by
CANHAM PROPERTIES LIMITED acting by
a director

.....
Director

in the presence of:

Signature of Witness *S Budd*

Name of Witness S Budd

Address of Witness 43 BRICKFIELDS
WEST MALLING
KENT. ME19 5AG

Occupation of Witness Finance Director