SECTION 106 UNILATERAL UNDERTAKING

THIS UNILATERAL UNDERTAKING is given this 16th day of OCTOBER two thousand and twenty four

By:

(1) The Russell Martin Foundation, company number 10473815 whose registered office is at Bank House Southwick Square, Southwick, Brighton, England, BN42 4FN ("**the Tenant**").

To:

(1) Adur District Council of Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA ("**the Council**").

(2) West Sussex County Council of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("**the County Council**").

RECITALS

A The Council is the registered proprietor under title number WSX332467 of the land at Southwick Recreation Ground, Croft Avenue, Southwick, BN42 4AB, shown for identification purposes only edged red on Plan A attached at Schedule 1 of this Unilateral Undertaking (**"the Land"**);

B The Tenant was granted a Tenancy at Will by the Council from 2 March 2021 in respect of the land at Football Club, Old Barn Way, Southwick, West Sussex BN42 4NT, that forms part of the Land, shown for identification purposes only edged red on Plan B attached at Schedule 2 of this Unilateral Undertaking (**"the Football Club"**);

C The Council is the local planning authority for the purposes of the Act and for the administrative area in which the Land is located;

D The County Council is a local planning authority for the area within which the Land is located and is the local highway authority for the purposes of the Highways Act 1980;

E The Tenant has by the Application applied to the Council for Planning Permission to develop the Football Club by the Development;

F The Tenant is willing to give an undertaking to perform the obligations set out in this Unilateral Undertaking to facilitate the grant of Planning Permission by securing the contribution contained in this undertaking towards measures which avoid or mitigate against any adverse effect of the Development;

G The Council and County Council are satisfied that the provisions of this Unilateral Undertaking comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended.

1. DEFINITIONS & INTERPRETATION

In this Unilateral Undertaking:

1.1 **"the Act"** means the Town and Country Planning Act 1990 as amended.

1.2 **"the Application"** means the application for Planning Permission submitted to the Council by the Tenant for the Development and given application reference number AWDM/1217/23.

1.3 **"Commencement of the Development"** means the carrying out as part of the Development of the first material operation (within the meaning ascribed in Section 56 of the Act) and "Commenced" shall be construed accordingly, save for the following acts which shall not constitute a material operation and shall not individually or together constitute Commencement of the Development:

(a) Demolition;
(b) Site clearance;
(c) Site investigations, testing or surveys;
(d) The provision of underground drainage and sewers and the laying and diversion of other services and service medium;
(e) Archaeological investigations and digs;
(f) Ecological surveys, investigations or assessments;
(g) Decontamination and remediation works;
(h) The construction of boundary fencing or hoardings (including the erection of an enclosure for the purpose of site security);
(i) The construction of a temporary site compound and welfare facilities / buildings / enclosures
(j) Below ground works

1.4 **"the Development"** means the development of the Football Club by redevelopment of the Former Southwick Football Club, comprising the replacement of existing turf pitch with 3G pitch and replacement floodlights, demolition of existing clubhouse and erection of replacement Sports Hub Building, erection of spectator stand along with other ancillary infrastructure.

1.5 **"Index"** means the All-In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the County Council may reasonably direct.

1.6 **"Index Linking"** means the recalculation of any payment specified in this Deed by applying the following formula:-

A = (B x C) divided by D

Where:

A = the sum actually payable
B = the original sum mentioned in this Deed
C = the All In Tender Price Index at the date payment falls due
D = the All In Tender Price Index for the quarter preceding December 2023

and "Index-Linked" and other congruent terms shall be construed accordingly.

1.7 **"Interest"** means interest at four (4) per cent above the base lending rate of the Bank of England from time to time.

1.8 **"Occupation"** means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" "Occupies" and "Occupied" shall be construed accordingly.

1.9 **"Planning Permission"** means planning permission for the Development that may be granted in pursuance of the Application.

1.10 **"Travel Plan"** means a working travel plan to be created by the Tenant and submitted to the County Council for its written approval to encourage the use of public transport to the Football Club.

1.11 **"Travel Plan Monitoring Fee"** means the sum of £3,815 (three thousand eight hundred and fifteen pounds) payable to the County Council for monitoring the delivery of the Travel Plan over the lifetime of the Development.

