

Dated 24th February 2021

ROPEMAKER PROPERTIES LIMITED

as Owner

to

ARUN DISTRICT COUNCIL

as ADC

and

WEST SUSSEX COUNTY COUNCIL

as WSCC

UNILATERAL UNDERTAKING

relating to

Section 106 of the Town & Country Planning Act 1990
and other powers Empty Supermarket Premises
Avon Road Littlehampton West Sussex BN17 6AT

WATSON FARLEY
&
WILLIAMS

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THIS UNILATERAL UNDERTAKING is made on 26th February 2021

BY

- (1) **ROPEMAKER PROPERTIES LIMITED** incorporated and registered in England and Wales with company registration Number 00759094 whose registered office is at Chertsey Road, Sunbury-on-Thames TW16 7BP (the "**Owner**")

IN FAVOUR OF

ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF ("**ADC**")

WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("**WSCC**")

BACKGROUND

- (A) The Owner is the registered proprietor of the Land.
- (B) ADC is the Local Planning Authority for the purposes of the Act and for the area in which the Land is situated and authority responsible for the provision of housing
- (C) WSCC is the Local Planning Authority for the area in which the Land is situated, and the authority responsible for the provision of education, library services and fire and rescue services.
- (D) ADC shall be responsible for enforcing this Deed so far as affordable housing matters are concerned.
- (E) WSCC shall be responsible for enforcing this Deed so far as education, library services, fire and rescue matters are concerned.
- (F) The Owner has by the Application applied to ADC for the Planning Permission to develop the Land for the Development.
- (G) ADC has resolved that subject to the completion of this Undertaking Planning Permission be granted subject to the conditions for the Development
- (H) The Owner wishes to enter into this Undertaking to give Planning Obligations to ADC and WSCC upon the terms and subject to the conditions herein.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 In this Undertaking:

- (a) Words importing the masculine include the feminine and vice versa.
- (b) Words importing the singular include the plural and vice versa.
- (c) Words importing persons include companies and corporations and vice versa.

- (d) Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- (e) Any reference to a clause or schedule or plan is to one in or attached to this Undertaking.
- (f) Any reference to a colour or letter is to be on the plan attached to this Undertaking.
- (g) 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.
- (h) References to the Owner shall include its successors in title and assigns and references to WSCC and ADC shall include successors to their respective functions.
- (i) Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.
- (j) In this Undertaking, unless the context requires otherwise, the following definitions apply:

"Act" means the Town & Country Planning Act 1990.

"Affordable Dwelling" means any Dwelling which is a form of Affordable Housing.

"Affordable Housing" means affordable housing as defined in Annex 2 Glossary of the NPPF or a ministerial statement as meeting the requirements of affordable housing planning obligation under section 106 of the Act (or any successor legislation) or the provision of which would make such a planning obligation unnecessary and may include but is not limited to:

- (a) social rented housing;
- (b) affordable rented housing;
- (c) shared ownership housing; and
- (d) intermediate housing (including intermediate rent, shared equity and low-cost homes for sale).

"Affordable Housing Commuted Sum" means the Affordable Housing Commuted Sum referred to in Schedule 3.

"Affordable Housing Plan" means a plan identifying the location of the Affordable Housing Units and the Affordable Housing Land to include the tenure mix of the Affordable Housing Units, plot boundaries, dwelling mix, garden areas and the location of parking spaces for each of the Affordable Housing Units.

"Affordable Housing Provider" means a registered provider of affordable housing registered under the Housing and Regeneration Act 2008 with the Homes England who is either on the ADC list of Approved Affordable Housing Providers (as may be published by ADC from time to time) or any company or other body approved by the Homes England for receipt of social housing grant as may be proposed by the Owner and specifically approved by ADC in writing for the purposes of this Undertaking.

"Affordable Housing Scheme" means a scheme drawn up by the Owner, setting out, in relation to the Affordable Dwellings:

- (a) the tenure mix
- (b) the dwelling mix; and
- (c) the location.

