DATED 21. November **2011**

WEST SUSSEX COUNTY COUNCIL

To

ADUR DISTRICT COUNCIL

UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town
and Country Planning Act 1990

relating to Land at The Former Willows First School,
Irene Avenue, Lancing, BN15 9NZ

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THIS UNILATERAL UNDERTAKING is made the twenty first day of November 2011

BY:

WEST SUSSEX COUNTY COUNCIL of County Hall Chichester West Sussex PO19 1RQ ("the Owner" and "the County Council")

TO

ADUR DISTRICT COUNCIL of Civic Centre Ham Road Shoreham-by-Sea West Sussex BN43 6PR (hereinafter called "the Council")

WHEREAS:

(1) The Owner made the Application to the Council and is the freehold owner of the Site which is registered under part of Title No. WSX336158 at HM Land Registry.

(2) The Council is the Local Planning Authority for the purposes of the Act and for the area in which the Site is situated

(3) The County Council is the highway authority and the authority responsible for fire and rescue infrastructure for the area in which the Site is located.

(4) On 13 May 2011 the Council issued a decision notice to the Owner refusing planning permission for the Application

(6) The Owner has appealed to the Planning Inspectorate under section 78 of the Act against the refusal of Planning Permission

(7) In the event that the appeal is successful and Planning Permission is granted this Deed will come into effect and the Owner enters into this Deed to indicate willingness for the following purposes:

(a) securing the provision of affordable housing as set out in paragraph 1 of the Schedule

(b) securing a financial commitment known as the Fire and Rescue Contribution as set out in paragraph 2 of the Schedule

(c) securing a financial commitment known as the Total Access Demand (TAD) Contribution as set out in paragraph 3 of the Schedule

(8) The operative provisions of this Deed are conditional inter alia upon the granting of Planning Permission following the appeal and the Commencement of Development.

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

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

"the Act" the Town and Country Planning Act 1990 and all subsequent revisions and amendments;

"Affordable Housing" means affordable housing as defined in PPS3 Housing, Annex B dated June 2010 comprising social rented and intermediate housing provided to specified eligible households whose needs are not met by the market and which should meet the needs of eligible households, including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices;

