

DATED 4th September 2015

**EAST SUSSEX COUNTY COUNCIL(1)**

**AND**

**THE CAVENDISH SCHOOL (EASTBOURNE) (2)**

**To**

**EASTBOURNE BOROUGH COUNCIL**

**UNILATERAL UNDERTAKING**  
**under (inter alia) Section 106 of the**  
**Town and Country Planning Act 1990**  
**relating to Cavendish School, Eldon Road,**  
**Eastbourne, East Sussex BN21 1UE**

**East Sussex County Council**  
**County Hall**  
**St Anne's Crescent**  
**Lewes**  
**East Sussex**  
**BN7 1SW**

**Our Ref: PH/446(106)/JCH**

**THIS UNILATERAL UNDERTAKING** is given this 4th day of September 2015

**GIVEN BY:**

- (1) **EAST SUSSEX COUNTY COUNCIL** of County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1SW ("the Owner"); and
- (2) **THE CAVENDISH SCHOOL (EASTBOURNE)** (Company registration number 0135372) of The Cavendish School, Eldon Road, Eastbourne, East Sussex BN21 1UE ("the Leaseholder")

**TO: EASTBOURNE BOROUGH COUNCIL** of Grove Road, Eastbourne, East Sussex BN21 4TW ("the Borough Council")

**RECITALS**

**WHEREAS:**

- (1) Words and phrases in this Deed are defined in Clause 1.1
- (2) The Owner is the freehold owner of the land known as Cavendish School, Eldon Road, Eastbourne shown for the purposes of identification only edged red on the Plan and registered at the Land Registry under title numbers EB8358 ("the First Title") shown for the purposes of identification only coloured blue on the Plan and EB12972 ("the Second Title") shown for the purposes of identification only coloured pink on the Plan ("together the Property")
- (3) By a lease dated 1 August 2012 made between the Owner and the Leaseholder the Leaseholder leased the Property for a term of 125 years from 1 August 2012.
- (4) For the area within which the Property is situated the Borough Council is for the purposes of Section 106 of the Town and Country Planning Act 1990 as amended ("the 1990 Act") and

Section 111 of the Local Government Act 1972 ("the 1972 Act") a local planning authority the County Council (as hereinafter defined) is for the purposes of the 1990 Act the 1972 Act and the Highways Act 1980 ("the 1980 Act") respectively a local planning authority a local authority and the highway authority

- (5) By an application for planning permission submitted to the County Council and allocated reference number EB/3238/CC ("the Application") the Owner has applied for planning permission to develop the Property as set out in the Application
- (6) On 24 June 2015 the County Council resolved to grant planning permission subject to conditions and the completion of a Deed to secure certain highway works a Travel Plan and a Contribution towards the cost of advertising and implementing such parking restrictions as may be required ("the Planning Obligations").
- (7) On 31 July 2015 the Owner and the Leaseholder completed the Deed referred to in Recital (6) above ("the First Deed") and it was registered against the First Title as a Local Land Charge.
- (8) It has been noted that the First Deed omitted reference to the Second Title and in order to rectify this omission the Owner now gives this undertaking pursuant to Section 106 of the 1990 Act in order to secure the planning obligations contained in this Second Deed against the Second Title.

