

DATED

2022

**ROBERT HITCHINS LIMITED**

and

**GLOUCESTERSHIRE COUNTY COUNCIL**

**PLANNING OBLIGATION BY WAY OF AGREEMENT**  
**under S106 of the Town and Country Planning Act 1990 (as amended) S278 of the**  
**Highways Act 1980 Section 111 of the Local Government Act 1972 and Section 1 of**  
**the Localism Act 2011**  
**(Transport and Infrastructure obligations only)**  
  
in respect of Land at Oakley Farm, Priors Road, Cheltenham

Planning Application Reference 20/01069/OUT  
Planning Appeal Ref: APP/B1605/W/21/3273053

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**THIS DEED** is made the

day of

2022

**BETWEEN**

1. **ROBERT HITCHINS LIMITED** (Co. Regn. No. 0686734) whose registered office is at The Manor, Boddington, Cheltenham, Gloucestershire GL51 0TJ (“the **Owner**”)
2. **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall, Westgate Street, Gloucester GL1 2TG (“the **Council**”)

**WHEREAS:**

- (1) The Owner is the Registered Proprietor of the Land with absolute title subject only to the matters set out in the Title Registers but otherwise free from incumbrances and as more particularly described in Schedule 1 of this Deed
- (2) The Owner proposes to carry out the Development on the Land
- (3) The Owner enters into this Deed in order to secure the planning obligations contained within it in relation to highways and other infrastructure provision only in the event that the Permission is granted; The Owner will enter into a separate planning obligations with regards to education and libraries provisions by way of a Unilateral Undertaking which will be completed on the same date as this Deed
- (4) The Owner will enter into separate planning obligations with Cheltenham Borough Council which will be completed on the same date as this Deed
- (5) The Council is
  - (a) a Local Planning Authority as defined in the Act and the Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act; and

- (b) the Highway Authority for Gloucestershire (other than for special and trunk roads)

**NOW THIS DEED WITNESSETH** as follows:

**DEFINITIONS AND INTERPRETATION**

1.(a) In this Deed the following expressions shall have the following meanings:

<b>'Act'</b>	means the Town and Country Planning Act 1990 and any re-enactment or amendment thereof for the time being in force
<b>'Appeal'</b>	means an appeal under Planning Appeal Reference APP/B1605/W/21/3273053
<b>'Application'</b>	means an application made to Cheltenham Borough Council and registered under number 20/01069/OUT for residential development of up to 250 residential dwellings, associated infrastructure, ancillary facilities, open space and landscaping. Demolition of existing buildings. Creation of new vehicular access from Harp Hill and currently subject to the Appeal
<b>'CIL Regulations'</b>	means the Community Infrastructure Levy Regulations 2010 (as amended)
<b>'Commencement Date'</b>	<p>means the date which any material operation as defined in Section 56 of the Act forming part of the Development begins to carry out other than (for the purposes of this Deed and for no other purpose):</p> <ul style="list-style-type: none"> <li>• operations consisting of site clearance (including vegetation),</li> <li>• demolition work,</li> <li>• archaeological investigations,</li> <li>• investigations for the purpose of assessing ground conditions,</li> <li>• remedial work in respect of any contamination</li> </ul>

	<p>or other adverse ground conditions,</p> <ul style="list-style-type: none"> <li>• diversion and laying of services,</li> <li>• erection of any temporary means of enclosure,</li> <li>• the temporary display of site notices or advertisements</li> <li>• construction of temporary accesses or temporary works</li> <li>• erection of hoarding and fences and other site security measures during construction including the provision of site compounds</li> </ul> <p>and "<b>Commence</b>" "<b>Commenced</b>" and "<b>Commencement of Development</b>" shall be construed accordingly</p>
<b>'Community Infrastructure Levy'</b>	means the community infrastructure levy pursuant to the CIL Regulations (or similar tax, levy, tariff or charge relating to the grant of planning permission)
<b>'Contributions'</b>	means the <ul style="list-style-type: none"> <li>• Order for Conversion of Footway to Cycleway Contribution; and</li> <li>• Travel Plan Implementation and Monitoring Contribution</li> </ul>
<b>'Development'</b>	means development of the Land in accordance with (or largely in accordance with) the Permission
<b>'Dwelling'</b>	means a dwelling built as part of the Development (and reference to a numbered dwelling such as 1 <sup>st</sup> or 50 <sup>th</sup> shall have the ordinary meaning thereof and shall be construed accordingly)
<b>'First Occupied'</b>	means the date when a Dwelling becomes liable for Council Tax or any replacement thereof and ' <b>First Occupation</b> ' shall be construed accordingly