1.12 **"Working Days"** means Monday to Friday excluding bank holidays and other public holidays.

1.13 Words importing the masculine include the feminine and vice versa.

1.14 Words importing the singular include the plural and vice versa.

1.15 Words importing persons include companies and corporations and vice versa.

1.16 Any reference to a clause or plan is to one in or attached to this Unilateral Undertaking.

1.17 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction specification made or issued under the statute or deriving validity from it.

1.18 The Tenant, the Council and the County Council or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them.

2. ENABLING PROVISIONS

This deed constitutes a planning obligation pursuant to Section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

3 COMMENCEMENT AND DETERMINATION

3.1 In the event that Planning Permission is granted and the Development is Commenced this Unilateral Undertaking shall have full force and effect but not otherwise, save that clauses 1, 2, 3, 7, 8 and 9 shall have full force and effect from the date of this Unilateral Undertaking.

3.2 If the Planning Permission granted pursuant to the Application shall expire before the Commencement of the Development or shall at any time be varied or revoked other than at the request of the Tenant then this Unilateral Undertaking shall be determined and shall have no further effect.

4. TENANT'S COVENANTS WITH THE COUNTY COUNCIL

The Tenant hereby covenants with the County Council that it will comply with the following obligations:

(a) To submit the Travel Plan for approval prior to Commencement of Development
(b) Not to Occupy the Development unless a Travel plan Co-ordinator has been appointed. The Tenant shall notify the County Council in writing of the name, address, email address and telephone number of the person appointed.
(c) Upon Occupation of the Development the Tenant shall implement the approved Travel Plan or amendments (as may be agreed with the County Council in writing) until such time as it is agreed between the Tenant and the County Council (in writing_ that there is no need for a Travel Plan
(d) To pay the Travel Plan Monitoring Fee to the County Council prior to Occupation of the Development.

(e) Not to Occupy the Development unless and until the Travel Plan Monitoring Fee has been paid in full to the County Council.

(f) To serve notice of the following on the County Council:

i. Twenty Working Days prior notice of the anticipated Commencement Date of the Development;
ii. Notice of the actual Commencement Date of the Development within ten Working Days of such occurring;
iii. Twenty Working Days prior notice of the anticipated Occupation date of the Development; and
iv. Notice of the actual date on which the Development was Occupied within ten Working Days of such occurring.

5. LIABILITY

No person shall be liable for any breach of the covenants, restrictions or obligations contained in this Unilateral Undertaking after that person has parted with its interest in the Football Club but they will remain liable for any breaches of this Unilateral Undertaking occurring before that date.

6. INDEXATION OF CONTRIBUTION

All financial contributions payable to the County Council shall be Index Linked. 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 County Council shall advise the Tenant in writing.

7. GENERAL

The Tenant acknowledges and declares that:

7.1 The obligations contained in this Unilateral Undertaking are planning obligations for the purpose of Section 106 of the Act and so bind the Tenant's interest in the Football Club.

7.2 This Unilateral Undertaking constitutes a deed.

7.3 The obligations contained in this Unilateral Undertaking are enforceable by the Council and the County Council.

7.4 This Unilateral Undertaking does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.

7.5 This deed is a Local Land Charge and shall be registered as such by the Council.

7.6 This deed shall be governed by and construed in accordance with the laws of England and each of the parties hereby submits to the exclusive jurisdiction of the Courts of England and Wales.

7.7 That there are no third party interests in the Football Club which would require any other party to give this Unilateral Undertaking.

8. NOTICES

8.1 Any notice, demand or any other communication served under this Unilateral Undertaking will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

8.2 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Unilateral

Undertaking or to such other address as one party may notify in writing to the others at any time as its address for service.

8.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

(a) if delivered by hand, at the time of delivery;
(b) if sent by post, on the second Working Day after posting; or
(c) if sent by recorded delivery, at the time delivery was signed for.

8.4 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

8.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9. COSTS

The Tenant agrees to pay to the Council and County Council prior to completion of this Unilateral Undertaking their reasonable legal costs incurred in the negotiation and preparation of this Unilateral Undertaking.

