

Dated

2017

(1) Finch Investments Limited

TO

(2) Cheltenham Borough Council

AND

(3) Gloucestershire County Council

UNILATERAL UNDERTAKING

pursuant to s.106 of the Town and Country Planning Act 1990

In relation to land at

Old Gloucester Road,

Cheltenham, Gloucestershire

17/01411/OUT

THIS DEED is made the day of two thousand and seventeen

BY:

(1) FINCH INVESTMENTS LIMITED (Isle of Man Company Registration Number: 005660C) whose registered address is First Floor, Milbourn House, 13A St. Georges Street, Douglas, Isle of Man, IM1 1AJ ("**the Owner**")

TO:

(2) CHELTENHAM BOROUGH COUNCIL of PO Box 12, Municipal Offices, Promenade, Cheltenham, Gloucestershire, GL50 1PP ("**the Council**")

(3) GLOUCESTERSHIRE COUNTY COUNCIL of Shire Hall Westgate Street Gloucester GL1 2TG ("**the County Council**").

INTRODUCTION

1. The words and phrases used in this Deed are defined in Clause 1
2. The Council is the Local Planning Authority for the purposes of the Act
3. The County Council is the Children and Families Authority and the Libraries Authority for Gloucestershire
4. The Owner is registered as the proprietor of the freehold of the Site with Absolute Title at the Land Registry under Title No. GR256925
5. The Owner has submitted the Application to the Council
6. The Owner has agreed to enter into this Deed in accordance with Section 106 of the Act in order to facilitate the Development and deliver the necessary Planning Obligations as set out in this Deed

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the

following meanings:

- 1.1. "Act" means the Town and Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force
- 1.2. "Affordable Housing" means affordable housing as that term is described and/cr defined in Annex 2 of the National Planning Policy Framework dated March 2012 as updated from time to time or as defined in any government documentation that shall supersede it
- 1.3. "Affordable Housing Scheme" a scheme to provide Affordable Housing Units on the Site which shall be submitted to the Council pursuant to paragraph 1 Schedule 3 and shall provide the general location detail and design of each property type with size and tenure and specification of each Affordable Dwelling on a plan of the Site which are policy compliant (for the avoidance of doubt this scheme may be amended by the written agreement of Owner and Council provided that the scheme remains in accordance with the approval of the relevant Reserved Matters dealing with that Phase)
- 1.4. "Affordable Housing Units" means the Dwellings to be constructed as Affordable Housing in accordance with this Agreement together with associated parking soft landscaped areas and landscaping to private areas and being provided Fully Serviced as either Affordable Rented Units or

Shared Ownership Units at a 75/25 split respectively or such other tenure and/or split as is agreed by the Council as part of the Affordable Housing Scheme all such units to be indistinguishable in appearance to the Open Market Units and "Affordable Housing Unit" shall be construed accordingly

1.5. "Affordable Rent" means rented housing provided by a Registered Provider subject to rent controls other than the national rent scheme that requires housing to be offered at a rent (inclusive of Service Charge where applicable) of up to 80% of local Open Market Rents and using the Royal Institution of Chartered Surveyors approved valuation methods and not exceeding the Local Housing Allowance levels or the equivalent replacement assessment

1.6. "Affordable Rented Units" means Dwellings that are to be rented by the Registered Provider to Eligible Persons at an Affordable Rent and "Affordable Rented Unit" shall be construed accordingly

1.7. "Application" means the application for planning permission submitted to the Council for the Development and allocated reference number 17/01411/OUT

1.8. "Approved Purchaser" means a person or persons in need of Affordable Housing and who is registered with the Help to Buy Agent (or as otherwise approved in writing by the Council) who shall occupy the Shared Ownership

Unit as their principal or sole home and who have a Local Connection

1.9. "Commencement of Development" means 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 purposes of this Deed and for no other purpose) operations consisting of site clearance (including vegetation), 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, construction of temporary accesses or temporary works, erection of hoardings and fencing and other site security measures including the provision of site compounds, and "Commence Development" shall be construed accordingly

1.10. "Development" means the development of the Site for residential development of up to 90 dwellings (of which 40% shall be Affordable Housing), associated open space, landscaping and infrastructure, including a new vehicular access to Old Gloucester Road as set out in the Application

1.11. "Dwelling" means a dwelling to be constructed pursuant to the

Planning Permission and "Dwellings" is to be construed accordingly

1.12. "Eligible Person" means a person(s) who:

either

(i) is in need of an Affordable Rented Unit and who is registered on the Homeseeker Plus Scheme and meets the criteria set out within the allocations policy of the Homeseeker Plus Policy; and has a Local Connection; or

(ii) is approved in writing by the Council as someone otherwise in need of Affordable Housing (or as otherwise approved by the Council)

1.13. "Help to Buy Agent" means the Government appointed help to buy agent from time to time or any person exercising the functions that are now the duty of the help to buy agent that determines eligibility for occupation of Shared Ownership Units

1.14. "Fully Serviced" means the Affordable Housing Units shall be provided with full service provision as are the Open Market Units which shall include as appropriate vehicular access and parking foul and surface water drainage mains water gas electricity and telecommunications access to allow the Occupation of the Affordable Housing Units which shall be

connected into the appropriate services constructed for the remainder of the Development

1.15. "Index" means the cost multiplier issued by the Department for Education (DfE) or by any other Department Ministry or other body upon which the duties in connection with that index devolves being the cost per pupil for the construction of accommodation to provide additional pupil places and supplemented by the Building Cost Information Service Public Sector Tender Price Index issued by the Royal Institution of Chartered Surveyors in the years when the DfE Multiplier is not published

1.16. "Indexation" means a sum calculated by reference to any percentage increase in the Index set out below between the publication immediately before the date hereof and the date upon which the payments are actually paid to the County Council

1.17. "Interest" means interest at 3 per cent above the base lending rate of the Barclays Bank Plc from time to time

1.18. "Libraries Contribution" means the sum of Seventeen Thousand, Six Hundred and Forty Pounds (£17,640) to be paid by the Owner to the County Council in accordance with the provisions of the First Schedule, towards improving local library provision in Up-Hatherley Library, Cheltenham, Gloucestershire

1.19. "Local Connection" means a local connection (as defined in section 199

of the Housing Act 1996 and in accordance with the Homeseeker Plus Policy and any timescales contained in the Homelessness Code of Guidance for Local Authorities or any replacement thereof) in the following order of priority and with a local connection to:

(i) the administrative area of the Council,

(ii) the Gloucestershire administrative area

But if no persons qualify pursuant to (i) or (ii) above, the occupation must be to a person or persons ordinarily resident in the United Kingdom and who is approved in writing by the Council in 5 Working Days from receipt of their application on to Homeseeker Plus Scheme or with the Help to Buy Agent as being in need of Affordable Housing and such consent not to be unreasonably withheld or delayed




1.20. "Management Company" means a management company the principal objects of which are to maintain and enhance the On Site Open Space

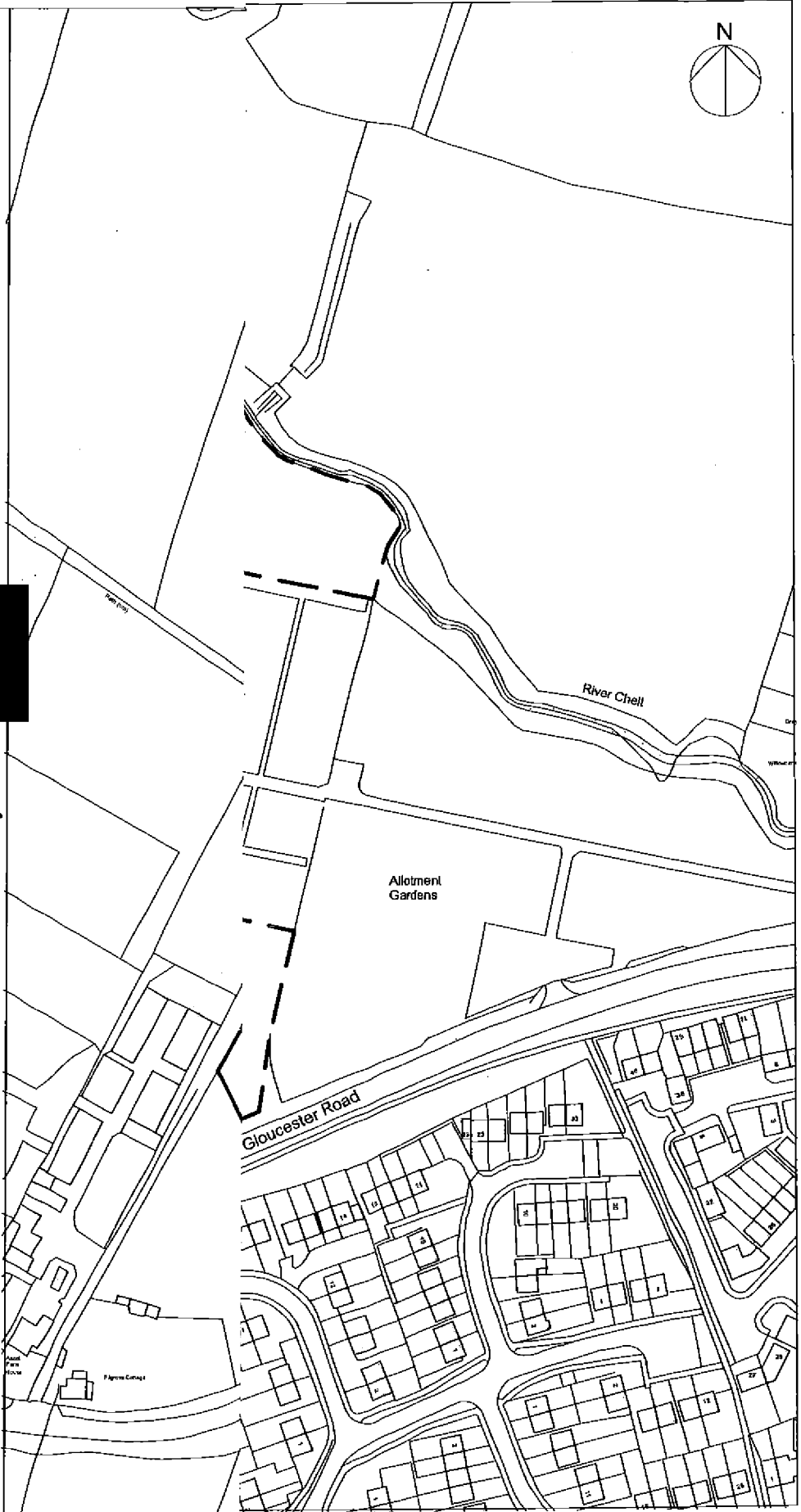
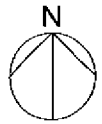
1.21. "Occupation" and "Occupied" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" and "Occupier(s)" shall be construed

accordingly

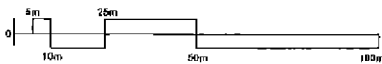
- 1.22.** On Site Open Space means the means the public open space to be provided on the Site in accordance with condition of the Planning Permission as agreed between the Owner and Council in accordance with the provisions of the Fourth Schedule
- 1.23.** "Open Market Unit" means the Dwellings for sale on the open market to the general public forming part of the Development that are not Affordable Housing Units and "Open Market Units" shall be construed accordingly
- 1.24.** "Open Market Value" means the value of the Open Market Units achievable for that type of property in that area at that time
- 1.25.** "Phase" means that part of the Development which is included in a Reserved Matters application consisting of one or more parts of the Site
- 1.26.** "Plan" means the plan attached to this Agreement marked 'Plan'
- 1.27.** "Planning Permission" means the planning permission (if any) granted by the Council in respect of the Application and includes the plans thereto and any duly authorised non-material amendments thereto
- 1.28.** "Primary Education Contribution" means the sum to be paid by the Owner to the County Council in accordance with the provisions of Part A of the Second Schedule, to be used towards the expansion of the existing primary schools at

LEGEND

-  existing building
-  Development Site under Application
-  Potential Further Development Phases



ANDREW HUNTER
AS DIRECTOR OF
FINCH INVESTMENTS
LTD



Notes
Do NOT scale off this drawing.

of any discrepancies immediately.

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CH DEVELOPMENT,
Gloucester Road, Cheltenham.
idential Development

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Drawing Title
Location Plan

Drawn HD	Date MAY 2017	Scale 1:2000 @ A3
Job Number 1552.17	Work Stage PLANNING	
Drawing Number AL.P.001	Rev. A	

Hesters Way Primary School or Springbank Primary School to extend, remodel, upgrade and improve its capacity and suitability to allow for an additional 20 places to be provided, or alternatively to build such capacity into the new primary school planned as part of the West Cheltenham strategic development such sum to be calculated in accordance with the Primary Education Formula

1.29. "Primary Education Formula" means a sum determined in accordance with the housing mix of Dwellings approved by the Council pursuant to Reserved Matters in relation to the Planning Permission as follows:

- £367.00 per flat of 2 or more bedrooms; and
- £3,799.00 per house of 2 or more bedrooms

such sum to be increased by Indexation

1.30. "Registered Provider" means a provider of social housing as defined by Part 2 of the Housing and Regeneration Act 2008 or other entity providing Affordable Housing under equivalent arrangements who is approved or accredited by the Homes and Communities Agency or similar successor body

1.31. "Reserved Matters" means one or more applications for detailed approval under the Application

1.32. "Secondary Education" means the sum to be paid by the Owner to the County Council in accordance with the provisions of

Contribution" Part B of the Second Schedule, to be used towards the expansion of the existing secondary school facilities at All Saints Academy, Cheltenham for capital works to extend, remodel, upgrade and improve its capacity and suitability to allow for additional places to be provided if required, such sum to be calculated in accordance with the Secondary Education Formula

1.33. "Secondary Education Formula" means a sum determined in accordance with the housing mix of Dwellings approved by the Council pursuant to Reserved Matters in relation to the Planning Permission and which shall include only those Dwellings which have not yet been made available for Occupation as of 1st September 2023 as follows:

- £48.00 per flat of 2 or more bedrooms; and
- £2,635.00 per house of 2 or more bedrooms

such sum to be increased by Indexation

1.34. "Shared Ownership Units" means those Affordable Housing Units identified in the approved Affordable Housing Scheme as being provided by a Registered Provider for sale by way of a standard Homes and Communities Agency model Shared Ownership Lease applicable to shared ownership accommodation granted on a premium payable on completion or raised by mortgage or charge under which the initial purchaser

acquires an initial share of the equity in that Affordable Housing Unit and pays a rent element if required by the Registered Provider and which permits staircasing and be at a cost level that is affordable having regard to local income and local house prices

1.35. "Site" means the land against which this Deed may be enforced as shown edged red on the Plan for identification purposes only

1.36. "Working Day(s)" means any day except Saturday and Sunday or a bank holiday or any days which in England and Wales are public holidays.

2. CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner

2.4 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 unless there is an express provision otherwise

- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory functions
- 2.7 "including" means including without limitation.
- 2.8 References to "the Site" include each and every part thereof
- 2.9 The clause headings herein do not form part of this Deed and shall have no effect upon the meaning or construction of the provisions of this Deed
- 2.10 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not knowingly and willingly to cause permit or suffer the doing of that act or thing

3. LEGAL BASIS

- 3.1 This Deed is entered into pursuant to section 106 of the Act. To the extent that the obligations fall within the terms of section 106 of the Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council and/or the County Council (as the case may be)
- 3.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are intended to be enforceable by the Council and / or County Council pursuant to powers contained in section 111 of the Local Government Act 1972, section 1 of

the Localism Act 2011 and all other enabling powers

- 3.3 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and County Council as local planning authorities

4. CONDITIONALITY

- 4.1 This Deed shall be (save for Clauses 6.1, 6.2, 6.3, 6.5, 7, 11 and 12 which shall be of immediate effect) (and subject to Clause 4.2) conditional on and shall only take effect on the grant of the Planning Permission

- 4.2 The covenants within Clause 5 of this Deed are conditional upon the Commencement of Development

5. THE OWNER'S COVENANTS

To the extent that it affects its interest in the Site, the Owner covenants with the County Council as set out in the First Schedule and Second Schedule, and the Owner covenants with the Council as set out in the Third Schedule, and Fourth Schedule

6. MISCELLANEOUS

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

- 6.2 The Owner hereby consents to the registration of the Deed as a local land charge

- 6.3 Any notices required to be given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid recorded delivery post to the principal address or registered office (as appropriate) of the relevant

party and shall be deemed to have been served as follows:

6.3.1 If personally delivered, at the time of delivery; and

6.3.2 If sent by recorded delivery post, 48 hours after the envelope was delivered into the custody of the postal authority within the United Kingdom

6.4 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.