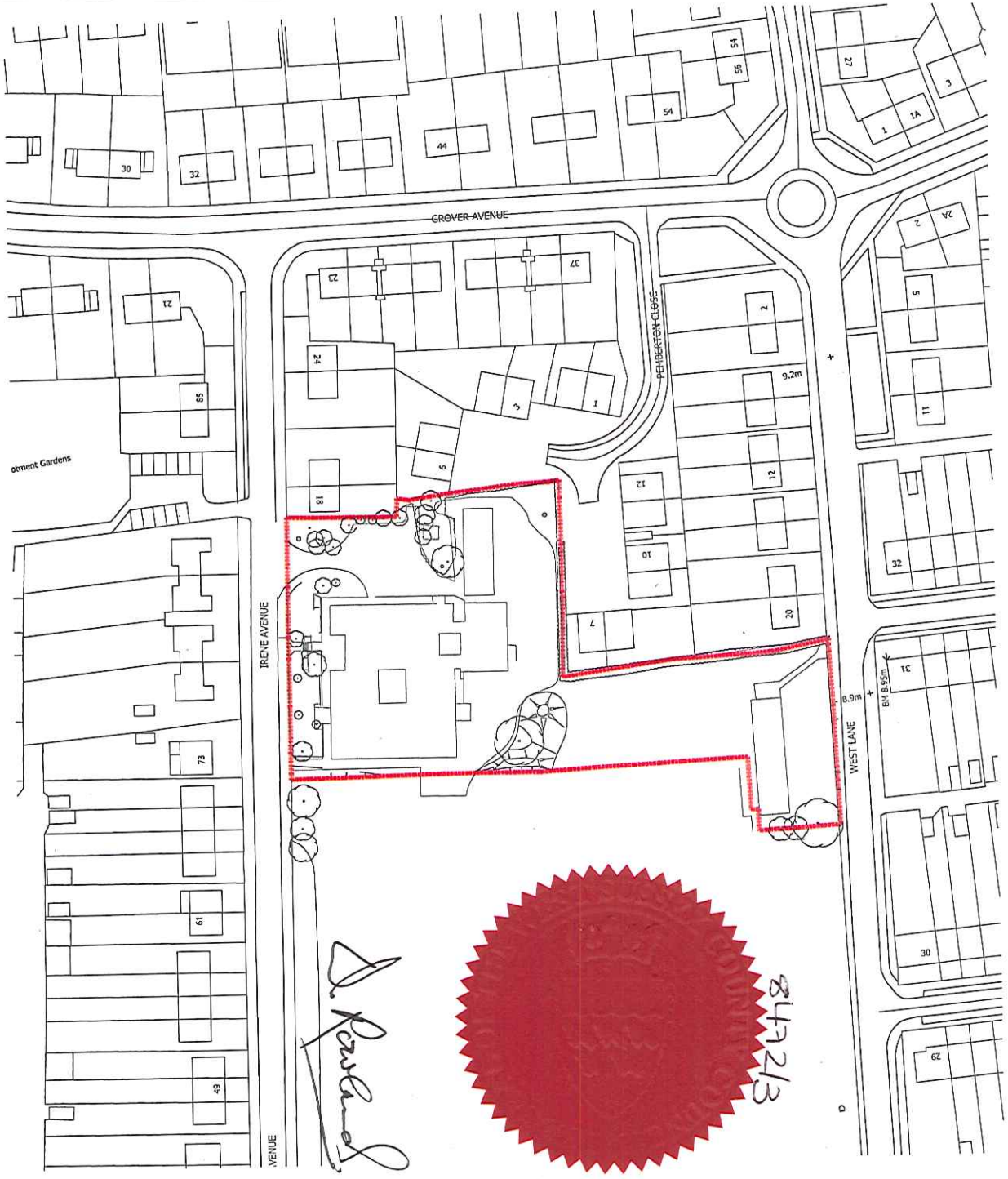
RIBA
Chartered Practice

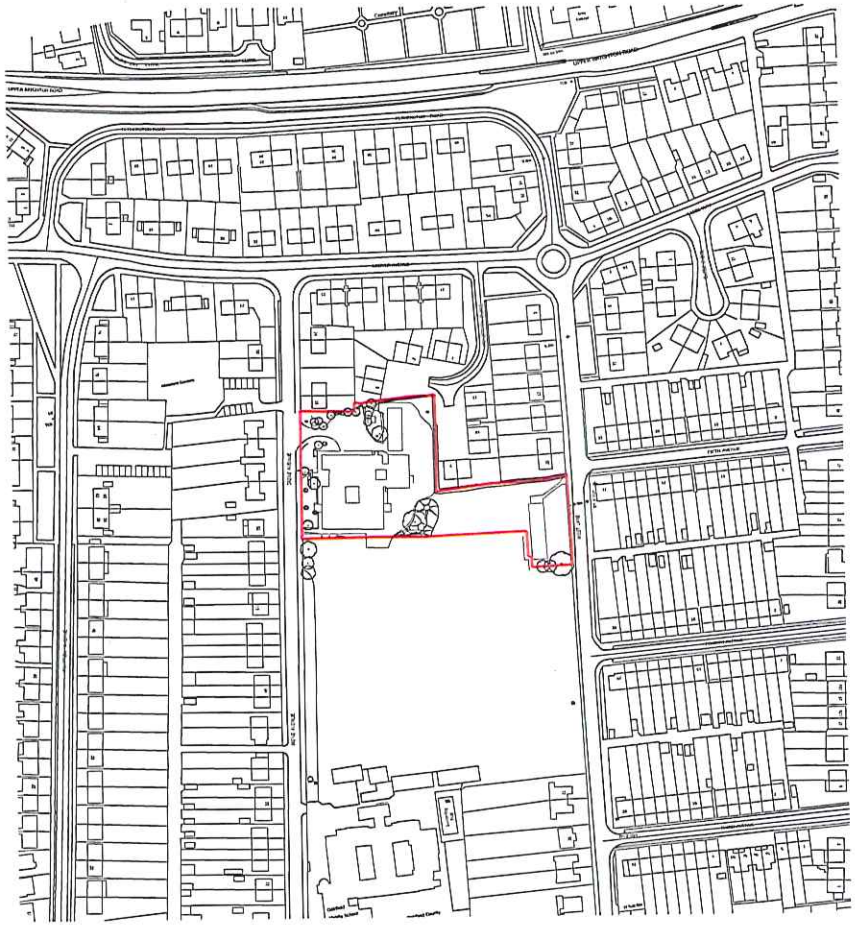
DO NOT SCALE FROM THIS DRAWING EXCEPT FOR PLANNING PURPOSES ONLY.

ALL DIMENSIONS RELATING TO SUB-CONTRACTOR OR SUPPLIERS WORK MUST BE CHECKED ON SITE AND AGREED BETWEEN THE GENERAL CONTRACTOR & THE SUB-CONTRACTORS \ SUPPLIERS. ALL DIMENSIONS ARE IN MILLIMETERS. IF IN DOUBT ASK.