<b>'Highway Agreement'</b>	means an agreement between the Owner and the Council entered into pursuant to inter alia the provisions of Section 278 and/or Section 38 of the Highways Act to secure the Works
<b>'Index (Trans)'</b>	<p>means:</p> <ul style="list-style-type: none"> <li>• the Retail Prices Index (Motoring) ('RPI(M)' as published by the Office of National Statistics or by any other Department Ministry or other body upon which the duties in connection with that index devolves; or</li> <li>• in the event that the Office for National Statistics ceases to compile or publish the said RPI(M) Index such other index as the parties shall agree or in default of agreement such index as shall be determined for the purposes of this Deed as being an index which gives an accurate indication of the rate of inflation of prices in the UK from month to month</li> </ul>
<b>'Indexation'</b>	means application of the relevant index or RPI to the respective contribution in relation to clause 6
<b>'Inspector'</b>	means the inspector appointed by the Secretary of State or Minister for Housing, Communities and Local Government appointed to determine the Appeal
<b>'Land'</b>	means the freehold land known as Oakley Farm, Priors Road, Cheltenham, GL52 5AQ being the land comprised in Land Registry title number GR215822 and shown for the purposes of identification only edged red on the Plan
<b>'Late Payment Interest'</b>	means a rate calculated on a daily basis and compounded quarterly from the due date until payment at five per cent (5%) per annum over Bank of England base rate from time to time in force

<b>'Notice of Commencement'</b>	means written notification from the Owner to the Proper Officer through the S106 Monitoring Officer of the Commencement Date in accordance with the provisions of this Deed
<b>'Order for Conversion of Footway to Cycleway Contribution'</b>	means the sum of Five Thousand pounds (£5,000.00) to be used towards the cost of funding the Order
<b>Order</b>	the Order for the creation of the B4075 Priors Road pedestrian/cycle linkage as shown for illustration purposes only on drawing number H628/08 Rev A (of which a copy is annexed to this Deed)
<b>'Permission'</b>	means planning consent granted pursuant to the Application (whether or not granted on appeal)
<b>'Plan'</b>	means the plan annexed to this Deed and marked drawing number 333.L.1
<b>'Proper Officer'</b>	means the Director of Economy, Environment and Infrastructure or such other Chief Officer as shall from time to time be responsible for highways and infrastructure functions of the Council
<b>'Repayment Interest'</b>	means interest repaid at the Sterling Overnight Index Average (also known as SONIA) (as compiled by the Bank of England) then subsisting calculated annually at the end of each financial year to ascertain the simple average interest rate for that year from the date of payment until the date of repayment (net of tax if such deduction is required by the guidance in respect thereof issued by Her Majesty's Government at the date of such refund)
<b>'S106 Monitoring Officer'</b>	means that officer of the Council appointed from time to time with the role of monitoring the compliance of the Owner or other persons with the

	provisions of this Deed
<b>‘Title Registers’</b>	means the registers of title number GR215822 referred to in Schedule 1 as at 27 <sup>th</sup> May 2021 timed 11:26:44
<b>‘Travel Plan’</b>	means a plan to deliver a modal shift away from the private car in favour of public transport and other means of travel including walking and cycling which has been approved by the Council in line with the Residential Travel Plan submitted by the Owner in connection with the Planning Application and the definition includes any amendments or variations of the same
<b>‘Travel Plan Implementation and Monitoring Contribution’</b>	means the sum of sixty four thousand five hundred pounds (£64,500) to be used in relation to the implementation and monitoring of the Travel Plan including the employment of a person or organisation to co-ordinate the Travel Plan
<b>‘VAT’</b>	means the tax referred to in the Value Added Tax Act 1994 or any tax of a similar nature which is introduced in substitution for or as an addition to such tax from time to time
<b>‘Working Days’</b>	means any day except Saturday or Sunday or a Bank Holiday or any day which in England and Wales are public holidays
<b>‘Works’</b>	<p>means the:</p> <ul style="list-style-type: none"> <li>• relocation of bus stops;</li> <li>• provision of bus shelters;</li> <li>• improvements to the footways and crossing; and</li> <li>• widening of the existing footway along the B4075 Priors Road</li> </ul> <p>all as identified for illustrative purposes only on drawing number H628/08 Rev A (of which a copy is annexed to this Deed) to facilitate pedestrian/cycle</p>