**NOW THIS DEED WITNESSES** the following:

**1     INTERPRETATION**

1.1 In this Deed unless the context otherwise requires:

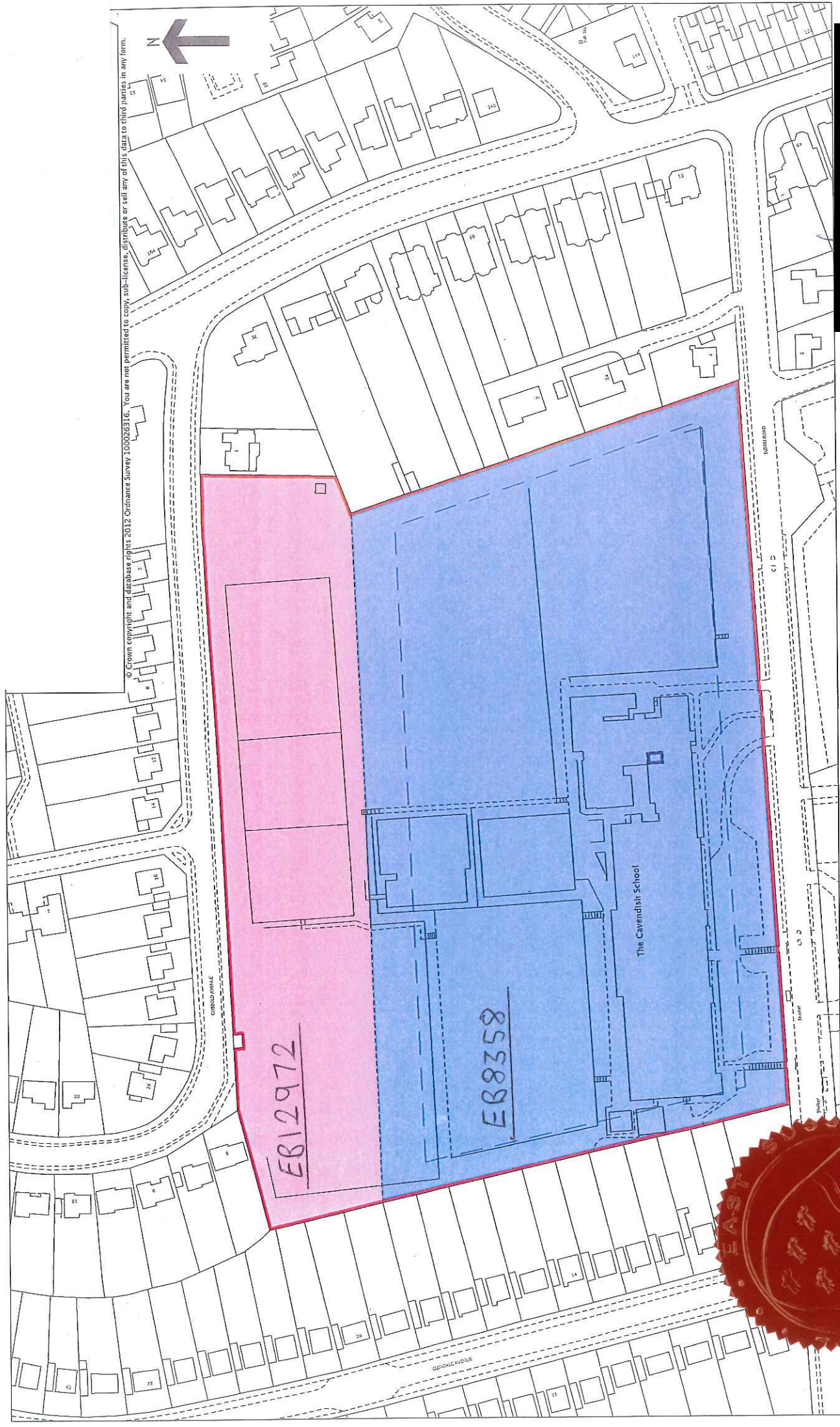
<b>“Accredited Supervisor”</b>	means a supervisor who is accredited under the New Roads and Street Works Act 1991
<b>“Application”</b>	means the application for full planning permission submitted to the County Council dated 3 October 2014 and allocated reference number EB/3238/CC for the Development
<b>“the Assistant Chief Executive, Governance Services”</b>	means the Assistant Chief Executive, Governance Services for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his.
<b>“Commencement of Development”</b>	shall refer to the commencement of the Development and shall have the same meaning as ascribed to a "material operation" by Section 56(4) of the 1990 Act (PROVIDED THAT for the purposes of determining whether or not a material operation has been carried out there shall be disregarded such operations as site clearance archaeological investigations demolition work 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 and the temporary display of site notices or advertisements) and “Commenced” and “Commencement” shall be construed accordingly
<b>“Competent Person in Health and Safety”</b>	means an employee/contractor/consultant with health and safety training experience and qualifications
<b>“Construction Index”</b>	means the All-in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or such other index as the County Council may reasonably nominate in the event that the All-in

	Tender Price Index shall no longer be published or it's name or methodology be materially altered.
<b>"County Council"</b>	means East Sussex County Council of County Hall, St Anne's Crescent, Lewes, East Sussex, BN7 1SW acting in its capacity as local planning authority and/or highway authority as relevant
<b>"CDM"</b>	means the Construction (Design and Management) Regulations 2015
<b>"Deed"</b>	means this Planning Obligation by Deed of Agreement
<b>"the Development"</b>	means the Development of the Property by construction of a new two storey two form entry primary school including nursery provision with associated car parking 2no. 3G sports pitches playing surfaces and games court as an extension to the existing school as set out in the Application
<b>"Director"</b>	means the Director of Communities, Economy and Transport for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his
<b>"Exception Report"</b>	means the report from the Owner to the Director on each recommendation of the Safety Audit that the Developer proposes should be implemented
<b>"Highway Works"</b>	means the highway works described in Part 2 of the First Schedule hereto
<b>"Inflation Index"</b>	means the "all items" index figure of the Retail Prices Index published by the Office for National Statistics and if the name or basis of computation of such index should change any official replacement of the said index by the Office of National Statistics and in the absence of such official replacement such other index as may be agreed between the Owner and County Council
<b>"Occupation" and "Occupied"</b>	means first occupation for the purposes permitted by the Planning Permission but not including occupation by

	personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
<b>"Payment Notice"</b>	means a notice in the form set out in the Fourth Schedule
<b>"Plan"</b>	means the plan attached to this Deed
<b>"Planning Permission"</b>	means the full planning permission subject to conditions granted pursuant to the Application
<b>"Safety Audit"</b>	means a Safety Audit (which shall include a site visit) and which has been approved by the Director in writing and carried out at the Owner's expense by a consultant independent of the Highway Works design consultant and reference herein to a Stage One Stage Two Stage Three or Stage Four Safety Audit shall be construed accordingly and the results of which shall be submitted together with the appropriate Exception Report to the Owner on receipt of such by the Developer
<b>"Specified Date"</b>	means the date upon which an obligation arising under this Deed is due to be performed
<b>"Statutory Undertaker"</b>	shall have the meaning ascribed to it by Section 329 of the 1980 Act and shall include persons authorised under any enactment to carry on an undertaking for the supply of electricity gas water and any sewerage undertaking and shall also include the Environment Agency the holder of a licence to operate telecommunication systems the Civil Aviation Authority and the holder of a licence to supply cable television
<b>"Statutory Undertakers' Works"</b>	shall mean all works required by any Statutory Undertaker to be carried out in connection with the Highway Works
<b>"Transport Contribution"</b>	means the sum of Fifteen Thousand pounds (£15,000) being a financial contribution towards the costs of advertising and implementing parking restrictions if required on the street surrounding the Property payable as specified in Part 1 of the Second Schedule save that this is altered by the provisions of Clauses 2.14 and 4.2.2 of this



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	Deed
<b>"the Travel Plan"</b>	means the Travel Plan referred to in the Third Schedule
<b>"the Travel Plan Auditing Fee"</b>	means the sum of Six Thousand pounds (£6,000) payable as a contribution to the costs of the County Council for auditing the Travel Plan referred to in the Third Schedule

- 1.2 Unless the context requires otherwise references in this Deed to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Deed
- 1.3 Where any party to this Deed comprises two or more persons any obligations on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons
- 1.4 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force
- 1.5 The headings to this Deed do not and will not by implication form any part of this Deed and shall have no legal force whatsoever
- 1.6 References to any party shall include the successors in title to that party and to any person deriving title through or under that party

## **2 PRELIMINARY**

### **2.1 Legal Powers**

**THIS** Deed is made pursuant to Section 106 of the 1990 Act Section 1 of the Localism Act 2011 and all other enabling powers for the purpose of requiring certain Highway Works to be



completed provision of and compliance with the Travel Plan and payment of the Transport Contribution.

## 2.2 **Enforceability**

2.2.1 The various covenants restrictions requirements stipulations and other obligations on the part of the Owner contained in this Deed are entered into under the provisions and powers referred to in sub-clause 2.1 and are planning obligations for the purposes of Section 106 of the 1990 Act whether expressed to be planning obligations or not and are enforceable by the Borough Council against the Owner and any person deriving title from the Owner

2.2.2 Insofar as any clause or clauses of this Deed is/are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not effect the validity or enforceability of the remaining provisions of this Deed

## 2.3 **Expiry**

If the Planning Permission shall expire or shall have been revoked before the Development has been Commenced this Deed shall forthwith determine and cease to have effect

## 2.4 **Conditions Precedent**

This Deed shall come into effect upon the grant of the Planning Permission and Commencement of Development save for the provisions of Clauses 2.1 to 2.6, 2.10 to 2.13 and 4.1 which shall come into effect immediately upon completion of this Deed.

## 2.5 **Registration**

This Deed is a local land charge and shall be registered as such

## 2.6 **Fettering of discretion**

Nothing in this Deed shall fetter or restrict the discretion of the Borough Council in the exercise of its powers under any statutory enactment or other enabling power for the time being in force

**2.7 Service of Notices**

2.7.1 Any notice or other written communication to be served by the Owner pursuant to this Deed shall be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:

2.7.1.1 by first class post deemed served three working days after posting

2.7.1.2 through a document exchange deemed served on the first working day after the day on which it would normally be available for collection by the addressee

2.7.1.3 by facsimile at the time of successful transmission.

2.7.2 Any notice or other written communication as referred to in Clause 2.7.1 above shall be delivered to the party at its address herein specified (and in the case of the County Council shall be marked for the attention of the Assistant Chief Executive, Governance Services) or such other address as may from time to time be notified for the purpose by notice in writing.

**2.8 Obligations**

The Owner hereby undertakes as specified in Clauses 3 and 4

**2.9 Contracts ( Rights of Third Parties ) Act 1999**

Nothing in this Deed confers or purports to confer on any third party any benefit or rights to enforce any terms of this Deed

2.10 **Warranty as to Title**

The Owner confirms and warrants to the Borough Council that it has not leased mortgaged charged or otherwise created any interest in the Property at the date of this Deed other than the Lease and that Recitals (2) and (3) of this Deed are correct and accurate in every respect.

2.11 **Waiver**

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

2.12 **Jurisdiction**

This Deed is governed by and interpreted in accordance with the law of England and Wales.