10. INTEREST

If any payment to be made by the Tenant under this deed is paid late Interest will be payable from the date payment is due to the date of actual payment and the Tenant shall pay such Interest to the County Council.

IN WITNESS of which the Tenant has executed this deed on the above date.

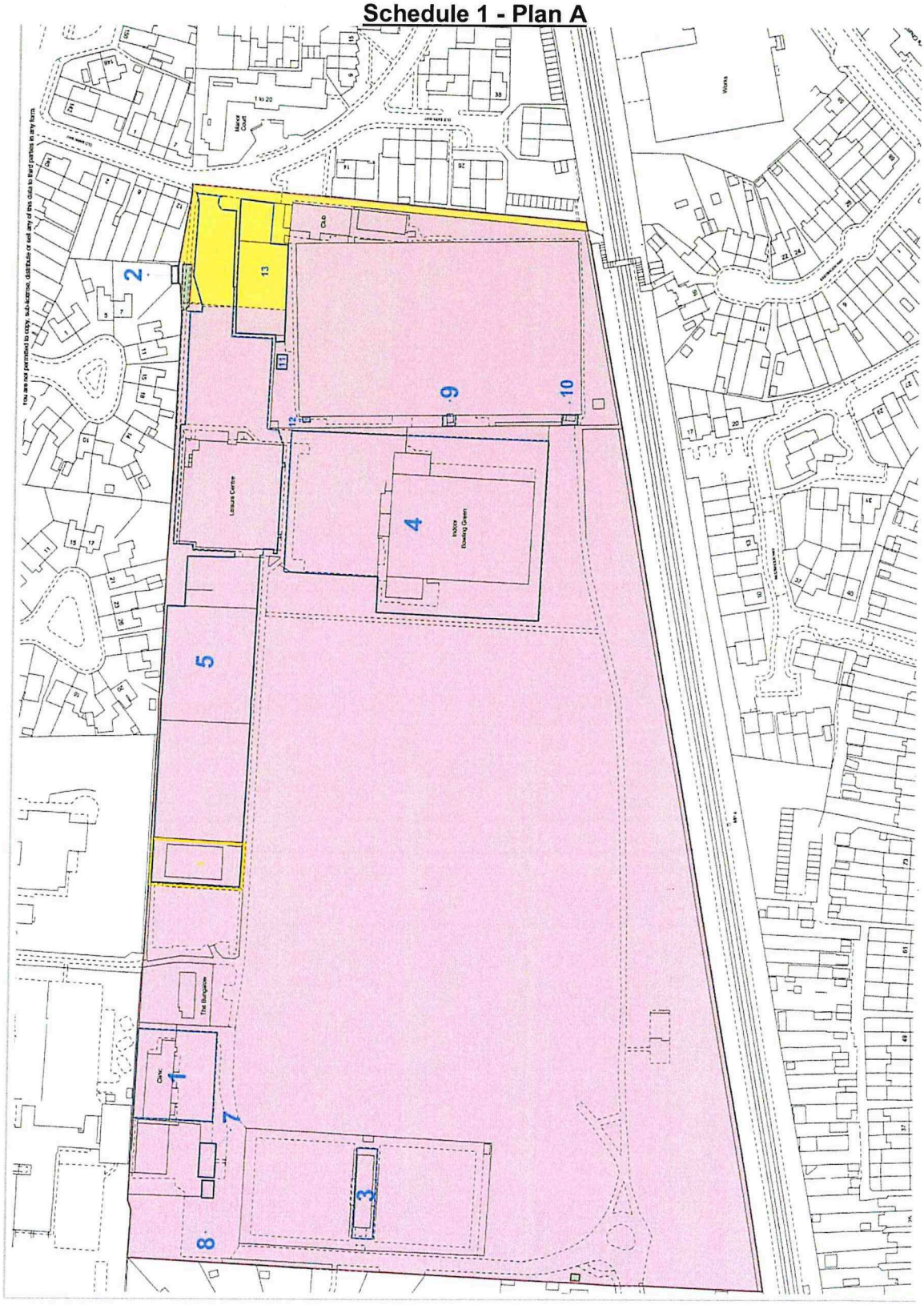
The Russell Martin Foundation

Signature:.....
in the presence of

Signature:.....