"Affordable Housing Units" means 30% of the Dwelling Units to be provided as Affordable Housing in accordance with the terms of this Undertaking comprising a target tenure split of 75% Affordable Rented Units and 25% Intermediate Housing Units (unless the tenure target is varied in accordance with an Approved Affordable Housing Plan and / or Reserved Matters Approval(s)) and **"Affordable Housing Unit"** shall be construed accordingly.

"Affordable Rented Units" means 75% of the Affordable Housing Units, a total of 8 Affordable Housing Units, consisting of Affordable Housing let by local authorities or Affordable Housing Providers to households who are eligible for social rented housing subject to rent controls that require a rent of no more than 80% of the local market rent (inclusive of service charge where applicable) or such other amount as may be prescribed by the Homes England and if rents cease to be regulated then the rent shall be agreed in writing with ADC.

"agreed" or **"approved"** means agreed or approved in writing and given for the purpose of this Undertaking.

"Application" means an application in respect of the Land for the Development and given Council reference LU/214/20/PL

"Approved Affordable Housing Plan" has the meaning ascribed in paragraph 1.1 of Schedule 3.

"CIL Regulations" means the Community Infrastructure Regulations 2010 (as amended).

"Commencement of Development" means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development but excluding for the purposes of this Undertaking any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works site clearance archaeological investigations and digs exploratory boreholes operations permitted by the Town and Country Planning General Permitted Development) Order 1995 the erection of hoardings and fencing temporary diversion of services and signage (including the formation of temporary construction accesses) and **"Commence Development"** shall be construed accordingly.

"Commencement Notice" means notice in the form annexed to this Undertaking at Schedule 1.

"Completion Period" has the meaning ascribed in paragraph 1.8(a)(v) of Schedule 3.

"CPI" means the Consumer Price Index published from time to time by the Office of National Statistics

"Development" means the demolition of existing buildings and redevelopment of site comprising 36 No-residential units (Class C3) and flexible commercial floorspace GIA (A1/ A3

and/or D1) together with the provision of car and cycle parking, landscaping and associated works.

"Dwelling Unit" means a residential dwelling forming part of the Development and **"Dwelling Units"** shall be accordingly construed.

"Education Contribution" mean the Primary Education Contribution; the Secondary Education Contribution and the Sixth Form Education Contribution.

"Fire and Rescue Contribution" means the sum of Seven Hundred and Fifty-Two Pounds (£ 752) to be paid to WSCC and to be used towards the supply and installation of additional fire safety equipment to vulnerable persons homes in Littlehampton.

"Homes England" means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act).

"Intermediate Housing Units" means 25% of the Affordable Housing Units, a total of 3 Affordable Housing Units comprising Affordable Housing for sale and rent provided at a cost above social rent but below market levels which can included shared equity (shared ownership and equity loans) other low-cost homes for sale and intermediate rent but not Affordable Rented Units.

"Land" means the Empty Supermarket Premises, Avon Road, Littlehampton BN17 6AT, registered with title number WSX 120215 and shown for identification purposes only edged red on the Plan.

"Library Contribution" means the sum of Eight Thousand Three Hundred and Forty Pounds (£8,340) to be paid to WSCC and to be used on a project to enhance library space with improved digital access at Littlehampton Library.

"Market Housing Units" means Dwelling Units within the Development which are not Affordable Housing Units and **"Market Housing Unit"** shall be construed accordingly.

"Market Value" means a figure agreed in writing between the Owners and ADC based on the average of three independent valuations each circulated having regard to the estimated amount for which the relevant Dwelling or Dwellings could reasonably be expected to sell in the open market as Market Housing Unit(s) on the date of valuation between a willing buyer and a willing seller.

"Monitoring Fee" means the sum of £900.00 payable to ADC on Commencement of Development in line with Schedule 3 paragraph 1.9 in accordance with Regulation 122(2A) of CIL in respect of the cost of monitoring in relation to the delivery of these Planning Obligations

"Mortgagee" has the meaning ascribed in paragraph 1.8(a)(i) of Schedule 3.

"Mortgagee Offer" has the meaning ascribed in paragraph 1.8(a)(ii) of Schedule 3.