2.13 **Delivery**

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

2.14 **Index Linking**

2.14.1 In the event that the Transport Contribution shall become due after the date of this Deed payable the Transport Contribution shall be the amount arrived at by the following:

$$A = \frac{B \times C}{D}$$

D

where: A is the sum actually payable on the relevant Specified Date

B is the original sum mentioned in this Deed

C is the Construction Index for the quarter preceding the relevant Specified Date

D is the Construction Index for the quarter preceding the date of this Deed  
C divided by D is equal to or greater than 1

2.14.2 In the event that the Travel Plan Auditing Fee shall become due after the date of this Deed the Travel Plan Auditing Fee shall be the amount arrived at by the following

$$A = \frac{B \times C}{D}$$

where

A is the sum actually payable on the relevant Specified Date

B is the original sum specified in Clause 1 hereof

C is the Inflation Index for the month preceding the relevant Specified Date

D is the Inflation Index for the month preceding the date of this Deed

C divided by D is equal to or greater than 1

2.15 **Specified Date and Payment Notice**

Where this Deed imposes a requirement for the payment of the Transport Contribution on a Specified Date:-

2.15.1 notice of the Specified Date shall be given to the County Council as appropriate in the form of the Payment Notice not more than seven days after such Specified Date

2.15.2 if the notice of a Specified Date is not given the County Council as appropriate shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Owner of its determination

2.15.3 to make the payment due under this Deed to the County Council as appropriate and to attach a fully completed Payment Notice with such payment

### **3 OWNER'S OBLIGATIONS**

The Owner undertakes to comply with the Owner's covenants as set out in the First Schedule the Second Schedule and the Third Schedule PROVIDED THAT in the event that the Planning Obligations contained in the First Deed are complied with to the satisfaction of the Director then the covenants in the First Schedule the Second Schedule and the Third Schedule of this Deed shall no longer be enforceable.

### **4 FINANCIAL PROVISIONS**

#### **4.1 Costs**

The reasonable and proper professional and administrative costs of the Borough Council incurred in connection with the acceptance of this Deed shall be paid by the Owner on the execution hereof

#### **4.2 Payment of Sums Due**

4.2.1 All sums payable under this Deed shall (unless otherwise stated in this Deed) become due fourteen days after the Specified Date ("the Due Date") and shall henceforth be debts due to the County Council recoverable by action as a simple contract debt and may be deducted from any monies due to the Owner from the County Council under any contract agreement or arrangement whatsoever

4.2.2 If any such sums are not paid by the Due Date then the Owner shall thereafter be liable to pay to the County Council interest on the same calculated on a daily basis at a daily rate of 1/365th of the annual rate of interest of 4% per annum greater than the National Westminster Bank PLC base rate in force from time to time from the Specified Date to the date of payment thereof

#### 4.3 **Indemnity**

The Owner shall fully and completely release and indemnify and keep indemnified the County Council from and against

4.3.1 any claims under Section 10 of the Compulsory Purchase Act 1965 and under Part 1 and Part II of the Land Compensation Act 1973 (or any other enactment or provision replacing or re-enacting the same) in respect of depreciation in the value of any interest in land which may have been caused by or resulted from the execution and/or use of the Highway Works or any part thereof and

4.3.2 all actions claims charges costs damages demands expenses and proceedings (including claims relating to the infringement or disturbance or destruction of any right easement or privilege) arising out of or in connection with or incidental to the carrying out of the Highway Works and their subsequent use (unless caused directly by or through the negligence or other tortious action of the County Council).

**IN WITNESS** whereof the Owner has executed this Deed the day and year first before written

### **FIRST SCHEDULE**

#### **COVENANTS REGARDING HIGHWAY WORKS**

##### 1. **Covenants**

The Owner hereby covenants with the Borough Council as specified in Paragraphs 2 to 7

##### 2 **PRE-COMMENCEMENT MATTERS**

2.1 The Highway Works shall not be commenced until:-



- 2.1.1 The Owner shall have produced to the Director evidence of the obtaining of all Traffic Regulation Orders and/or other such orders or notices as the County Council in its sole discretion considers necessary for the completion of the Highway Works. Such Traffic Regulation Orders orders and/or notices to be obtained by and at the cost of the Owner.
- 2.1.2 The Director has given his written approval to:-
- 2.1.2.1 all drawings and specifications for the Highway Works (which drawings and specifications shall incorporate the findings of a Stage Two Safety Audit of the Highway Works and which specifications shall comply with the East Sussex County Council Highway Construction Specification for Developers, supplemented by the Specification for Highway Works published by the Highways Agency) ("the Contract Documents") such approval to be given before invitations to tender are sought
- 2.1.2.2 the acceptance of the contractor and any subcontractor of his (which contractor and subcontractor shall be accredited for the purposes of the New Roads and Street Works Act 1991) whose tender for the Highway Works the Owner proposes to accept together with satisfactory documentary evidence of the total cost of the construction of the Highway Works ("the Construction Costs") and the total cost of the Statutory Undertakers' Works ("the Statutory Undertakers' Costs") such acceptance to be given before the contract for the Highway Works is awarded
- 2.1.2.3 a preliminary programme of work for the Highway Works ("the Programme") and a detailed programme of works incorporating the principles of the Programme ("the Final Programme")