ALL WORKS OR MATERIALS INDICATED OR THE DRAWING ARE TO BE TO THE LATTST BRITISH STANDARDS AND ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE RELEVANT CODES OF PRACTICE OR RECONIZED TRADE ASSOCIATIONS RECOMMENDATIONS & PUBLICATIONS

REV.	AMENDMENT	BY	DATE





8478/3

Project	Former Willows First School Landing
Drawing	Location + Block Plan
Date	July 2010
Drawn by	sab
Scales	1:500 + 1:1250
Status	planning
Job No	TSP 351
Dwg No	FS01
Revision	

the SEAMAN PARTNERSHIP Ltd
UNIT 2, MARTINS BARN, BIRDHAM ROAD
CHICHESTER, WEST SUSSEX, PO20 7BX
TEL:01243 514131 FAX:01243 511488
office@the-seaman-partnership.co.uk
w.w.w.the-seaman-partnership.co.uk

"Affordable Housing Units" means thirty per cent (30%) of the Residential Units within the Development being 7 dwellings in total to be provided as Affordable Housing in a mix of five (5) Social Rented Units and two (2) Intermediate Affordable Housing in accordance with the following mix: 1x1 bed flat, 2x2 bed flat, 3x3 bed house and 1x4 bed house of which 1x1 bed and 1x2 bed will be Intermediate Affordable Housing.

"the Application" the application for outline planning permission dated 22 February 2011 submitted to the Council for the Development and allocated reference number ADC/0069/11;

"Commencement of the Development" the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purpose 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 advertisements and "Commence Development" shall be construed accordingly;

"Development" the Development of the Site for the erection of 23 houses and flats (mixture of one, two, three and four bedrooms and one, two, and two and a half storeys and ancillary external works (outline with all matters reserved) as set out in the Application;

"Executive Head of Planning Regeneration & Wellbeing" The Executive Head of Planning Regeneration & Wellbeing for the time being or such other proper officer of the Council responsible for planning functions;

"Financial Qualifications" means the level of income and/ or resources or such other circumstances as the Borough Council's Housing Services Manager or their nominee shall agree after consultation with the Registered Social Landlord from time to time below which a Qualifying Person qualifies on financial terms for the right to purchase an intermediate affordable housing unit. In determining whether an Applicant satisfies the Financial Qualification due regard will be taken on the Applicant's savings benefits and other financial resources in addition to income;

"Fire and Rescue Contribution" means the sum of three hundred and ninety eight pounds (£398) being a contribution towards the provision of fire service infrastructure (excluding fire hydrants) in the vicinity of the Site to serve the additional needs of the community generated by the Development;

"First Occupation" the beneficial occupation of first Residential Unit the use for which the Development was designed;

"Index" All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation;

"Interest" interest at the rate of 4% above the base lending rate from time to time of the Bank of England applicable at the date the relevant contribution under this Deed is paid;

"Intermediate Affordable Housing" means housing at prices and rents above those of social rent but below market price or rents, and which include shared equity products, other low cost homes for sale and intermediate rent made available to persons who satisfy the Financial Qualification in operation at the time of purchase.

"Open Market Units" means all those Residential Units to be constructed which are not Affordable Housing Units and "Open Market Unit" shall be construed accordingly;

"Plan" the plan annexed to this Deed

"Planning Permission" means any outline planning permission granted by the Planning Inspectorate pursuant to the appeal

"Qualifying Person" means a person whose name appears on the Borough Council's Housing Register who satisfies the Financial Qualification in operation at the time of purchase

"Registered Social Landlord" means one or more registered social landlord(s) within the meaning of the Housing Act 1996 and any amendment, re-enactment or successor provision) including its successors and assigns;

"Residential Unit" means individual units within the Development to be used for residential purposes (and for the avoidance of doubt this definition shall include houses and flats as appropriate);

"Site" means the land known as The Former Willows First School Irene Avenue Lancing BN15 9NZ which is shown for identification purposes edged red on the Plan;

"Social Rented Units" means rented housing owned and managed by local authorities and Registered Social Landlords for which guideline target rents are determined through the national rent regime or rented housing owned or managed by other persons and provided under equivalent rental arrangements as agreed with the local authority or with the housing corporation as a condition of grant;

Total Access Demand or "TAD Contribution" means the sum calculated in accordance with paragraph 3 of the Schedule of this Deed

1.2 Words importing the singular includes the plural and vice versa and words importing one gender include all other genders

1.3 The expressions "the Owner" "the Council" and "the County Council" shall include their respective successors in title and assigns statutory or otherwise

1.4 References to clauses sub-clauses paragraphs and schedules are references to clauses and sub-clauses in and paragraphs and schedules to this Deed unless specifically stated otherwise

1.5 Headings are for ease of reference only and shall not be construed as part of this Deed

2. STATUTORY PROVISIONS

2.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other powers enabling the parties hereto

2.2 This Deed shall have full force and effect from the date hereof

2.3 The covenants restrictions and requirements imposed upon the Owner under this Deed are planning obligations and are enforceable by the Council as local planning authority

2.4 In respect of the planning obligations for the Fire and Rescue Contribution and the TAD Contribution:

2.4.1 Until such time as the County Council as Owner has disposed of its interest in the Site the Council is the local planning authority responsible for enforcing these planning obligations;

2.4.2 Upon disposal by the County Council as Owner of its interest in the Site the County Council shall become the local planning authority responsible for enforcing these planning obligations

2.4 The Deed is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of that section

2.5 This Deed is a local land charge and shall be registered as such by the Council

3. CONDITIONALITY

This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

Save for the provisions of Clause 9 which shall come info effect immediately upon completion of this Deed

4. THE OWNER'S COVENANTS

The Owner covenants to the Council as set out in the Schedule.