	linkages as shown on the said drawing
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- (b) The Development shall be deemed to be commenced on the Commencement Date
- (c) Where the context so admits
  - (i) words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa (and where more than one party undertakes an obligation all such obligations can be enforced against all and any parties so undertaking)
  - (ii) where reference is made to a statutory provision this includes all prior and subsequent enactments amendments and modifications relating to that provision and any sub-ordinate legislation made under it
- (d) The expressions "the **Council**" and "the **Owner**" shall include their respective successors in title and assigns and in the case of the Council its successors in statutory function
- (e) All headings in this Deed are for ease of reference only and are not part of this Deed nor are they intended to be used as a guide to its interpretation
- (f) Any phrase introduced by the terms '**including**' '**include**' '**in particular**' or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms
- (g) This Deed shall cease to have effect (insofar only as it has not already been complied with or should have been complied with)

- (i) if the Permission shall be varied quashed revoked or otherwise withdrawn or it expires prior to the implementation of the Permission;  
or
  - (ii) the Permission (without the consent of the Owner) is modified by any statutory procedure; or
  - (iii) development of the Land is undertaken pursuant to another planning permission granted after the date of this Deed
- (h) Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission or any other one relating to the Development) granted (whether or not on appeal) after the date of this Deed

#### **STATUTORY PROVISIONS**

- 2.(a) The parties hereby agree that this Deed constitutes a planning obligation for the purposes of Section 106 of the Act and inter alia made pursuant to Section 278 of the Highways Act 1980, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and any other enabling powers
- (b) This Deed is entered into in pursuance of and is a planning obligation for the purpose of Section 106 of the Act and is entered into by the Owner in respect of the Land and their respective successors and assigns and is enforceable by the Council.

### **CONDITIONALITY**

- 3.(a) (Save for this clause and clauses 1, 2, 12 - 20 inclusive which shall be of immediate effect) the provisions of this Deed is conditional on and shall only take effect on the grant of the Permission
- (b) the provisions of clause 5 of this Deed are conditional upon Commencement of Development
- (c) in the event that the Application falls to be determined by the Secretary of State or by an Inspector appointed by the Secretary of State (as to the whole or any part of this Deed, as appropriate) the obligations hereunder are conditional upon the Secretary of State or the Inspector appointed by the Secretary of State not stating in his report that the provisions are irrelevant or not required in order to grant Permission or are not compliant with the CIL Regulations (and any provision in this Deed that the Inspector determines does not meet the policy tests set out in the CIL Regulations shall from the date of such determination not be enforced) UNLESS such decision is quashed following a successful legal challenge

### **EXCLUSIONS/LIABILITY FOR BREACH**

- 4.(a) It is intended that no party shall be liable for any breach of any restriction or obligation contained in this Deed after it shall have parted with its interest in the Land or the part of the Land to which the breach relates but without prejudice to liability for any subsisting breach arising prior to the parting with such interest for which it shall continue to be liable FOR THE AVOIDANCE OF DOUBT the reservation of any rights of access and/or to lay or maintain

equipment shall not constitute an interest in the Land for the purposes of this Clause

- 4.(b) The obligations hereunder shall not be enforceable against:
- (aa) the owners and/or occupiers of an individual Dwelling or those deriving title from them;
  - (bb) any statutory undertaker or other person who acquires any part of the Land or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services
  - (cc) 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 and Communities Agency 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 (July 2021)) taking possession or effecting a power of sale under a charge in default
- 4.(c) It is intended that no party shall be liable for any breach of any restriction or obligation contained in this Deed unless they hold an interest in that part of the Land in respect of which the breach occurs but without prejudice to liability for any subsisting breach arising prior to the parting of such interest for which it shall continue to be liable

### **THE PARTIES' COVENANTS**

- 5(a) The Owner covenants with the Council as set out in Part 1 of Schedule 2 of this Deed; and
- 5(b) The Council covenants with the Owner in the terms set out in Part 2 of Schedule 2 of this Deed

### **INDEXATION**

6. Any contribution referred to in this Deed shall be increased or decreased by an amount equal to the increase or decrease in the Index (Trans) in respect of the particular contribution set out in this Deed from the publication immediately before the date hereof to the publication immediately before the date on which such contribution is payable

### **LATE PAYMENT INTEREST**

7. If any sum payable under the terms of this Deed is not paid at the time specified herein the Owner shall pay to the Council Late Payment Interest on such sum at the Late Payment Interest rate

### **VAT**

8. All payments in accordance with the terms of this Deed shall be exclusive of any VAT payable in respect thereof

### **NOTICES**

9. Any notice to:

- (a) the Owner under this Deed shall be in writing signed by the Assistant Director of Legal Services for the time being of the Council unless otherwise herein provided and shall be deemed to be sufficiently served if sent to it by registered or recorded delivery post; and
- (b) the Council under this Deed shall be in writing and shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the Council addressed to the Assistant Director of Legal Services Gloucestershire County Council Shire Hall Westgate Street Gloucester GL1 2TG

**NOTICE (OF COMMENCEMENT AND OTHER PAYMENT TRIGGERS)**

10. The Owner shall:

- (a) write to the S106 Monitoring Officer no less than twenty eight (28) days before the Owner:
  - (i) expects commencement of the Development to occur; and
  - (ii) expects First Occupation of the 50<sup>th</sup> Dwelling to occurnotifying the Council of the respective expected trigger event referred to above; and
- (b) within seven (7) days of the actual:
  - (i) Commencement Date; and
  - (ii) First Occupation of the 50<sup>th</sup> Dwellingshall serve on the S106 Monitoring Officer notice of the respective trigger event referred to above;

and the Owner acknowledges that the S106 Monitoring Officer is at liberty to elect a date which it considers to be the Commencement Date and the date

of First Occupation of the 50th Dwelling in default of the Owner's compliance with respective trigger events set out in sub-clause 10(a) and/or 10(b) above for the purposes of Clauses 6 (Indexation) and 7 (Late Payment Interest)

**EVIDENCE OF COMPLIANCE**

11. 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 Land 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) Working Days) with such information including any copies of any documents as the Council may request for the purpose of ascertaining whether there has been compliance with or any breach of the requirements of this Deed and the Schedules to it

**NON-WAIVER**

12. It is hereby agreed by the parties to this Deed that failure by the Council or the Proper Officer at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by the Owner of any of the conditions or obligations of this Deed or any failure or delay by the Council or the Proper Officer to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such condition or obligation and shall not affect the validity of this Deed or any part thereof or the right of the Council to enforce any provision and any variation of this Deed agreed between the Owner and the Council shall not vitiate the remainder of this Deed which shall remain in full force and effect subject to such amendments or amendments agreed

## **GENERAL**

13. The parties hereby agreed that:
- (a) This Deed supersedes and replaces all previous negotiations whether oral or written; and
  - (b) None of the parties has relied on any express or implied statement warranty representation or undertaking given by or on behalf of another and no collateral Deed exists between the parties; and
  - (c) Nothing herein contained excludes the liability of any of the parties in relation to fraud; and
  - (d) any planning permission that may be granted by the Cheltenham Borough Council pursuant to Section 73 of the Act varying a condition/conditions in the Permission will be bound by the terms of this Deed as if such planning permission were the Permission and without the need for a further deed under Section 106A of the Act

## **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

14. It is not intended that any third party shall have a right to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit and nor shall any such third party have a right of veto over any future variations of this Deed