- 2.1.2.4 detailed proposals and drawings showing the traffic management measures to be implemented throughout the duration of the Highway Works (including any temporary signing and routing of construction and haulage traffic) ("the Approved Traffic Measures") together with satisfactory documentary evidence of the estimated total costs thereof ("the Approved Traffic Measures Costs")
- 2.1.2.5 detailed proposals and drawings showing all signs road markings and permanent street lighting (both vehicular and pedestrian)
- 2.1.2.6 detailed proposals of alterations to Statutory Undertakers' plant apparatus or other equipment and the submitted details shall include all drawings (if any) received from any Statutory Undertaker showing existing and proposed services
- 2.1.3 the Notice pursuant to paragraph 4.1 has been delivered to the County Council
- 2.1.4 all land required for or in connection with the Highway Works is owned by or under the control of the County Council
- 2.1.5 the Owner shall have publicised the Highway Works in such a way and to such an extent as the Director considers necessary in order to advise properly members of the public as to the nature timing duration and progress of the Highway Works
- 2.2 The Highway Works shall not be brought into use and the Development under the Planning Permission or any other subsequent permission shall not be Occupied until the Director shall have issued the Certificate referred to in paragraph 6.1 and the County Council agrees to use its reasonable endeavours to expedite the issuing of consents after service of the Notice by the Owner upon the County Council pursuant to paragraph 4.1

### **3.1 Design Check and Inspection Fee**

3.1.1 Within twenty-eight (28) days of request the Owner shall pay to the County Council such sum as is reasonably determined by the Director in his absolute discretion as being the charge for the Director's design checks and inspection of the Highway Works to be charged by way of officer time spent on such design checks and inspection at a rate of no more than £66 per hour ("the Design Check and Inspection Fee") PROVIDED THAT the amount of the Design Check and Inspection Fee shall not exceed a sum equal to ten per centum (10%) of the total of the Construction Costs and the Approved Traffic Measures Costs AND that the Owner may request a breakdown of the Design Check and Inspection Fee from the Director on request.

3.1.2 If the County Council shall grant to the Owner an extension of time in accordance with paragraph 4.2 hereof then the Owner shall pay such further Design Check and Inspection Fee as is determined by the Director in his absolute discretion as necessary to reimburse to the County Council the additional cost (if any) incurred in inspecting the Highway Works by reason of the grant of such extension of time and such further Design Check and Inspection Fee will be payable to the County Council forthwith on demand and be due to the County Council as a debt

3.2 Upon execution of this Agreement the Owner shall pay to the County Council the sum of three hundred pounds (£300) such sum being the cost of the supply erection and removal of signs to Diagram 7014 under the Traffic Signs Regulations & General Directions 2002.

## **4 EXECUTION OF HIGHWAY WORKS**

### **4.1 Notice of Commencement**

To give the County Council fourteen days prior written notice ("the Notice") of the date on which the Highway Works are to commence ("the Start Date").

#### 4.2 **Time for completion**

To execute forthwith and complete the Highway Works in accordance with the Highway Drawing and the Contract Documents to the reasonable requirements and reasonable satisfaction of the Director for no charge whatsoever to the County Council within twelve (12) weeks of the Start Date ("the Completion Date") PROVIDED ALWAYS that there shall be excluded from any calculation of the period of twelve (12) weeks any time during which the Highway Works or the part thereof for the time being remaining to be executed cannot be carried out on account of any act of God fire explosion flood war industrial action sabotage national emergency government direction or direction of a statutory authority.

#### 4.3 **Supervision**

To ensure throughout the duration of the Highway Works that they are supervised by an Accredited Supervisor as necessary for the proper superintendence of the Highway Works.

#### 4.4 **Statutory Undertakers Requirements**

To comply at its own expense at all times with the special requirements of any Statutory Undertakers and to pay (if in any case a Statutory Undertaker requires that the County Council shall be responsible for the cost of any removal protection or alteration of its apparatus) on the Specified Date the costs incurred or to be incurred by the County Council due to the removal protection or alteration of Statutory Undertakers' apparatus necessitated by the Highway Works.

#### 4.5 **Approved Traffic Measures and Final Programme**

To ensure that the Approved Traffic Measures and Final Programme are implemented retained and adhered to as far as reasonably practicable throughout the duration of the Highway Works.

#### 4.6 **Testing of Materials**

Throughout the duration of the Highway Works and the Maintenance Period as defined in paragraph 7.1 to undertake routine testing of materials used in and workmanship in connection with the construction of the Highway Works when required and to a standard agreed by the Director and shall forthwith send a copy of the results of such testing (free of charge) to the County Council.

#### 4.7 **Notice of Cessation and Recommencement**

4.7.1 To notify the Director in writing if before completion of the construction of the Highway Works the Highway Works shall cease for a period of more than one week and any such notice shall specify the dates of the cessation and re-commencement of the Highway Works.

4.7.2 In the event of any failure by the Owner to notify the Director of the dates of any cessation or re-commencement of the Highway Works in accordance with the provisions of Sub-paragraph 4.7.1 the amount of any Design Check and Inspection Fee pursuant to paragraph 3.2 shall be increased by such amount as specified by the Director to reimburse the County Council with the additional costs incurred in inspecting the Highway Works by reason of any such failure as aforesaid such additional cost to be paid to the County Council on request.

#### 4.8 **Noise Insulation**

To carry out such works and investigations as may be deemed appropriate and notified as necessary by the County Council to be carried out under the Noise Insulation Regulations 1975 (as amended) as a result of the Highway Works and reimburse by the Due Date the County Council's actual costs of carrying out statutory functions under the aforesaid Regulations.