Name of Witness: Robert Sliven
Address of Witness: 36 Elizabeth Avenue
Hove. BN3 6WG

Schedule 1 - Plan A

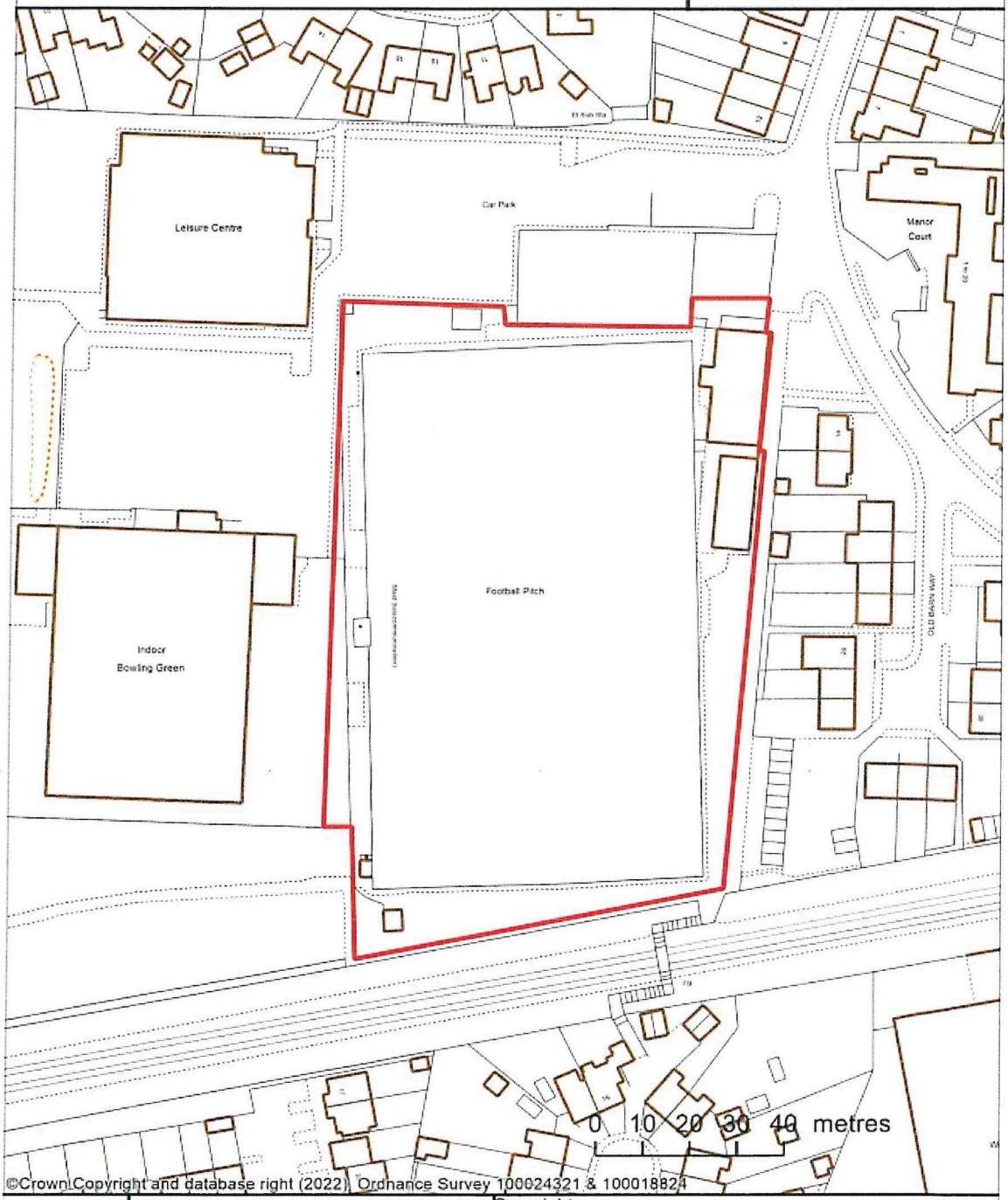


Schedule 2 - Plan B

Southwick Football Club, Old Barn Way, Southwick

16 September 2022

ADUR & WORTHING COUNCILS



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A Rice

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