

DATED 1 September 2017

**TUNBRIDGE WELLS BOROUGH COUNCIL**

- and -

**THE SACRED HEART SCHOOL BEECHWOOD TRUST LTD**

- and -

**BARCLAYS BANK PLC**

**PLANNING OBLIGATION AGREEMENT**

Relating to land within the curtilage of Beechwood Sacred Heart School 12 Pembury Road  
Tunbridge Wells  
Kent



THIS AGREEMENT is made the *first* day of *September* 200*8* 2017

**BETWEEN:**

- (1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of Town Hall Royal Tunbridge Wells Kent TN1 1RS ("the Council");
- (2) **THE SACRED HEART SCHOOL BEECHWOOD TRUST LIMITED**  
(Company Number: 01114031) of 12 Pembury Road Tunbridge Wells Kent TN2 3 QD ("the Owner");
- (3) **BARCLAYS BANK PLC** (Company Number:1026167) of Barclays Loan Servicing Centre PO Box Number 299 Birmingham B13PF("the Mortgagee")

**WHEREAS**

- (1) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated.
- (2) The Owner is the freehold owner of the Site.
- (3) The Application has been submitted to the Council.
- (4) Having regard to the provisions of the Local Plan and to all other material considerations the Council resolved on 19 April 2017 to grant the Planning Permission subject to the prior completion of this Agreement
- (5) The Mortgagee is the mortgagee under a legal charge of the Site dated 29 August 2006 and 8 April 2010

**NOW IT IS HEREBY AGREED**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings: -

"the Act"	the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991
"the Application"	the application for planning permission submitted to the Council for the Development and allocated reference number 16/07697
"Commencement"	the date on which a material operation comprised in the Development is taken to be

initiated within the meaning of section 56 (4)(a) to (d) of the Act PROVIDED ALWAYS that for the purpose of determining whether or not such a material operation has been carried out there shall be disregarded any works of demolition, site inspection, site surveys, testing, sampling, site clearance, soil investigations and trial holes and the expressions "Commence", "Commencement" and "Commenced" shall be construed

"The County Council"

The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the local highway authority for the area within which the Site is situated

the Development"

the Development of the Site with a 69 bed care home (Class C2 Use) with provision of new access onto Pembury Road and associated facilities as set out in the Application

"the Highway Sum "

the sum of £16,640 (Sixteen thousand six hundred and forty pounds) payable under the terms of this Agreement and subject to clause 8 for use by the County Council towards the feasibility phase of junction and/or public transport capacity improvements within the Pembury Road corridor ( A264) as marked in black on Plan A

"Index"

the General Building Cost Index as published by the building Cost Information Service on behalf of the Royal Institution of chartered Surveyors

"Interest"

interest at 4 per cent above the base lending rate of the Council's main bank at the time when the sums become due

"Plan A"

the plan of the Pembury Road corridor (A 264) annexed hereto and marked Plan A

“the Planning Permission”	the planning permission subject to conditions to be granted by the Council pursuant to the Application a draft of which is annexed to this Agreement
“the Red Line Plan”	the plan annexed hereto entitled “Proposed Care Home Location Plan” Drawing No 400 Rev C
“the Site”	the land against which this Agreement may be enforced being a parcel of land within the curtilage of Beechwood Sacred Heart School 12 Pembury Road Tunbridge Wells Kent TN17 3QD being part of the land registered at H M Land Registry with Title Absolute under Title Number K909574 and shown edged red on the Red Line Plan

2. Interpretation

In this Agreement:

- 2.1 Unless otherwise stated, reference to a clause sub-clause schedule paragraph or sub-paragraph is reference to a clause sub-clause schedule paragraph or sub-paragraph in this Agreement.
- 2.2 Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa
- 2.3 Covenants made hereunder by more than one person as joint owners of the Site or a defined part of it are made jointly and severally
- 2.4 References to any enactment include references to that enactment as for the time being amended applied consolidated re-enacted by or having effect by virtue of any subsequent enactment and for this purpose ‘enactment’ means any Act whether public general or local and includes any byelaw order rule regulation procedure scheme or other instrument having effect by virtue of an enactment
- 2.5 The terms “the Council” “the Owner” and “the Mortgagee” shall include their successors in title and assigns
- 2.6 Headings are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer

3. STATUTORY POWERS AND COVENANTS

- 3.1 This Agreement is made pursuant to Section 106 of the Act and all other enabling powers and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Owner's interest in the Site
- 3.2 Covenants in this Agreement falling within the provisions of section 106 of the Act shall be deemed to be expressed to be planning obligations to which the said section shall apply
- 3.3 Nothing contained or implied by this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Authority and its rights powers duties and obligations under all public and private statutes bylaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement

#### 4. CONDITIONALITY

This Agreement is conditional upon the grant of the Planning Permission save for the provisions of **Clause 5.3** (legal costs) and **Clause 14** (jurisdiction) which shall come into effect immediately upon completion of this Agreement.