#### **4.9 NRSWA Notices/TMA Roadspace**

To ensure that the necessary notices are served under the New Roads and Street Works Act 1991 and that the necessary road space is booked under the Traffic Management Act 2004.

#### **4.10 Health and Safety**

- 4.10.1 To comply with the Health and safety at Work Act 1971 and all other current relevant legislation approved codes of practice British-European Harmonised Standards and relevant industry best guidance applicable to the safe undertaking of the Highway Works.
- 4.10.2 To have suitable and sufficient safe working systems in place for ensuring that all contractors engaged on the Highway Works are competent to fulfil their relevant functions pursuant to the CDM and any other applicable legislation and subsequent amending legislation and evidence of the existence of such systems shall be provided to the satisfaction of the Director at the Director's request.
- 4.10.3 To ensure that a Competent Person in Health and Safety is employed until the issue of the certificate of Final Completion.
- 4.10.4 The Owner hereby confirms that he has the competence to perform the duties imposed on a client by the CDM.
- 4.10.5 The Owner is hereby appointed pursuant to regulation 4 of the CDM to act as the only client in respect of the Highway Works.

### **5 COUNTY COUNCIL'S POWERS**

#### **5.1 Testing of Workmanship and Materials**

The Director shall have full power to:



- 5.1.1 Check and test all materials and workmanship and the costs actually incurred by the Director in undertaking such testing shall be paid by the Owner on the Specified Date.
- 5.1.2 Reject any materials or workmanship which he may reasonably and properly consider not to be in accordance with the Contract Documents and/or the Highway Drawing or which show faults or signs of weakness or damage by frost or other weather condition or any other cause or any other defect whatsoever of any kind and to order their removal from the Highway Works and to require other proper materials or workmanship to be substituted for them whether the works have been carried out or the materials supplied or procured by the Owner or otherwise and such work shall forthwith at the Owner's own cost be re-executed made good or replaced with proper materials and workmanship as the case may require and the Director's directions on such subjects are to be final and binding on the Owner and shall be promptly attended to by the Owner.

5.2 **Works in default**

If any works to be carried out by the Owner under this Agreement are not carried out and completed in accordance with the Owner's obligations contained in this Agreement and to the satisfaction of the Director by the Completion Date or within such further time as the Director may in his discretion by notice in writing to the Owner allow then without prejudice to its other rights or remedies and powers against the Owner for such non-performance or non-observance then after the Director has first given 7 days notice in writing (except in the case of emergency when no notice shall be necessary) to the Owner of his intentions in that behalf the County Council may enter the Land and carry out and complete the said works and the Owner shall upon demand pay to the County Council all the cost it has incurred including the necessary cost of preparation and service of such notices the outstanding works and all the associated supervision and administration.

### 5.3 **Access for County Council**

The Owner shall at all times give the County Council free and unrestricted access to every part of the Highway Works during their construction upon reasonable prior notice except in the event of emergencies and at any time during the Maintenance Period.

## 6. **PRELIMINARY CERTIFICATE**

6.1 When the carrying out of the Highway Works shall have been executed and completed (including the payment of all charges levied by any Statutory Undertaker in connection with the Highway Works) to the reasonable satisfaction of the Director in accordance with the Contract Documents and the Highway Drawing and any sewer constructed as part of the Highway Works in connection with an Agreement under S104 Water Industry Act 1991 has been certified by the appropriate Water Company as being or having been on maintenance the Director shall forthwith issue a preliminary certificate (or letter in lieu thereof) to that effect ("the Preliminary Certificate") and the Owner hereby agrees and declares that on the issue of the Preliminary Certificate the Highway Works (insofar as they are not already public highway) shall become public highway open for use by the public at large.

6.2 Before the issue of the Preliminary Certificate the Owner shall:

6.2.1 provide in accordance with the detailed design approved pursuant to paragraph 2.1.2.5 to the satisfaction of the Director all such signs road markings street lighting and sources of illumination electrical cables and apparatus for the supply of electrical power for such signs and street lighting.

6.2.2 make payment of all sums due under this Agreement to the County Council together with interest thereon (if any) and including (but not by way of limitation).

- 6.2.2.1 the costs of providing all or any of such things as aforesaid as the County Council may at the request of the Owner agree to provide.
- 6.2.2.2 the costs of the service and posting of notices and the making and bringing into effect of any road traffic regulation orders or other orders that may be necessary in the Director's opinion as a result of the Highway Works.
- 6.2.3 make payment of all charges levied by any Statutory Undertaker in connection with the Highway Works.
- 6.2.4 deliver to the County Council the results of a Stage Three Safety Audit which has been carried out to the satisfaction of the Director by a professional and independent Safety Auditor whose identity has been approved by the Director.
- 6.2.5 undertake and have completed such remedial works as have been identified by the Stage Three Safety Audit in paragraph 6.2.4 above as being necessary to the satisfaction of the Director.
- 6.3 After the execution hereof should further legal advice need to be given including attendance at meetings in connection with this Agreement called at the request of the Owner the Owner agrees to pay all such additional costs so incurred by the County Council.