6.5 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

6.6 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 or any other one relating to the Development) granted (whether or not on appeal) after the date of this Deed

6.7 Nothing in this Deed shall be construed as restricting the exercise by the Council and / or County Council of any powers exercisable by it under the Act in the exercise of its functions as either a local planning authority, local housing authority, local waste collection authority education or libraries authority or other authority.

7. WAIVER

No waiver (whether expressed or implied) by the Council and / or County Council of any breach or default in performing or observing any of the

covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and / or County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

8. CHANGE IN OWNERSHIP

The Owner will each give to the Council and County Council immediate written notice of any change in ownership of any of their respective interests in the Site occurring before all the obligations under this Deed 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(s) of occupation purchased by reference to a plan Provided That this obligation shall not apply to any transfers of individual Dwellings nor any transfer to a statutory undertaker or service or utility company

9. 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

10. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

11. JURISDICTION

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

12. DELIVERY

The provisions of this Deed (save this clause) shall be of no effect until it has been dated.

13. EXCLUSIONS/LIABILITY FOR BREACH OF COVENANTS

13.1 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 or that part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the reservation of any rights of access and/or to lay or maintain equipment shall not constitute an interest in the Site for the purpose of this Clause 13.1

13.2 This Deed shall not be enforceable against:

13.2.1 any residential owner-occupiers or tenants of the Dwellings nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing (save for those provisions of this Deed that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged); or

13.2.2 any statutory undertaker or service company who acquires an interest in the Site for the purposes of its undertaking.

14. WARRANTY

The Owner hereby warrants to the Council and County Council that as at the date hereof they have not leased mortgaged charged or otherwise created any interest in the Site other than those already identified in the recitals of this Deed.

15. DISPUTE RESOLUTION

15.1 In the event of any dispute or difference relating to any matter contained in this Deed any party to the dispute (including successors in title to the parties to this Deed) may, by serving notice of the same on the other party or parties, require it to be referred for determination by an Expert (who will act as an expert not an arbitrator) appointed under clause 15.2 below, acting in accordance with clauses 15.3 to 15.9

15.2 If the parties do not make the appointment of the Expert by agreement within 14 days of service requiring reference of the dispute, the Expert shall be nominated upon the application of either party by the President (or other officer to whom the making of such appointment is for the time being delegated) of the Law Society and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than 10 years

15.3 Unless the Expert shall direct to the contrary, not more than 28 days after his appointment the parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon

15.4 The Expert shall be at liberty to visit the Site relevant to the dispute unaccompanied and to call for such written evidence from the parties as he may require

15.5 The Expert shall not, unless he directs to the contrary, hear oral representations from any party to the dispute

15.6 The Expert shall fully consider all submissions and evidence when making his decision

15.7 The Expert shall give his decision in writing and shall give reasons

15.8 The Expert shall use reasonable endeavours to give his decision and the

reason for it as speedily as possible and in any event within 42 days of his appointment.

15.9 The Expert's decision (save in the case of manifest or legal error) including his decision as to costs shall be final and binding. The Expert's fees shall be payable by the parties in such proportions as he shall determine and in default of such determination equally between them.