#### 5. THE OWNER'S COVENANTS

The Owner hereby covenants with the Council as follows:

##### 5.1 The Highway Sum

- 5.1.1 On or before the date the Development is Commenced to pay to the County Council the Highway Sum quoting ref 106/16/07697.
- 5.1.2 Not to Commence the Development unless and until the Highway Sum has been paid to the County Council
- 5.1.3 Not to Commence the Development unless and until the Owner has notified the Council that the Highway Sum has been paid.

##### 5.2 Notices

- 5.2.1 To notify the Council in writing ten working days prior to the Commencement of the Development with the date on which the Development is Commenced
- 5.2.2 To notify the Council in writing upon payment of the Highway Sum to the County Council

##### 5.3 Council's Legal Costs

- 5.3.1 To pay the Council on completion of this Agreement £630 towards the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement

## 6. DECLARATIONS

- 6.1 This Agreement 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 before the Development is Commenced.
- 6.2 The Council will upon the written request of the Owner confirm in writing whether or not the obligations set out herein have been performed or otherwise discharged
- 6.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest

## 7. WAIVER

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms and conditions or from acting upon any subsequent breach or default

## 8. INDEXATION

The Highway Sum shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

## 9. INTEREST

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

## 10. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement 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 Site or unit of occupation purchased by reference to a plan

## 11. NOTICES

Any notice under this Agreement shall be in writing and shall be sufficient if sent as follows:

- 11.1 To the Council if addressed to the Head of Planning Services or such other proper officer as defined within the Local Government Act 1972 as amended for the time being at the address at the head of this Agreement
- 11.2 To the Owner if sent to its address at the head of this Agreement or its registered office for the time being
- 11.3 To the Mortgagee if sent to its address at the head of this Agreement or its registered office for the time being
- 11.4 And in any case by registered or recorded delivery post or if left at the premises or such other address as may have been notified by one party to the other for this purpose

## 12. THIRD PARTIES

The provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from the terms of this Agreement and unless specifically provided no person other than the parties hereto or their successors in title shall have any benefit or any right to enforce any terms of this Agreement

## 13. LOCAL LAND CHARGE

This Agreement shall be registered as a local land charge

## 14. JURISDICTION

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

## 15. MORTGAGEE

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.





IN WITNESS whereof the parties hereto have executed and delivered this document as a deed the day and year first before written

THE COMMON SEAL of the TUNBRIDGE  
WELLS BOROUGH COUNCIL is hereunto  
affixed in the presence of:-



[Redacted]  
Authorised Signatory

SEAL BOOK REFERENCE:  
NUMBER:- 9355.

Executed as a Deed by  
THE SACRED HEART SCHOOL  
BEECHWOOD TRUST LIMITED  
acting by a director and its secretary  
or by two directors

[Redacted]

Director

MICHAEL FRANCIS STEVENS

[Director]/[Secretary]

[Redacted]

Executed AS A DEED by  
Insert Name Michelle Citkos

ROBERT PARK

Signature \_\_\_\_\_ [Redacted]