## **7 POST-COMPLETION MATTERS**

### **7.1 Maintenance Period**

- 7.1.1 To maintain the Highway Works (including all grassed and planted areas) and to include all such routine maintenance and repair as may be necessary to facilitate the use of the Highway Works by vehicles and members of the public generally (as appropriate) to the satisfaction of the Director at its own expense for a period of

twelve months ("the Maintenance Period") from the date that the Preliminary Certificate is issued.

7.1.2 To pay to the County Council any costs incurred by it during the Maintenance Period in respect of the maintenance and/or replacement of damaged equipment and the supply of electricity to the street lighting signs traffic signals and other apparatus provided in accordance with paragraph 6.2.1.

7.1.3 At the discretion of the Director deliver to the County Council the results of a Stage Four Safety Audit which has been carried out to the satisfaction of the Director by a professional and independent Safety Auditor whose identity has been approved by the Director and undertake and complete such remedial works as have been identified by the Stage Four Safety Audit as being necessary to the satisfaction of the Director.

## 7.2 **Certificate of Final Completion**

At such time as:-

7.2.1 all works of maintenance notified to the Owner by the Director within the Maintenance Period in respect of the Highway Works have been executed and completed to the Director's satisfaction in all respects AND

7.2.2 all sums due under this Agreement to the County Council have been duly paid AND

7.2.3 the Director has confirmed in writing that the Stage Four Safety Audit has been acted upon to his satisfaction.

7.2.4 the Owner has without cost to the County Council executed or procured the execution by all necessary parties of such deeds as are in the opinion of the County Council

necessary to secure to the County Council full drainage rights in respect of such parts of the surface water drainage system of the highway as are situate outside the limits of the Highway Works and the County Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds.

7.2.5 the Owner has delivered to the County Council two complete sets of "as built" drawings showing the Highway Works as actually constructed.

7.2.6 the Owner has delivered the Health & Safety file for the Highway Works as required by CDM the information content of which shall be as defined by the Approved Code of Practice and Guidance to the CDM and as specified by the Director

the Director shall forthwith issue a certificate (or letter in lieu thereof) ("the Certificate of Final Completion") which shall confirm that the Maintenance Period is then deemed to have been duly completed.

## **8 DECLARATION UNDER SECTION 38 OF THE 1980 ACT**

The Owner hereby agrees and declares in pursuance of Section 38 of the 1980 Act that upon the issue of the Certificate of Final Completion the Highway Works insofar as they are not already highway maintainable at the public expense will become highway maintainable at the public expense.

## **PART 2 – HIGHWAY WORKS**

The Highway Works are to include:-

1. The design of and implementation of alterations to the Willington Road/ Eldon Road/Rodmill Drive traffic signals;

2. The design and implementation of alterations to the Cobbold Avenue/Willingdon Road junction;
  3. Alterations to the accesses in both Cobbold Avenue and Eldon Road;
  4. Provision of laybys in Eldon Road;
  5. Provision of a new traffic island in Eldon Road; and
  6. Provision of such of the Proposals as required by the Director in accordance with the provisions of paragraphs 5 to 8 of the Second Schedule
- together with any other ancillary works reasonably required by the Director.

## **SECOND SCHEDULE**

### **The Owner's Covenants**

The Owner covenants with the Borough Council:-

1. to pay the Transport Contribution to the County Council on the date hereof
2. not to Commence Development until the Transport Contribution shall have been paid to the County Council in full.
3. to pay the Travel Plan Auditing Fee to the County Council prior to Occupation of any part of the Development
4. not to Occupy or cause or allow Occupation of any part of the Development until the Travel Plan Auditing Fee has been paid to the County Council in full.
5. prior to Commencement of Development to fully investigate the feasibility and benefit of implementing:-
  1. a revised bus stop location in Eldon Road;
  2. a controlled crossing in Eldon Road; and
  3. a 20mph speed limit on roads surrounding the Property("the Proposals")
6. prior to Commencement of Development to submit findings on the feasibility and benefit of the Proposals to the Director in the form of a report ("the Report") such Report shall consider the



Proposals in terms of, but not limited to, road layouts both current and proposed, traffic and pedestrian flows, vehicle speeds, accident history and site constraints.

7. not to Commence Development until the Report and any further information reasonable required by the Director following consideration of the Report has been submitted to the Director.

8. following consideration of the Report by the Director to implement such of the Proposals as the Director shall in his absolute discretion determine to be feasible and of benefit as Highway Works in accordance with the provisions of the First Schedule.

