

DATED

2022

ROBERT HITCHINS LIMITED

PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING

Under Section 106 of the Town and Country Planning Act 1990

-Relating to-

Land at Oakley Farm, Priors Road, Cheltenham

Planning Application Ref. 20/01069/OUT

Planning Appeal Ref: APP/B1605/W/21/3273053

(Maintenance Contribution)

THIS DEED is made the day of 2022

BY

ROBERT HITCHINS LIMITED (Co. Regn. No.00686734) whose registered office is at The Manor Boddington Cheltenham Gloucestershire GL51 0TJ ("the **Owner**")

creating planning obligations enforceable by **CHELTENHAM BOROUGH COUNCIL** of Municipal Offices, 77 Promenade, Cheltenham, Gloucestershire GL50 1PJ ("the **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 Owner is registered as the proprietor of the freehold of the Site at the Land Registry under title number GR215822 as more particularly described in the First Schedule
4. The Owner has appealed to the Secretary of State against the Council's non determination of the Application
5. The Owner enters into this Deed with the intent that any objections of the Council to the grant of planning permission are overcome

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. "Application" means the application for outline planning permission submitted to the Council for the Development and allocated reference number 20/01069/OUT and appeal reference APP/B1605/W/21/3273053

- 1.3.** “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 investigations for the purpose of assessing ground conditions archaeological investigations 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 during construction including the provision of site compounds, and “Commence Development” shall be construed accordingly
- 1.4** “Development” means residential development of up to two hundred and fifty (250) residential dwellings associated infrastructure, ancillary facilities, open space and landscaping. Demolition of existing buildings. Creation of new vehicular access from Harp Hill as set out in the Application
- 1.5** “Dwelling” means a dwelling to be constructed pursuant to the Planning Permission (and for the avoidance of doubt includes the affordable housing units and the open market units) and “Dwellings” is to be construed accordingly
- 1.6** “Index” means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

1.7	“Interest”	means interest at three per cent (3%) above the base lending rate of the Barclays Bank Plc from time to time
1.8	“Maintenance Contribution”	means the sum of up to twenty five thousand pounds (£25,000.00) to be paid by the Owner to the Council for use towards the future costs of re-pointing and maintaining the historic reservoir wall that forms part of the eastern boundary of the Site (as shown between points A – B on the Plan) and the pavilion within the curtilage of the said historic reservoir
1.9	“Monitoring Fee”	means the sum of five hundred pounds (£500.00) to be paid by the Owner to the Council to monitor compliance with this Deed
1.10	“Occupation(s)” 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 during construction and “Occupied” and “Occupier(s)” shall be construed accordingly
1.11	“Plan”	means the plan attached to this Deed marked drawing number 333.L.2 and entitled Section 106 Maintenance Contribution
1.12	“Planning Permission”	means the planning permission (if any) granted by the Council or the Secretary of State or Secretary of State's inspector in respect of the Application and includes the approved plans thereto and any duly authorised non-material amendments thereto
1.13	“Site”	means the land against which this Deed may be enforced as shown edged red on the Plan for identification purposes only and as more particularly described in the First Schedule

1.14 "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 deriving title through or under that party and in the case of the Council the successors to its 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

3. LEGAL BASIS

The Owner enters into this Deed as registered proprietor with title absolute of the freehold of the Site with the intent that the obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act, enforceable by the Council

4. CONDITIONALITY

4.1 This Deed is (save for Clauses 2.1 to 2.9, 6.1, 6.2, 6.3, 6.5, 7, 8, 9 and 10 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 undertakings within Clause 5 of this Deed are conditional upon the Commencement of Development

5. THE OWNER'S UNDERTAKINGS

The Owner undertakes with the Council as set out in the Second Schedule

6. MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed

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

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

6.4 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 or last known address of an

individual (as appropriate) of the relevant party and shall be deemed to have been served as follows:

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

6.4.2 If sent by recorded delivery post, forty eight (48) hours after the envelope was delivered into the custody of the postal authority within the United Kingdom

6.5 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

6.6 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 expires prior to the Commencement of Development the Planning Permission (without the consent of the Owner) is modified by any statutory procedure or development of the Site is undertaken pursuant to another planning permission granted after the date of this Deed insofar as it has not already been complied with or should have been complied with

6.7 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

6.8 Any Contribution referred to in this Deed shall be increased or decreased by an amount equivalent to the increase or decrease in the Index from the date hereof until the date on which such Contribution is paid

6.9 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

7. WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the obligations terms or

conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the 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 give to the Council immediate written notice of any change in ownership of 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 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. JURISDICTION

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

10. DELIVERY

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

11. EXCLUSIONS/LIABILITY FOR BREACH

11.1 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 11.1

11.2 The obligations hereunder shall not be enforceable against:

11.2.1 the owners and/or occupiers of an individual Dwelling or those deriving title from them;

11.2.2 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services

11.2.3 a chargee (and its successors) of any Registered Provider (which expression shall mean a housing association or other body which is registered with the Homes England as a social landlord) or residential occupier of an Affordable Housing Unit (which expression shall mean dwellings constituting affordable housing within the meaning of Annex 2 to the National Planning Policy Framework (February 2019)) taking possession or effecting a power of sale under a charge in default

12. WARRANTY

The Owner hereby warrants to the Council that as at the date hereof it has not leased mortgaged charged or otherwise created any interests in the Site other than those contained mentioned or referred to in title number GR215822 as at the 27 May 2021

13. 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

14. EVIDENCE OF COMPLIANCE

In addition and without prejudice to the proper exercise at any time by the 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 from time to time provide the Council (without charge and within ten (10) Workings Days) with such information including any copies of any documents as the 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 this document has been executed and delivered as a Deed on the day
and year first before written

FIRST SCHEDULE

Details of the Owner's Title and Description of the Site

Registered land under title number GR215822 held at the Land Registry, Gloucester Office, being all that freehold land known as Oakley Farm, Priors Road, Cheltenham, GL52 5AQ and shown for identification purposes edged red on the Plan

SECOND SCHEDULE

The Owner's Undertakings

1. To pay to the Council such amount of the Maintenance Contribution as is required to meet the costs of re-pointing and maintaining the historic reservoir wall that forms part of the eastern boundary of the Site (as shown between points A – B on the Plan) and the pavilion within the curtilage of the said historic reservoir, if called upon to do so within 5 years of the date of this Deed
2. To pay to the Council the Monitoring Fee on or prior to Commencement of Development
3. To give written notice to the Council upon the happening of the following events:
 - 3.1 Commencement of Development
 - 3.2 Payment of the Maintenance Contribution

THE COMMON SEAL of

ROBERT HITCHINS LIMITED

was hereunto affixed in the presence of:

.....

Director

.....

Director/Company Secretary