16. SECTION 73 VARIATION

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in respect of the conditions relating to the Planning Permission, save and in so far as the Deed has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Deed to the Application shall (save for the purposes of the definition of Planning Permission in relation to clauses 4.1, 6.6 and 6.7) be deemed to include any such subsequent planning applications as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

17. EVIDENCE OF COMPLIANCE

In addition and without prejudice to the proper exercise at any time by the Council and / or County Council of any of its statutory powers functions or discretions in relation to the Site or otherwise the Owner shall if and when required by the Council and / or County Council from time to time provide the Council and / or County Council (without charge and within ten Working Days) with such information including any copies of any documents as the Council and / or County Council may reasonably request for the purpose of ascertaining whether there has been compliance with or

any breach of the requirements of this Deed and the Schedules hereto

IN WITNESS whereof the parties hereto have executed and delivered this Deed on the day
and year first before written

FIRST SCHEDULE

Libraries Contribution

The Owner covenants with the County Council:

1. To pay to the County Council the Libraries Contribution to be used for the purposes specified in this Agreement within six months of the Commencement of Development
2. Not to cause or permit or allow six months to expire from the Commencement of Development unless the Libraries Contribution (together with any interest thereon for late payment if any) has been paid to the County Council.
3. To notify the County Council of the anticipated date of the Commencement of Development at least 5 Working Days before the anticipated date and to notify the County Council of the actual date of Commencement of Development within 5 Working Days of such date

SECOND SCHEDULE

Education Contribution

The Owner covenants with the County Council:

Part A: Primary Education Contribution

1. To pay to the County Council the Primary Education Contribution to be used for the purposes specified in this Agreement as follows:
 - a. An initial payment of Seventy-Five Thousand Pounds (£75,000) to be paid to the County Council within 6 months of Commencement of Development; and
 - b. A second payment of Seventy-Five Thousand Pounds (£75,000) to be paid to the County Council prior to Occupation of the thirtieth (30th) Dwelling; and
 - c. A third payment of Seventy-Five Thousand Pounds (£75,000) to be paid to the County Council prior to Occupation of the sixtieth (60th) Dwelling; and
 - d. The remainder of the Primary Education Contribution (including, for the avoidance of doubt, all Indexation, to be paid to the County Council prior to Occupation of the eightieth (80th) Dwelling
2. Not to cause or permit or allow:
 - a. six months to expire from the Commencement of Development unless the initial payment of the Primary Education Contribution has been paid to the County Council pursuant to paragraph 1(a) of this Second Schedule (together with any interest thereon for late payment if any);
 - b. Occupation of the thirtieth (30th) Dwelling until the second payment of the Primary Education Contribution has been paid to the County Council pursuant to paragraph 1(b) of this Second Schedule (together with any interest thereon for late payment if any);
 - c. Occupation of the sixtieth (60th) Dwelling until the third payment of the Primary Education Contribution has been paid to the County Council pursuant

- to paragraph 1(c) of this Second Schedule (together with any interest thereon for late payment if any);
- d. Occupation of the eightieth (80th) Dwelling until the Primary Education Contribution has been paid in full to the County Council pursuant to paragraph 1(d) of this Second Schedule (together with any interest thereon for late payment if any);
3. To notify the County Council of:
- a. the anticipated date of Commencement of Development at least 5 Working Days before the anticipated date and to notify the County Council of the actual date of the Commencement of Development within 5 Working Days of such date;
 - b. first Occupation of the thirtieth (30th) Dwelling at least 5 Working Days before the anticipated date and to notify the County Council of the actual date of Occupation within 5 Working Days of such date;
 - c. first Occupation of the sixtieth (60th) Dwelling at least 5 Working Days before the anticipated date and to notify the County Council of the actual date of Occupation within 5 Working Days of such date;
 - d. first Occupation of the eightieth (80th) Dwelling at least 5 Working Days before the anticipated date and to notify the County Council of the actual date of Occupation within 5 Working Days of such date;

Part B: Secondary Education Contribution

1. To notify the County Council of the number of Dwellings permitted pursuant to the Planning Permission which have not been made available for Occupation by 1st September 2023 no later than 5 Working Days of such date and to submit the Owner's calculation of relevant amount of the Secondary Education Contribution payable for the County Council's approval

2. To pay to the County Council the Secondary Education Contribution to be used for the purposes specified in this Agreement no later than 31st December 2023
3. Not to cause or permit or allow 31st December 2023 to expire unless the Secondary Education Contribution (together with any interest thereon for late payment if any) has been paid to the County Council

THIRD SCHEDULE

Affordable Housing

The Owner covenants with the Council:

1. Prior to Commencement of Development to submit to the Council for approval the proposed Affordable Housing Scheme and the Owner may submit as many as it may choose until one is approved
2. The Affordable Housing Units shall be provided in accordance with the relevant approved Affordable Housing Scheme and approved Reserved Matters (which may be amended from time to time by written agreement between the Owner and the Council) and shall be provided and occupied in accordance with the tenures hereinafter shown unless agreed otherwise in writing with the Council.
3. The Affordable Rented Units shall be let at an Affordable Rent and the Shared Ownership Units shall only be occupied under a Shared Ownership Lease and the details of the Open Market Value of the Shared Ownership Units shall be provided in writing to the Council 28 Working Days prior to being advertised to prospective purchasers
4. To provide 40% of the Dwellings as Affordable Housing Units but for the avoidance of doubt if the Planning Permission is amended or modified with the result that the number of Dwellings is increased or decreased from 90 dwellings the number of Affordable Housing Units shall be recalculated but the number shall not be less than 40% of the total number of Dwellings rounded to the nearest whole number PROVIDED FURTHER that at each and every Phase of the Development the Owner shall ensure that 40% (Forty Percent) of the Dwellings in such Phase are Affordable Housing Units unless otherwise agreed in writing by the Council

- 5 To provide 75% of the Affordable Housing Units as Affordable Rented Units and 25% of the Affordable Housing Units as Shared Ownership Units unless otherwise agreed in writing by the Council
- 6 To ensure that the Affordable Housing Units on any Phase shall not be Occupied until they are transferred to a Registered Provider in accordance with paragraph 16 below
- 7 Not to cause or permit the Occupation of more than 50% of the Open Market Units until 50% of the Affordable Housing Units have been completed and made available for Occupation and transferred to a Registered Provider on the terms set out at paragraph 16 below and not to cause or permit the Occupation of more than 90% of the Open Market Units until all of the Affordable Housing Units have been completed and made available for Occupation and transferred to a Registered Provider on the terms set out in paragraph 16 below
- 8 Not to permit the letting and Occupation of any Affordable Housing Unit other than to an Eligible Person in the case of the Affordable Rented Units and an Approved Purchaser in the case of the Shared Ownership Units otherwise than in accordance with this Schedule
- 9 Not to permit the letting of each of the Affordable Rented Units to an Eligible Person unless
 - a. On the first letting of each of the Affordable Rented Units the Council shall at all times be entitled to nominate the Eligible Person for 100% of the Affordable Rented Units;
 - b. On subsequent re-lettings of the Affordable Rented Units the Council shall at all times be entitled to nominate the Eligible Person for three out of every four or 75% of the Affordable Rented Units subsequently rented with

the remainder lettings made by the Registered Provider in accordance with the requirements of this Undertaking (unless otherwise agreed between the Registered Provider and the Council) and the details thereof shall be provided in writing annually to the Council (on a date to be agreed when the Affordable Housing is completed and transferred to a Registered Provider) and at the same time details of the lettings for the remaining 25% of relet Affordable Rented Units shall be reported to the Council

- 10 No service charge will apply to the Affordable Housing Units unless all elements of the service charge are eligible for housing benefit or equivalent and the service charge has been approved in advance in writing by the Council (unless otherwise agreed in writing between the Owners and the Council)
- 11 Not to permit the Affordable Housing Units to be used for any other purpose than as Affordable Housing in accordance with this Agreement subject always to paragraph 12 below
- 12 The covenants contained in this Agreement shall not be binding on a lender in possession ("the Lender") or a receiver appointed by such Lender (including administrative receivers) of all or any of the Affordable Housing Units or a bona fide purchaser for value thereof from such a Lender or receiver (except in the case of a purchaser which is a Registered Provider) or the successors in title of such purchaser PROVIDED that the following procedure is followed:
 - a. The Lender shall give notice in writing to the Council and the Registered Provider of its intention of exercising any power of sale or leasing and shall offer the Affordable Housing Units to the Council and other Registered Providers at a consideration representing in its opinion the open-market value thereof at the date of the notice subject to any leases or tenancies subsisting and shall use reasonable endeavours over a period of three months from the

date of receipt of the notice to dispose of the Affordable Housing Units to the Council or a Registered Provider