### **THIRD SCHEDULE**

#### **Travel Plan**

The Owner covenants with the County Council as follows:

#### **1 THE PRELIMINARY DRAFT TRAVEL PLAN**

1.1 Prior to the first Occupation of any part of the Development to prepare and submit to the County Council a preliminary draft version of the Travel Plan ("the Preliminary Draft Travel Plan") such plan to:

- 1.1.1 be based on and consistent with the analysis contained in the Transport Assessment produced to the County Council and dated 29<sup>th</sup> May 2015 ("the Transport Assessment") and in accordance with the aims and objectives of the County Council's Guidance on Travel Plans for New Development (September 2008);
- 1.1.2 identify modal share targets to achieve year-on-year reductions in car use journeys to and from the Development and include measures to secure the effective operation of the Kiss & Drop facility ("the Preliminary Draft Travel Plan Objectives");
- 1.1.3 identify measures and initiatives to achieve the Preliminary Draft Travel Plan Objectives; and

- 1.1.4 include methodologies of the measurement and monitoring of the extent to which the Preliminary Draft Travel Plan Objectives are achieved

## **2 THE DRAFT TRAVEL PLAN**

Not to Occupy or cause or allow to be Occupied any part of the Development until:

- 2.1. the Preliminary Draft Travel Plan including any appropriate adjustments ("the Draft Travel Plan") has been approved in writing by the County Council
- 2.2 the Travel Plan Auditing Fee has been paid to the County Council in full

## **3 THE REVISED DRAFT TRAVEL PLAN**

Following conclusion of the first six (6) months of the first Occupation of any part of the Development to prepare and not later than the conclusion of the first eight (8) months of Occupation of the Development submit to the County Council a draft version of the revised Travel Plan ("the Revised Draft Travel Plan") which will:-

- 3.1. be based on the Draft Travel Plan; and
- 3.2. take account of a transport survey undertaken at the time of preparation of the Revised Draft Travel Plan of the transport patterns and demands arising from the use and occupation of the Development; and
- 3.3 set modal share targets to achieve year-on-year reductions in car use journeys to and from the Development and include measures to secure the effective operation of the Kiss & Drop facility ("the Revised Draft Travel Plan Objectives"); and
- 3.4 identify measures and initiatives to achieve the Revised Draft Travel Plan Objectives; and
- 3.5 include methodologies for the measurement and monitoring of the Revised Draft Travel Plan

## **4 THE TRAVEL PLAN**

- 4.1 Not later than the conclusion of the first twelve (12) months following the first Occupation of any part of the Development to submit the Revised Draft Travel Plan including any adjustments ("the Travel Plan") to the County Council for approval in writing by the County Council.
- 4.2 To use best endeavours to achieve modal share targets to achieve year-on-year reductions in car use journeys to and from the Development set by the Travel Plan and the effective operation of the Kiss & Drop facility ("the Travel Plan Objectives") from the date of approval in writing by the County Council of the Travel Plan

- 4.3 To measure in accordance with the methodology(ies) detailed in the Travel Plan the extent to which the Travel Plan Objectives have been achieved at the end of each twelve (12) month period from the date of approval in writing by the County Council of the Travel Plan for a period of five (5) years from the date of the first measurement exercise.
- 4.4 To produce to the County Council a report on the extent to which the Travel Plan Objectives are being achieved ("the Monitoring Report") immediately following each of the measurement exercises described at paragraph 4.3 of this Schedule.
- 4.5 To implement forthwith further suitable measures and initiatives (such measures and initiatives to be subject to the prior written approval of the County Council) to achieve the Travel Plan Objectives if the Monitoring Report reveals the Travel Plan Objectives are not being achieved in full
- 4.6 If:-
- a) the Owners fail to produce the Revised Travel Plan to the County Council within eight (8) months of first Occupation of the Development; or
  - b) upon receipt by the County Council of the next Monitoring Report following the implementation of the measures and initiatives referred to in paragraph 4.5 of this Schedule it transpires that the Travel Plan Objectives are not being achieved in full
- on each occasion the Owners shall pay to the County Council all direct and indirect costs on a full indemnity basis of such measures the County Council deem necessary to ensure the Travel Plan Objectives are achieved and for the avoidance of doubt these shall include (but shall not be limited to) the costs and fees of any independent consultant and the administrative expenses of the County Council's Officers based upon such officers' hourly rates of charge for the additional time incurred in identifying and implementing the measures deemed necessary to ensure the Travel Plan Objectives are achieved

#### FOURTH SCHEDULE

##### Payment Notice

<b>Agreement Details</b>	
Application Site address	
Application	
Date of original Undertaking  under S106 of the Town and Country Planning Act 1990	
Date of variation of original Undertaking  [where relevant]	
Parties to Undertaking	
<b>Payee Details</b>	
Payee  [name, address and reference]	

**IN WITNESS** whereof the Owner has executed this Deed on the day and year before written

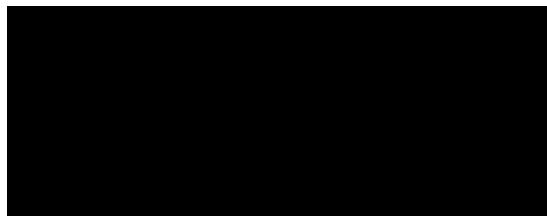
**THE COMMON SEAL of EAST SUSSEX  
COUNTY COUNCIL** was hereto affixed in  
the presence of:-

)  
)  
)



.....  
Authorised Signatory

**EXECUTED AS A DEED by  
THE CAVENDISH SCHOOL  
(EASTBOURNE)** in the  
presence of:-



Director



.....  
Director/Secretary