"Nomination Agreement" means a Nomination Agreement entered into by the Affordable Housing Provider and ADC in respect of the Affordable Dwellings provisions substantially in the form set out in clause 1.6 of Schedule 3

"NPPF" means the National Planning Policy Framework dated 19 February 2019 (or any future guidance or initiative that replaces or supplements it).

"Occupation" means occupation of the Development for the purposes of the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration marketing and display or security purposes and **"First Occupation"** and **"Occupiers"** and **"Occupy"** and **"Occupied"** shall be construed accordingly.

"Offer" has the meaning ascribed in paragraph 1.5(a) of Schedule 3.

"Payment Notice" means a notice in the form annexed to this Undertaking as Schedule 2.

"Plan" means the plan annexed to this Undertaking as Appendix 1 "Plan".

"Planning Obligations" means the obligations, conditions and stipulations set out in 3 and 4 and **"Planning Obligation"** shall be construed accordingly.

"Planning Permission" means a planning permission for the Development granted pursuant to the Application.

"Primary Education Contribution" means a contribution of Twenty-Three Thousand Seven Hundred and Twenty-Three Pounds (£ 23, 723) to be paid to WSCC as a contribution towards additional equipment at River Beach Primary School.

"Purchase Price" has the meaning ascribed in paragraph 1.8(a)(ii) of Schedule 3.

"Qualifying Occupiers" means persons who qualify for Affordable Housing within Schedule 3 and including residents of the Arun district who are unable, to resolve their housing needs in the local private sector market because of the relationship between housing costs and income.

"Qualifying Trigger" means any trigger contained within this Deed that attracts the WSCC Monitoring Fee because its implementation and/or adherence requires monitoring by WSCC

"Reasonable Endeavours" means the Owner shall not be required to take proceedings (including any appeal) in any court, public inquiry or other hearing but subject thereto the Owner shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the Owner to perform such obligation) may be reasonable.

"Reserved Matters Approval(s)" means approval by ADC of one or more matters reserved for approval by the Planning Permission.

"Sale Notice" has the meaning ascribed in paragraph 1.7(a)(i) of Schedule 3.

"Secondary Education Contribution" means a contribution of Fifty-Four Thousand Eight Hundred and Seventy-Four Pounds (£54,874) to be paid to WSCC as its total contribution towards phase 1 of the new secondary school for Arun District.

"Sixth Form Education Contribution" means a contribution of Five Thousand Nine Hundred and Eighty-One Pounds (£5,981) to be paid to WSCC as its total contribution towards additional equipment at The Littlehampton Academy Sixth Form.

"Specified Date" means the date upon which an obligation arising under this Undertaking is to be carried out or due to be performed.

"Working Day" means a weekday (Saturdays, Sundays and public holidays days excepted) and **"Working Days"** shall be construed accordingly.

"WSCC Contributions" means the Fire and Rescue Contribution the Library Contribution and the Education Contribution

"WSCC Monitoring Fee" means the total sum of Six Hundred Pounds (£600) payable to WSCC for monitoring the delivery and performance of a Qualifying Trigger contained in this Deed over the lifetime of the Development

2 ENABLING PROVISIONS

- 2.1 This Undertaking is made 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 whether listed in the Undertaking or not.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner in this Undertaking create Planning Obligations under Section 106 of the Act and are enforceable by ADC and WSCC as local planning authorities as appropriate in accordance with Section 106 of the Act.

3 COMMENCEMENT

- 3.1 This Undertaking shall come into effect upon the date of this Undertaking but the obligations in Clauses 4, 5, and 6 are conditional on the grant of the Planning Permission by ADC and shall become effective only on the Commencement of Development or as otherwise specified in Schedule 3 and Schedule 4 and **PROVIDED THAT** the liability of the Owner shall not arise until, in pursuance of the Planning Permission, a "material operation" (within the meaning ascribed in the definition of "Commencement of Development") is carried out on the Land.
- 3.2 On Commencement of Development the Owner will give to ADC and WSCC notice in writing of that commencement in the form of the Commencement Notice addressed to ADC's Group Head of Planning and WSCC's County Planning Officer or equivalent as the case may be.

4 OWNER'S COVENANTS IN FAVOUR OF ADC

The Owner covenants with ADC so as to bind the Land to perform the obligations as set out in Schedule 3.

5 OWNER'S COVENANTS IN FAVOUR OF WSCC

The Owner covenants with WSCC to comply with the provisions of Schedule 4.

6 LIABILITY OF ROPEMAKER PROPERTIES LIMITED

- 6.1 Ropemaker Properties Limited as Owner enters into this deed as the nominee for the trustee of the BP Pension Fund and its liability to ADC and WSCC is limited to the value of the asset from time to time comprising Land.

7 CERTIFICATES

7.1 The Owner agrees with ADC and WSCC:

- (a) where this Undertaking imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date the Owner shall give ADC or WSCC notice of the Specified Date not more than seven days after such Specified Date; and
- (b) if the Owner fails to give the notice required under this Clause ADC or WSCC shall acting reasonably be entitled in their absolute discretion to determine the Specified Date and shall give notice to the Owner of that determination.

8 INDEX LINKING

8.1 Any sums payable by the Owner under this Undertaking shall be increased by the application of the following formula:

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

where:

A is the sum actually payable on the Specified Date

B is the original sum mentioned in this Undertaking

C is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the Specified Date for the WSCC Contributions and the Retail Prices Index for the ADC Contributions

D is the Building Cost Information Service National All-In Tender Price Index for the quarter preceding the date of this Undertaking and the Retail Prices Index for the ADC Contributions

$\frac{C}{D}$ is equal to or greater than 1

9 INTEREST

Interest will be paid on sums due to ADC and WSCC under this Undertaking, but not paid on the Specified Date, from the Specified Date until actual payment. The rate of interest shall be 4% above the HSBC Bank base rate from time to time.

10 PAYMENT NOTICE

All payments due under this Undertaking shall be forwarded to the payee and shall have attached to them a copy of the Payment Notice duly completed.

11 GENERAL

11.1 The Owner agrees that:

- (a) Nothing in this Undertaking constitutes an obligation to grant planning permission.

- (b) The Owner shall on completion of this Undertaking pay to ADC the reasonable legal costs incurred by ADC in the negotiation, preparation and execution of this Undertaking.
- (c) Nothing in this Undertaking grants planning permission or any other approval consent or permission required from ADC or WSCC in the exercise of any other statutory function.
- (d) Nothing in this Undertaking fetters or restricts the exercise by ADC or WSCC of any of their powers.
- (e) The obligations contained in Clauses 4 and 5 are Planning Obligations for the purpose of Section 106 of the Act.
- (f) This Undertaking constitutes a deed.
- (g) The Planning Obligations in this Undertaking are enforceable by ADC as to Clause 4 and by WSCC as to Clause 5.
- (h) Nothing in this Undertaking confers or is intended to confer a benefit on a third party under the Contracts (Rights of Third Parties) Act 1999.
- (i) This Undertaking is a Local Land Charge and shall be registered by ADC as such.
- (j) Following the performance and satisfaction of all the obligations contained in this Undertaking ADC shall as soon as reasonably practicable following a written request to do so effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Undertaking.
- (k) This Undertaking shall not be enforceable against residential owners or occupiers or tenants of Market Housing Units constructed pursuant to the Planning Permission or a person deriving title from them.
- (l) Save for the provisions of paragraph 1.1 – 1.4 of Schedule 3, this shall not be enforceable against residential owners or occupiers or tenants of Affordable Housing Units constructed pursuant to the Planning Permission or a person deriving title from them.
- (m) The Owner shall not be liable for any breach of the restrictions and obligations set out in this Undertaking where such breach arises after the Owner shall have parted with its entire interest in the Land or such part of the Land to which such breach relates save in respect of liability for antecedent breach of this Undertaking.
- (n) No covenants or obligations contained in this Undertaking shall be binding upon any part of the Land that may in future be acquired by a statutory undertaker for the purposes of its undertaking or operational land as defined in Section 262 of the Act.
- (o) If any provision in this Undertaking shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- (p) This Undertaking 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.

- (q) Where the Undertaking, approval, consent, confirmation, notification or expression of satisfaction is required by the Owners from ADC or WSCC under the terms of this Undertaking such Undertaking, approval, consent, confirmation, notification or expression of satisfaction shall not be unreasonably withheld or delayed.
- (r) Any notice or other communication required to be served under this Undertaking must be in writing and shall be deemed to be validly served if sent by recorded delivery to the principal address or registered office of WSCC and ADC or sent by email to ADC at planning@arun.gov.uk quoting the Application number and marked for the attention of the Group Head of Planning.
- (s) Nothing in this Undertaking shall prohibit or limit the right to develop the Land or any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.
- (t) In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the Act (and ADC is satisfied that no revised planning obligations are required as a result of such amendment) this Undertaking shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- (u) In the event that an application is made pursuant to Section 73 of the Act to carry out the Development without complying with a condition or conditions attached to the Planning Permission and planning permission is granted in respect of the application (and ADC is satisfied that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Undertaking shall also be to the new planning permission granted pursuant to Section 73 of the Act and this Undertaking shall apply to and remain in full force in respect of that new planning permission without the need for a further Undertaking to be entered into pursuant to Section 106 of the Act.
 - (i) The provisions of this clause 10.1(u)(i) shall not apply to any application made pursuant to Section 73 of the Act which necessitates or requires amendments to the substantive terms or Planning Obligations of or contained within this Undertaking.
 - (ii) For the avoidance of doubt ADC reserves the right to insist upon the completion of a separate Planning Obligation by Undertaking in connection with any application made pursuant to Section 73 of the Act if ADC (acting reasonably) considers it necessary to do so.
- (v) The Owner covenants to pay the WSCC Monitoring Fee on completion of this Deed and for the avoidance of any doubt the costs referred to in this Clause do not constitute or purport to constitute Planning Obligations for the purposes of Section 106 of the Act and are payable pursuant to the other statutory provisions referred to in Clause 2.

12 DISPUTE RESOLUTION

- 12.1 In the event of any dispute or difference arising between the Owner and ADC and/or WSCC in respect of any matter contained in this Undertaking such dispute or difference shall be referred to an independent Chartered Surveyor of at least fifteen (15) years standing who shall be nominated in default of agreement between the Owner and ADC and/or WSCC by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy. The determination of the independent Chartered Surveyor (including any determination as to the responsibility for the payment of his own costs and those of the Owner and ADC) shall be final and binding upon the Owner and ADC and/or WSCC and on any persons claiming through or under them and judgement upon the matter may be entered in any court having jurisdiction

or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.

12.2 In the case of any legal requirement or interpretation or other matter regarding this Undertaking the same shall be referred to Counsel of at least fifteen (15) years' experience in such matters who shall be appointed in default of agreement between the Owner, ADC and/or WSCC (as the case may be) by the Chair of the Bar Council or the Vice-Chair of the Bar Council.

12.3 The terms of reference of any Expert appointed to determine a dispute disagreement or difference shall include the following:

- i. the Expert shall call for representations from the Owner, ADC and/or WSCC within 21 days of a reference to him under this Undertaking and require the Owner, ADC and/or WSCC to exchange representations within this period;
- ii. the Expert shall allow the Owner, ADC and/or WSCC 14 days from the expiry date of the period referred to in clause 11.3(a) above to make counter representations
- iii. any representations or counter representations received out of time may be disregarded by the Expert
- iv. the Expert shall provide the Owner, ADC and/or WSCC with a written decision (including his reasons) within 28 days of the last date of receipt of counter representations and he shall be entitled to call for such independent expert as he shall think fit.
- v. the Expert's costs and the costs of any independent expert advice called for by the Expert shall be included in the award.
- vi. unless this Undertaking has already been terminated the Owner shall continue to comply with its obligations under this Undertaking regardless of the nature of the dispute for resolution pursuant to this clause 11.3(f).

13 JURISDICTION

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

14 DELIVERY

The provisions of this Undertaking shall be of no effect until it has been dated (apart from this Clause which shall be of immediate effect).

SCHEDULE 1

COMMENCEMENT NOTICE

Pursuant to Clause [●] in the Planning Obligation Described Below

I advise you that the Development described below was commenced on the Start Date stated in this Notice.

Dated: this _____ day of _____ 20

Signed: _____

On Behalf of: _____

To:	(1) Group Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF (DX: 57406 Littlehampton) or by email to planning@arun.gov.uk ; (2) County Planning Officer; West Sussex County Council, County Hall, Chichester, West Sussex PO19 1RQ
From:	
Development At:	
Nature of Development:	
Planning Permission Date & Reference:	
Planning Obligation Date & Parties:	
Start Date:	

SCHEDULE 2

PAYMENT NOTICE

Payment of Monies due under a Section 106 Planning Obligation / Undertaking

Please answer all the questions:

- 1 Payment to be made by / on behalf of
- 2 Land at
- 3 Undertaking dated
- 4 Planning application reference number (where applicable)
- 5 Obligation in Undertaking:

(a)	clause no.	
(b)	contribution towards	
(c)	amount of contribution due	
(d)	Date upon which contribution is due	
(e)	amount of contribution enclosed	
(f)	amount of Monitoring Sum	

SCHEDULE 3

OWNERS' COVENANTS IN FAVOUR OF ADC

The Owner covenants with ADC as follows:

1 Affordable Housing

- 1.1 Not to Commence Development until an Affordable Housing Plan has been submitted to and approved in writing by ADC ("**Approved Affordable Housing Plan**").
- 1.2 To provide the Affordable Housing Units in accordance with the Planning Permission and the Approved Affordable Housing Plan (subject to any amendments agreed by ADC in writing from time to time).
- 1.3 Not to Occupy more than:
 - (a) 25% of the Market Housing Units (or such other number of Market Housing Units that may be agreed in writing by ADC) until the Owners have entered into a legally binding contract with an Affordable Housing Provider for the disposal of the Affordable Housing Units (either freehold or leasehold for a period of not less than 125 years on terms which ensure that the Affordable Housing Units are and remain bound by the obligations in this Schedule (unless otherwise agreed in writing with ADC);
 - (b) 50% of the Market Housing Units (or such other number of Market Housing Units that may be agreed in writing by ADC) unless and until the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.4 Subject to paragraph 1.7(c) of this Schedule, with effect from the date on which they are completed the Affordable Housing Units shall not be Occupied other than by Qualifying Occupiers and for the avoidance of doubt this restriction shall apply not just to the first Occupier of any of the Affordable Housing Units but to all subsequent occupiers of the Affordable Housing Units.
- 1.5 **Mechanics and Terms of Transfer**
 - (a) The Owner shall make an offer ("**First Offer**") of disposal to the Affordable Housing Units to ADC which offer shall include:
 - (i) a contract for the sale of land;
 - (ii) a draft transferand shall thereafter use Reasonable Endeavours to dispose of the Affordable Housing Units to ADC
 - (b) The First Offer shall remain open for acceptance for no less than four (4) months from the date of the First Offer being made ("**First Offer Period**").
 - (c) In the event that the First Offer made in accordance with paragraph 1.5(a) above is not accepted within the First Offer Period then the Owners shall make a second offer to transfer the Affordable Housing Units to an Affordable Housing Provider ("**Second Offer**") by provision of:

- (i) a contract for the sale of land;
 - (ii) a draft transfer
- (d) The Second Offer shall consist of the same terms as the First Offer subject to revisions necessitated by the lapse of time.
- (i) The Second Offer shall be made not later than one (1) month after the expiry of the First Offer
 - (ii) The Second Offer shall remain open for acceptance for no less than (4) months from the date of the Second Offer being made (Second Offer Period)
 - (iii) In the event that the Second Offer is not accepted within the Second Offer Period then the Owner may on or before the occupation of 10 of the Market Dwellings pay to ADC the Affordable Housing Commuted Sum whereupon once such sum has been paid to ADC the Owner and any successors in title shall be released from the provisions of this paragraph 1.5 insofar as it relates to the Affordable Dwellings and the Affordable Dwellings may be sold on the open market as Market Housing Units.