5. SEVERANCE

If any provisions of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the avoidance of doubt it is hereby agreed and declared that:-

(a) nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contracts (Rights of Third Parties) Act 1999; and

(b) nothing in this Deed is intended to confer any benefit on any third party (whether referred to herein by name class description or otherwise) or any right to enforce a term contained in this Deed

7. MISCELLANEOUS

7.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed 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.

7.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

8. INTEREST

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

9. JURISDICTION

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

THE SCHEDULE

Covenants made by the Owner to the Council

The Owner covenants with the Council:

1. AFFORDABLE HOUSING

(a) to provide the Affordable Housing Units on the Land and not to allow First Occupation of more than twelve (12) of the Open Market Units prior to providing the Affordable Housing Units

(b) to dispose of the Affordable Housing Units together with all necessary rights and easements to a Registered Social Landlord at nil value.

Mechanics and Terms of Transfer

(c) The Owner shall make an offer to a RSL which shall include (i) sale of land contract (ii) draft transfer (iii) local authority searches (iv) any insurances and indemnities (v) structural surveys and land contamination reports (vi) details of planning consent.

(d) Such offer shall remain open for acceptance for not less than four (4) months ("the First Offer Period") from the date of the offer being made ("the Offer Date")

(e) In the event that the first offer made in accordance with paragraph 1(d) is not accepted within 4 months of the Offer Date then the Owner shall make a second offer to another Registered Social Landlord to enter into a Sale of Land Contract for the Affordable Housing Units and not later than one month after the expiry of the First Offer Period ("the Second Offer") and such offer shall consist of the matters referred to in paragraph 1(c) subject to revisions necessitated by lapse of time and

shall remain open for acceptance for no less than 6 weeks ("the Second Offer Period") from the date of the offer being made ("the Second Offer Date")

(f) In the event that the Owner is unable to dispose of the Affordable Housing Units to a Registered Social Landlord following the expiry of the Second Offer Period in paragraph 1(e) the Owner shall pay to the Council a sum equivalent to the cost at the time of providing the Affordable Housing Units within the District of Adur. The amount to be paid will be determined through an independent assessment by the District Valuer, such assessment to be funded by the owners and the owners shall pay the commuted sum to the District Council on or before the First Occupation of more than twelve (12) of the Open Market Units;

(g) Not to Commence Development until the owner has entered into a binding contract for the transfer of the Affordable Housing Units or until the amount of any commuted sum has been determined:

(h) Not to occupy or permit the occupation of the Affordable Housing Units other than as Intermediate Affordable Housing unless a commuted sum is paid under paragraph 1(f) above.

2. FIRE AND RESCUE CONTRIBUTION

To pay to the Council the Fire and Rescue Contribution on or before First Occupation of the Development

3. TAD CONTRIBUTION

To pay to the Council the TAD Contribution on or before the First Occupation of the Development being the sum as calculated using the formula below:

TAD Contribution = Sustainable Access Contribution + Infrastructure Contribution, where:

Sustainable Access Demand Contribution = (C – D) x E, where:

C(Total Access) = (A (number of dwellings) x B (Occupancy per dwelling)) using the following figures as a guideline:

Dwelling Size	/	Occupancy	
		House	Flat
1 bed	=	1.7	1.2
2 bed	=	1.8	1.3
3 bed	=	2.2	1.7
4 bed	=	2.7	2.4
5 bed	=	3.0	2.0

D = Parking Spaces provided by the residential development element of the Proposed Development

E = Standard multiplier of £450.00

Infrastructure Contribution = D x F, where:

D = Parking Spaces provided by the residential development element of the Proposed Development

F = Standard multiplier of £900

(b) The TAD Contribution shall be increased by an amount equal to the proportionate increase in the Index between the month preceding the date of this Agreement and the month preceding the date of payment of the TAD Contribution.

(d) If the TAD Contribution is not paid on or before the First Occupation of the Development to pay in addition interest at the Interest Rate from the date of the First Occupation of the Development until the TAD Contribution is paid in.

IN WITNESS whereof this instrument has been duly executed as a Deed by the parties hereto the day and year first before written

8472/3.

THE COMMON SEAL of **WEST SUSSEX COUNTY COUNCIL** was affixed to this Deed in the presence of:-

Authorised Signatory:

