

DATED 24th January 2018

Unilateral Undertaking

Given by

Forstal Properties Limited

To:

Tonbridge and Malling District Council

And

Kent County Council

under s.106 Town and Country Planning Act 1990

Relating to:

Land on the South Side of Forstal Road, Aylesford, Kent

Lee May
Brachers LLP
Somerfield House
59 London Road
Maidstone
Kent
ME16 8JH

Telephone: 01622 690691
Lee May@brachers.co.uk

Reference: 96/LM/[]

THIS Unilateral Undertaking is dated 24th January 2018

Given By:

FORSTAL PROPERTIES LIMITED (Co Reg No 09850552) of 4 Holmoaks Woodlands
Vinters Park Maidstone Kent ME14 5RG ("the Owner").

To:

TONBRIDGE AND MALLING DISTRICT COUNCIL, of Gibson Building, Gibson Drive,
Kings Hill, West Malling, Kent, ME19 4LZ ("the Council") and

KENT COUNTY COUNCIL of Sessions House County Hall Maidstone Kent ME14 1XQ (the
"County Council")

1. Definitions

In this Deed the following expressions shall have the meaning opposite them: -

- Applicable House : means all Dwellings but excluding those Dwellings (if any) of less than 56sqm GIA
- Commencement of Development : The carrying out in relation to the Development of any material operation as defined by Section 56(4) of the TCPA 1990. 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 for construction purposes only, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence” “Commenced” and “Commencing” shall be construed accordingly

- Contributions : The Libraries Contribution, the Primary Education Contribution and the Secondary Education Contribution.
- County Council : Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the local highway education social services and library authority for the area within which the Land is situated
- Deed : This Deed together with all schedules and appendixes hereto
- Development : The development of land and buildings on the south side of Forstal Road, Ayleasford, Kent for the erection of 12 Dwellings.
- Dwelling : any residential unit to be constructed on the Land as part of the Development.
- Housing Unit : the residential units forming the Development.

Index Linked	: Increased in accordance with the following formula: Amount Payable = the Contribution x (A/B) where: A = the figure for the General Build Cost Index that applied immediately preceding the date of actual payment; B = the figure for the General Build Cost Index that applied where the Index was last published prior to the date of this Deed.
Land	: The freehold land shown edged in red on the Plan known as the land and buildings on the south side of Forstal Road, Aylesford, Kent, being the land registered at H M Land Registry with absolute title under title number K435055.
Libraries Contribution	: The sum of £48.02 per Dwelling to be used towards additional book stock at Larkfield Library to mitigate the impact of the additional borrowers generated by this development
Occupy	: means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in

construction fitting out finishing decoration or marketing of that building nor occupation in relation to site and building security operations and “Occupation” “Occupier” or “Occupied” shall be construed accordingly

- Plan : The plan marked PHA/100 and annexed to this Deed at Annex 1.
- Planning Application : An application for planning permission registered by the Council under reference number 17/00964/FL, for the erection of 12 dwellings on the Land.
- Planning Obligation : The planning obligation contained in clause 4.1.
- Planning Permission : The Planning Permission to be granted by the Council pursuant to the Planning Application
- Primary Education Contribution : The sum of £3324.00 per Applicable House to be used towards additional capacity at St Peter’s Primary School
- Secondary Education Contribution : The sum of £2359.80 per Applicable House to be used towards additional capacity at Aylesford School
- TCPA 1990 : Town and Country Planning Act 1990.

2. Background

- 2.1 The Council and the County Council are local planning authorities for the purposes of the TCPA 1990 for the area in which the Land is located.
- 2.2 The Owners owns the Land.

2.3 The Council has decided to grant planning permission for the Development subject to securing a legal agreement for the payment of the Contributions.

2.4 The Owners considers that the Planning Obligation should be entered into (subject to the conditions set out in this Deed) in respect of the Land.

3. Interpretation

In this Deed: -

3.1 A reference to a person includes companies and all other legal entities.

3.2 Words in the singular include the plural and vice versa.

3.3 A reference to one gender shall include a reference to all other genders.

3.4 A reference to any party (other than to the Council) shall include that party's successors in title and assigns (unless this Deed states otherwise).

3.5 A reference to the Council shall include the successors to its statutory functions as local planning authority.

3.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time (unless this Deed states otherwise).

3.7 A reference to a statute or statutory provision shall include any subordinate legislation made under that statutory or statutory provision (unless this Deed states otherwise).

3.8 References to clauses are to the clauses in this Deed.

3.9 An obligation on a person not to do something includes an obligation not to agree to or allow that thing to be done.

3.10 Where any party consists of more than one person covenants and obligations by that party can be enforced against every person so bound jointly and against each of them individually.