PROVIDED THAT

- (A) the Owner shall have provided ADC with written evidence of their Reasonable Endeavours to dispose of the Affordable Housing Units to an Affordable Housing Provider; and
 - (B) (B) ADC shall, acting reasonably, have confirmed in writing that such Reasonable Endeavours were reasonable, or an expert shall have determined that such Reasonable Endeavours were reasonable; and
 - (C) (C) the Owner shall pay to ADC the Affordable Housing Commuted Sum for each of the Affordable Housing Units in relation to which the First and Second Offers have not been accepted within 20 working days of the end of the Second Offer Period
- (iv) The Affordable Housing Commuted Sum shall be calculated in accordance with the following formula:

$X \text{ multiplied by } Y = \text{the Affordable Housing Commuted Sum}$

Where:

$X = £80,000.00$; and

$Y = \text{the number of Affordable Dwellings which will not be provided on the Land as part of the Development in accordance with the terms of this Undertaking.}$

1.6 Nomination Rights

- (a) To procure that the Affordable Housing Provider grants nomination rights to ADC in relation to the first Occupation of all of the Affordable Housing Units and in relation to the subsequent Occupation of 75% of the Affordable Housing Units **PROVIDED THAT** if ADC does not accept

such offer then the Affordable Housing Provider shall in seeking to allocate the Affordable Housing Units have regard as far as possible to the following criteria:

- (i) any family association in the said administrative area in accordance with relevant housing allocation policies;
- (ii) any period of ordinary residence in the said administrative area not immediately before the date on which any unit of accommodation becomes vacant;
- (iii) any employment opportunity in the locality;
- (iv) any other connection with the locality; but so that for the avoidance of doubt the satisfaction of such criteria hereof shall be determined by the body responsible for the allocation of the Affordable Housing Units from time to time.

1.7 Future Provisions

- (a) Nothing in this Schedule 3 shall be construed as imposing or otherwise implying any obligation on ADC to grant or make available any public subsidy or other financial support (or to assist the Owner in obtaining such public subsidy or other financial support) in respect of the Affordable Housing Units.
- (b) The provisions of this Schedule 3 shall cease to bind any of the Affordable Housing Units if in relation to that Affordable Housing Unit:
 - (i) a statutory right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment amendment or replacement thereof) has been exercised; or
 - (ii) it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased his ownership under the lease to 100%.
- (c) In the event of any dispute as to whether any proposed occupier of any Affordable Housing Unit is a Qualifying Occupier the matter shall be determined an Expert pursuant to the provisions of Clause 13 of this Undertaking.

1.8 Mortgagee in Possession Clauses

- (a) In the event that any Affordable Housing Unit is the subject of a legal charge or mortgage and there is a default under any legal charge or mortgage of the Affordable Housing Unit then any chargee or mortgagee ("**Mortgagee**") shall be entitled to exercise its power of sale free from the restrictions set out in this Third Schedule provided that the Mortgagee shall first have followed the procedure set out below:
 - (i) The Mortgagee shall give written notice ("**Sale Notice**") to ADC of its intention to exercise its power of sale;
 - (ii) At the same time as giving the Sale Notice the Mortgagee shall make an offer ("**Mortgagee Offer**") to sell the Affordable Housing Units to ADC for an amount to be agreed or determined ("**Purchase Price**");

- (iii) ADC may notify the Mortgagee in writing within one month of the date of the offer whether or not it wishes to accept the Offer (in the case of an acceptance such acceptance to conditional upon the Purchase Price being acceptable to ADC):
- (iv) If ADC shall notify the Mortgagee within one month of the time specified in sub-paragraph 1.8(a)(iii) of this Schedule that it wishes to accept the offer then:
 - (A) the Mortgagee shall co-operate with ADC to secure the transfer; and
 - (B) ADC and the Mortgagee shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing Units but subject to all or any tenancies of the Affordable Housing Units as may be subsisting at the date of the Sale Notice and disregarding the provisions of paragraph 1.8 of this Schedule;
- (v) Subject to the provisions of sub-paragraph 1.8(a)(vi) of this Schedule the transfer to ADC or to an Affordable Housing Provider shall be completed within two months of the date the Purchase Price is agreed (or such longer period as may be agreed between the Mortgagee and ADC) or determination in accordance with sub-paragraph 1.8(a)(iv)(B) of this Schedule ("**Completion Period**");
- (vi) If the Mortgagee does not wish to exercise its power of sale at any time after giving the Sale Notice or ADC does not wish to continue with the exercise of its power under the provisions of sub-paragraph 1.8(a)(v) of this Schedule that party shall give to the other not less than seven days' written notice of its intention to discontinue.
- (vii) If either:
 - (A) ADC fails to give notification to the Mortgagee within the time specified in sub-paragraph 1.8(a)(iii) of this Schedule; or
 - (B) having given notification of refusal of the Offer in accordance with sub-paragraph 1.8(a)(iii) of this Schedule ADC fails to give notification to the Mortgagee within the time specified in sub- paragraph 1.8(a)(iii) of this Schedule; or
 - (C) ADC having complied with the time periods specified in sub- paragraph 1.8(a)(iii) of this Schedule the transfer to either ADC or to an Affordable Housing Provider shall not be completed within the Completion Period; or
 - (D) ADC shall serve notice of its intention to discontinue under sub- paragraph 1.8(a)(vi) of this Schedule