- b. If such disposal has not completed (despite the Lender or receiver acting reasonably and this being evidenced to the Council's satisfaction) within three months of the notice being given under paragraph 12(a) above the Lender or receiver may sell the Affordable Housing Units upon the open market free of any restrictions

PROVIDED THAT at all times the rights and obligations in this Schedule shall not require the Lender or any receiver appointed thereby (or any successors in title thereto) to act contrary to their duties under the charge or mortgage nor to dispose of the Affordable Housing Units for a consideration less than the monies outstanding under the mortgage or charge

- 13 The covenants in this Schedule shall not be binding on:
 - (i) any person exercising a statutory right to acquire (or equivalent contractual right) any of the Affordable Rented Units or any person deriving title through or under such person; or
 - (ii) any person holding an interest in Shared Ownership Unit from time to time in the event such person by exercising any right to staircase or redeem acquires 100% of his landlord's interest in the Shared Ownership Unit or any person deriving title through or under such person
- 14 Notwithstanding the other provisions of this Schedule regarding the tenure of the Affordable Housing Units, if after using reasonable endeavours no person(s) in Affordable Housing need have been identified or reasonable offers received in respect of the acquisition of an Shared Ownership Unit within 6 months from the date on which it is initially offered to the market (or such other time period agreed in writing

by the Council), such Shared Ownership Unit may additionally be offered by the initial Registered Provider as an Affordable Rented Unit

15 To provide written confirmation to the Council no more than 10 Working Days before the following trigger events are due to occur:

15.1 Commencement of Development

15.2 First Occupation of an Affordable Housing Unit

16 The completed Affordable Housing Units shall be transferred:

16.1 with vacant possession

16.2 Subject to any easement wayleaves and rights over on or under the Affordable Housing Units as may exist as at the date of this Agreement

16.3 Free from any charge or other encumbrances which would prevent the use of the Affordable Housing Units as Affordable Housing

16.4 With full title guarantee

16.5 Cleared of debris and building materials

16.6 With all necessary rights of access and services

16.7 At a price agreed between the Registered Provider and the Owner; and

16.8 Each party shall bear its own costs of negotiation and exchange of contracts

FOURTH SCHEDULE

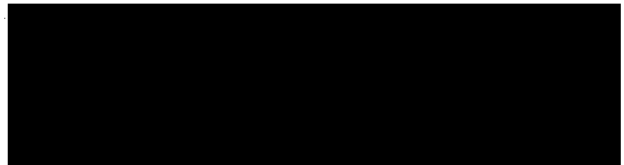
Public Open Space

The Owner covenants with the Council:

1. From the time the On Site Open Space is completed in accordance with the plan approved pursuant to condition of the Planning Permission until such time as the On Site Open Space is transferred to a Management Company to ensure that the On Site Open Space is maintained in accordance with any conditions attached to the Planning Permission and with all health and safety requirements in force from time to time and is available at all times for use by the general public at large
2. Not to occupy more than 75% of the Dwellings until the On Site Open Space has been transferred to the Management Company free from encumbrances and together with all necessary rights of access and easements and the On Site Open Space shall be transferred upon the following terms:
 - (a) consideration of £1 (one pound)
 - (b) such transfer to contain a restrictive covenant expressed to be for the benefit of the freehold of the remainder of the Site and each and every part thereof to the effect that the On Site Open Space shall not be used for purposes other than open space for public recreation
3. Following the transfer of the On Site Open Space ensure that the On Site Open Space is available at all times for use by the general public at large for a period in perpetuity and to the satisfaction of the Council

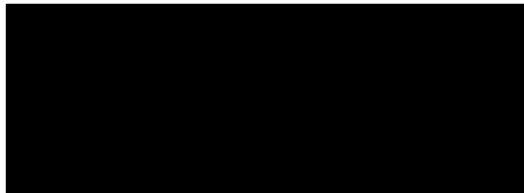
SIGNED AS A DEED by
FINCH INVESTMENTS LIMITED

Acting by on Director



Director

in the presence of



Signature of witness

Name of Witness

MARION LAMONT

Address of witness

PO BOX 307, EXCHANGE HOUSE

54/62 AITH ST, DUBLIN 11

IDLE OF MAN

Occupation of Witness

CHARTERED ACCOUNTANT