3.11 Clause headings are for convenience only and shall not affect the interpretation or construction of this Deed.

4. Planning Obligation

- 4.1 The Owners hereby covenant with the Council and the County Council that the Owners will comply with the obligations set out in Schedule 1 of this Deed (the Planning Obligation)
- 4.2 The Planning Obligation constitutes planning obligations for the purposes of Section 106 of the TCPA 1990 and any other enabling powers.
- 4.3 The Planning Obligation shall be enforceable by the Council and the County Council in accordance with Section 106 of the TCPA 1990.
- 4.4 The Planning Obligation given in Clause 4.1 is conditional upon the grant of the Planning Permission and shall have effect from the date of grant of the Planning Permission.
- 4.5 The Planning Obligation is entered into by the Owners with the intention that it binds the Land and those persons from time to time having an interest in the Land.
- 4.6 The Planning Obligation is a local land charge and shall be registered as such by the Council.

5. Indexation of Contributions

- 5.1 All financial contributions payable to the County Council shall be Index Linked.
- 5.2 Where reference is made to an index 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) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owners in writing.

6. Determination of this Deed

This Deed shall be determined and have no effect if the Planning Permission: -

- 6.1 expires before the Commencement of Development;
- 6.2 is varied or revoked other than at the request of the Owners; or

6.3 is quashed following a successful legal challenge.

7. Warranty as to Ownership

The Owners warrants to the Council and the County Council that no person other than the Owners has any legal or equitable interest in the Land.

8. Release from liability

No person shall be liable for any breach of the Planning Obligation or any other obligation contained in this Deed after parting with all of its interest in the Land or the part in respect of which the breach occurs (except in respect of any breach subsisting prior to parting with such interest).

9. Notices

Any notice or other communication required to be given under this Deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:-

(a) **Council:** Head of Legal Services TONBRIDGE AND MALLING DISTRICT COUNCIL, of Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ

(b) **Owners:** of 4 Holmoaks Woodlands Vinters Park Maidstone Kent ME14 5RG

or as otherwise specified by the relevant person by notice in writing to the other person.

10. Interest on Late Payments

If the Contributions have not been paid to the County Council by the due date for payment as indicated in Schedule 1, the Owners shall pay the County Council Council interest on the Contributions at a rate of 4% above the base rate from time to time of the National Westminster Bank PLC. Such interest shall accrue on a daily basis for the period from the date due for payment to and including the actual date of payment.

11. Third party rights

No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

12. Severance

Insofar as any clause or clauses of this Deed 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 Deed.

13. Governing law and jurisdiction

This Deed shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

14. Nature of document

This document is a deed and shall be treated as having been executed and delivered on it being dated.

Schedule 1

The Contributions

The Owners hereby undertake with the Council and the County Council to pay the Contributions at the times and in the manner set out below:

1. Libraries Contribution

- 1.1 To pay 50% of the index linked Libraries Contribution to the County Council prior to the Commencement of Development
- 1.2 not to Commence Development or allow Development to Commence until 50% of the said Libraries Contribution has been paid to the County Council
- 1.3 to pay the balance of the index linked Libraries Contribution to the County Council prior to first Occupation of any Dwelling
- 1.4 not to Occupy or cause or allow to be Occupied any Dwellings until the balance of the index linked Libraries Contribution has been paid to the County Council

2. Primary Education Contribution

- 2.1 To pay 50% of the index linked Primary Education Contribution to the County Council prior to the Commencement of development
- 2.2 not to Commence Development or allow Development to Commence until 50% of the said Primary Education Contribution has been paid to the County Council
- 2.3 to pay the balance of the index linked Primary Education Contribution to the County Council prior to first Occupation of any Dwelling
- 2.4 not to Occupy or cause or allow to be Occupied any Dwellings until the balance of the index linked Primary Education Contribution has been paid to the County Council

3. Secondary Education Contribution

- 3.1 To pay 50% of the index linked Secondary Education Contribution to the County Council prior to the Commencement of development
- 3.2 not to Commence Development or allow Development to Commence until 50% of the said Secondary Education Contribution has been paid to the County Council
- 3.3 to pay the balance of the index linked Secondary Education Contribution to the County Council prior to first Occupation of any Dwelling
- 3.4 not to Occupy or cause or allow to be Occupied any Dwellings until the balance of the index linked Secondary Education Contribution has been paid to the County Council

Executed as a deed by FORSTAL PROPERTIES LIMITED acting by ~~SIMON REARD~~ director in the presence of:



WITNESS

Director

Signature



Name

RUPERT GEORGE LANTING COX

Occupation

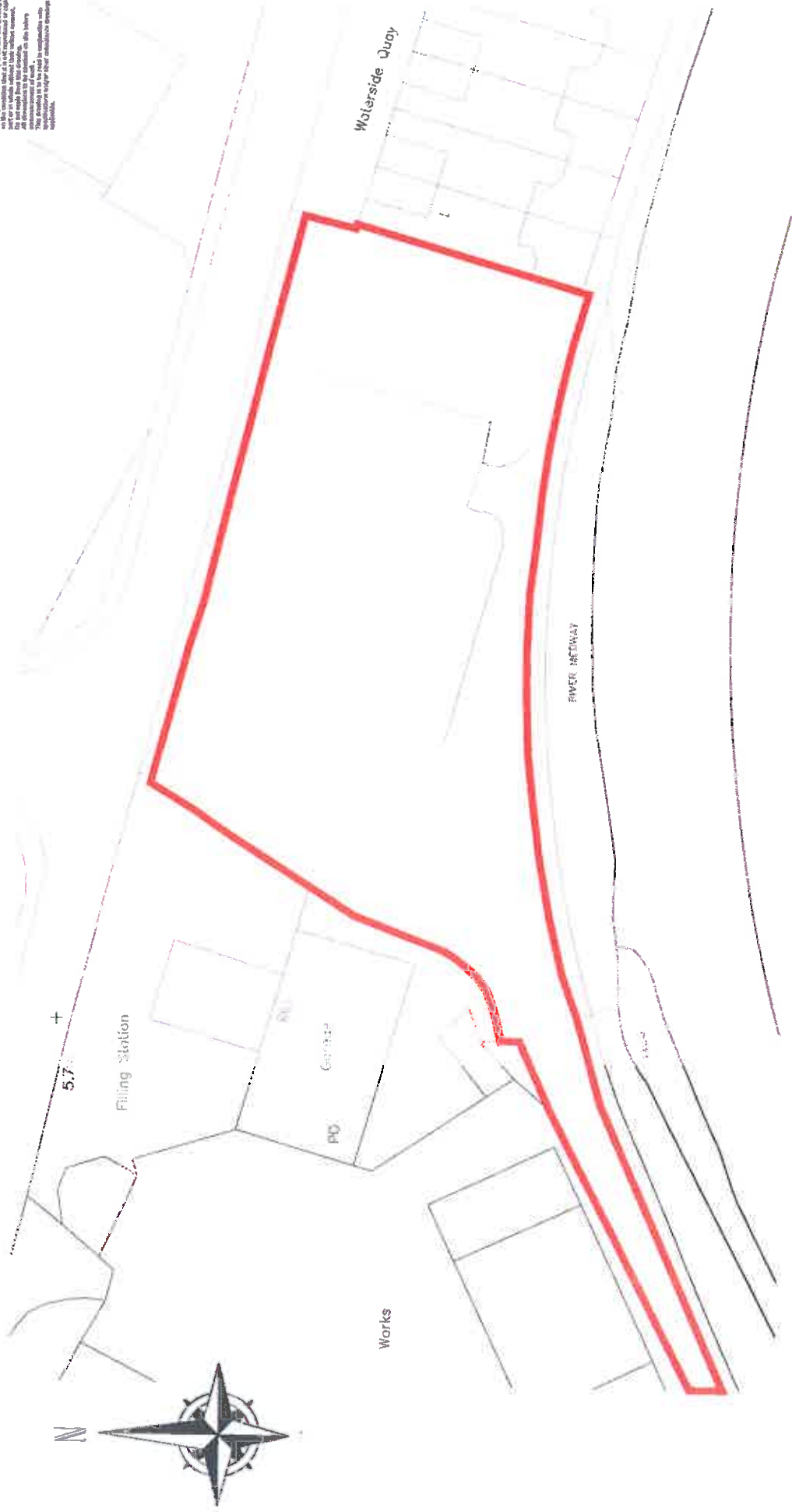
Solicitor.

Address

BRACHERS LLP
59 LONDON ROAD
MAIDSTONE
KENT ME16 8JH
TEL 01622 690691

ANNEX 1

Notes
 1. This drawing is the property of GZA Group Limited.
 2. This drawing is for the use of the client only and is not to be used for any other purpose.
 3. The client is responsible for the accuracy of the information provided to GZA Group Limited.
 4. GZA Group Limited is not responsible for the accuracy of the information provided to the client.
 5. This drawing is not to be used in conjunction with any other drawing or document.
 6. The accuracy of the information provided is not guaranteed.
 7. The accuracy of the information provided is not guaranteed.



EXISTING SITE PLAN

S. Reed

REV.	DESCRIPTION	DATE
001	Initial design & site plan	12/15/2015
002	Revised design & site plan	12/15/2015
003	Final design & site plan	12/15/2015

Prepared by: S. Reed
 Checked by: S. Reed
 Drawn by: S. Reed
 Project: Phocix House
 Location: Aylsham, Kent, ME20 7AU

Existing Site Plan
 SCALE: 1:200 @A1
 DATE: Dec 2015
 DWG NO.: PHA/100