then the Mortgagee shall be under no obligation to sell the Affordable Housing Units either to ADC or to an Affordable Housing Provider and shall be entitled to exercise its power of sale without any of the provisions of this Schedule being binding on the purchaser or purchasers of the Affordable Housing Units or any part thereof or any successor in title hereto.

The rights and obligations in this paragraph 1.8 shall not require the Mortgagee to act contrary to its duties under the charge or mortgage or the interests of the Mortgagee in respect of monies outstanding under the charge or mortgage

1.9 ADC Monitoring Fee

- (a) Prior to the Commencement of the Development to pay to ADC the Monitoring Fee.
- (b) Shall not cause or permit the Development to be commenced until the Monitoring Fee has been paid to ADC.

SCHEDULE 4

OWNERS' COVENANTS IN FAVOUR OF WSCC

The Owner covenants with WSCC as follows:

1 WSCC Contributions

1.1 To pay the WSCC Contributions to WSCC as follows:

1.2 Fire and Rescue Contribution.

- (a) To pay to WSCC the Fire and Rescue Contribution Index Linked on or before the Commencement of Development.
- (b) Not to cause or allow the Commencement of the Development to occur before the Fire and Rescue Contribution has been paid to WSCC.
- (c) If the Fire and Rescue Contribution is not paid to WSCC on or before the relevant payment date to pay to WSCC in addition Interest from the relevant payment date until the actual date of payment and any such interest shall be treated as part of the Fire and Rescue Contribution.

1.3 Library Contribution.

- (a) To pay to WSCC the Library Contribution Index Linked on or before the Commencement of Development.
- (b) Not to cause or allow the Commencement of the Development to occur before the Library Contribution has been paid to WSCC.
- (c) If the Library Contribution is not paid to WSCC on or before the relevant payment date to pay to WSCC in addition Interest from the relevant payment date until the actual date of payment and any such interest shall be treated as part of the Library Contribution.

1.4 Education Contribution

- (a) To pay to WSCC the Education Contribution Index Linked on or before the Commencement of Development.
- (b) Not to cause or allow the Commencement of the Development to occur before the Education Contributions have been paid to WSCC.
- (c) If the Education Contribution is not paid to WSCC on or before the relevant payment date to pay to WSCC in addition Interest from the relevant date until the actual date of payment and any such interest shall be treated as part of the Education Contribution.

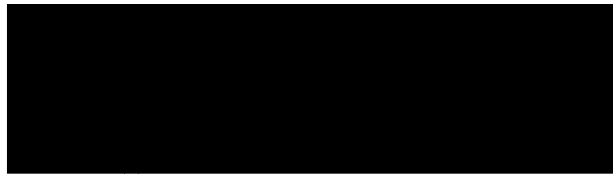
EXECUTION PAGE

EXECUTED as a DEED
by ROPEMAKER PROPERTIES LIMITED
acting by its attorney
HETAN GANATRA
in the presence of:

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)
)
)
)
)
)



Signature of Witness:



Name:

Jayanti Ganatra

Address:

3 Cherryfield Avenue H16 BFL

Witness's occupation:

* Financial Advisor

APPENDIX 1

PLAN