## **DISPUTE RESOLUTION**



- 15.(a) In the event of any dispute or difference relating to any matter contained in this Agreement any party to the dispute (including successors in title to the parties to this Agreement) 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.(b) below, acting in accordance with clauses 15.(c) to 15.(h)
- 15.(b) If the parties do not make the appointment of the Expert by agreement within fourteen (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 ten (10) years
- 15.(c) Unless the Expert shall direct to the contrary, not more than twenty-eight (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.(d) The Expert shall be at liberty to visit the Land relevant to the dispute unaccompanied and to call for such written evidence from the parties as he may require
- 15.5 The Expert shall fully consider all submissions and evidence when making his decision
- 15.(e) The Expert shall give his decision in writing and shall give full reasoning to support such decision

17.(f) The Expert shall use reasonable endeavours to give his decision and the reason for it as speedily as possible and in any event within forty-two (42) days of his appointment

15.(g) 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

#### **EFFECT OF INVALIDITY ILLEGALITY OR ENFORCEABILITY**

16. If any provision in this Deed 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

#### **WARRANTY**

17. The Owner hereby warrants to the Council that it has not leased mortgaged charged or otherwise created any interest in the Land at the date of this Deed

#### **JURISDICTION**

18. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

#### **CONSENT TO REGISTRATION**

19. The Owner hereby consents to the registration of this Deed as a Local Land Charge

**COSTS**

20. The Owner shall upon the execution hereof pay the Council's:
- (i) charges for monitoring compliance with this Deed in the sum of £500; and
  - (ii) reasonable legal fees in negotiating the terms of this Deed

**SCHEDULE 1  
DETAILS OF LAND OWNERSHIP**

TITLE NUMBER	PROPRIETOR
Freehold land at Oakley Farm, Priors Road, Cheltenham being all of the land comprised in Land Registry title number GR215822	The Owner

**SCHEDULE 2  
THE CONTRIBUTIONS AND WORKS**

**PART 1A – THE OWNER’S OBLIGATIONS**

1. The Owner shall pay the Contributions to the Council (plus Indexation (in accordance with Clause 6) and Late Payment Interest (in accordance with Clause 7) if applicable) as set out below:

Type of Contribution	Lump sum or Instalments	Trigger
(a) Order for Conversion of Footway to	One lump	• On or before

	Cycleway Contribution	sum	Commencement of Development
(b)	Travel Plan Implementation and Monitoring Contribution	One lump sum	<ul style="list-style-type: none"> <li>• On or before Commencement of Development</li> </ul>

**PART 1B – THE OWNER’S OBLIGATIONS**

1. To enter into a Highway Agreement with the Council for the adoption of the Works within three (3) months of technical approval of the Works having been issued by the Council; and
2. Not to cause or permit the First Occupation of the 50<sup>th</sup> Dwelling until a Final Certificate has been issued pursuant to the Works approved by the Highways Agreement

**PART 2 – THE COUNCIL’S OBLIGATIONS**

APPLICATION OF THE CONTRIBUTIONS

1. The Council hereby agrees and covenants with the Owner that the Contributions will be applied for the purposes identified in this Deed unless otherwise agreed in writing by the parties.

REPAYMENT

2. In the event that all or part of the Contributions in this schedule are unspent or uncommitted ten (10) years from the date of its respective repayment

trigger (and if more than one trigger pursuant to the contribution the last trigger thereof) the Council shall return to the party by whom the payment to the Council was made any such unexpended or uncommitted sum together with Repayment Interest on the amount repaid

WORKS

3. The Council hereby agrees and covenants with the Owner to use all reasonable endeavours to:

- a. approve a scheme submission for the Works as soon as reasonably practicable; and
- b. to make and bring into effect the provisions of the Order as soon as reasonably practicable

4. The Council hereby agrees and covenants with the Owner to use all reasonable endeavours to enter into a Highway Agreement with the Owner within three (3) months of technical approval having been issued for the adoption of the Works

**IN WITNESS** whereof the parties hereto have caused this Deed to be executed the day and year first before written

Executed as a **DEED** by affixing the **COMMON SEAL** of **ROBERT HITCHINS LIMITED** in the presence of:-

}

Director

Director/ Secretary

**THE COMMON SEAL of  
GLOUCESTERSHIRE COUNTY COUNCIL**  
was hereunto affixed  
in the presence of:-



Assistant Director of Legal Services