as Attorney of BARCLAYS BANK PLC  
in the presence of:-

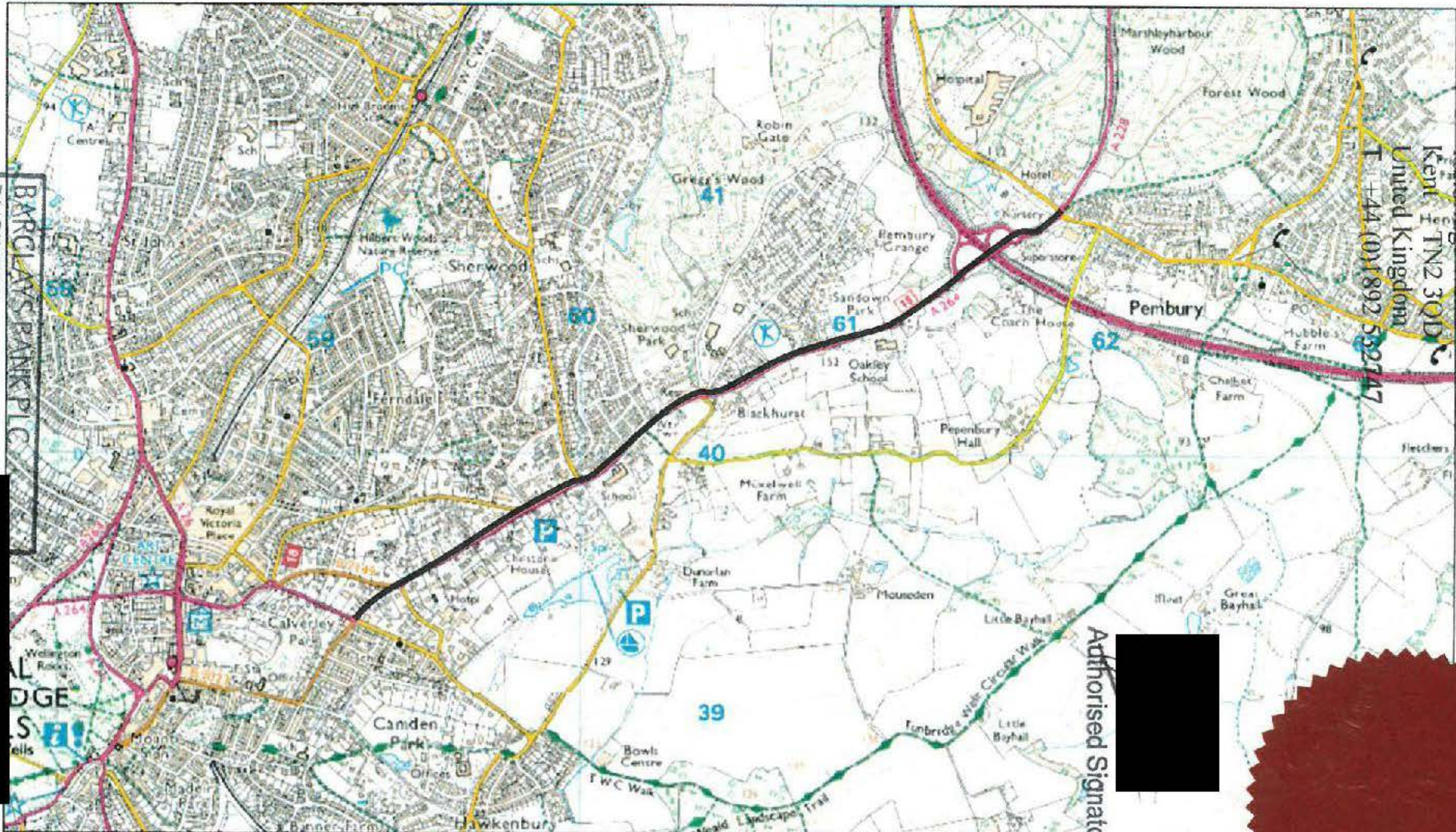
Insert Name KAREN SUSAN HOOGETTS

Signature \_\_\_\_\_ [Redacted]

Business Banking QRC	INITIALS	DATE
	MSD	



A264 Pembury



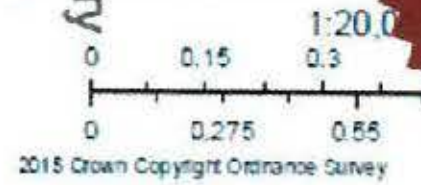
BARCLAYS BANK PLC  
BUSINESS LENDING SER  
PO BOX 16275  
BIRMINGHAM  
B2 2XE

**BEECHWOOD**  
Sacred Heart School  
12 Pembury Road  
Dunbridge Wells  
Kent TN2 3DD  
United Kingdom  
T +44 (0)1892 552747

Authorised Signatory



June 21, 2017



SEAL BOOK REFERENCE  
Q355



**BEECHWOOD**  
 Sacred Heart School  
 12 Pembury Road  
 Tunbridge Wells  
 Kent TN2 3QD  
 United Kingdom  
 T +44 (0)1892 532747



Project Co-ordinator: GS  
 Date: Mar '15  
 Stage: PL  
 Drawing No: 400  
 Rev: C  
 Preliminary  
 Tender  
 Information  
 Construction  
 Approval

Authorised Signatory



SEAL BOOK REFERENCE NUMBER:-  
 9355

Client: Beechwood Sacred Heart School One House  
 Project: Beechwood Sacred Heart School, Pembury Road  
 Drawing Title: Proposed Care Home Location Plan

By:	Date
GV	27.12.2016
GV	07.12.2016
GV	02.02.2017

Revisions:  
 A. Amended red and blue lines  
 B. Scale bar and north point added  
 C. Amended red and blue lines as agreed at IPA meeting on 02.02.2017.

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