

DATED 23 February

2022

(1) ROBERT HITCHINS LIMITED

-and-

(2) CHELTENHAM BOROUGH COUNCIL

AGREEMENT

**pursuant to s.106 Town and Country Planning Act 1990
in relation to land at Oakley Farm, Priors Road, Cheltenham
PLANNING APPLICATION REFERENCE 20/01069/OUT
PLANNING APPEAL REFERENCE APP/B1605/W/21/3273053**

(Affordable Housing)

**One Legal
Tewkesbury Borough Council
Council Offices
Gloucester Road
Tewkesbury**

THIS DEED is made the 23 day of February 2022

BETWEEN:

- (1) **ROBERT HITCHINS LIMITED** (Company Registration Number 0686734) whose registered office is at The Manor, Boddington, Cheltenham, Gloucestershire GL51 0TJ (“the Owner”); and
- (2) **CHELTENHAM BOROUGH COUNCIL** of Municipal Offices 77 Promenade Cheltenham Gloucestershire GL50 1PJ (“the Council”)

INTRODUCTION

1. The words and phrases used in this Agreement are defined in Clause 1
2. The Council is the Local Planning Authority for the purposes of the Act and is also the Housing Authority for the purposes of the Housing Act 1996 and is entitled to enforce the planning obligations contained in this Agreement
3. The Owner is registered as the proprietor of the freehold of the Site with absolute title at the Land Registry under title number GR215822
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 Agreement 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 Agreement 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 defined in Annex 2 of the National Planning Policy Framework dated July 2021 as updated from time to time or as

defined in any government documentation that shall supersede it

1.3. "Affordable Housing Land" means the land within the Site upon which the Affordable Housing is to be constructed including all curtilages and communal areas associated with it

1.4. "Affordable Housing Provider" means any one of the following:

- (a) a body that meets the definition of 'Housing Association' in section 1(1a) of the Housing Associations Act 1985; or
- (b) a private registered provider as defined in Section 80 of the Housing and Regeneration Act 2008, or body registered with the Homes England; or
- (c) a body approved or accredited by Homes England or equivalent successor body whose terms of approval or accreditation have been evidenced to the satisfaction of the Council (acting reasonably and without delay) in writing; or
- (d) any other body previously agreed in writing by the Council (acting reasonably and without delay)

1.5. "Affordable Housing Scheme" means a scheme to provide the Affordable Housing Units on the Site to be submitted to the Council pursuant to paragraph 1 of the First Schedule (and which may be amended by written agreement between the Owner and the Council provided that such scheme remains in accordance with approval of relevant Reserved Matters Application) and such scheme shall detail the location design property type size standard accessibility standards phasing and tenure of the each of the Affordable Housing Units within the Site and shall be identified on a plan of the Site and shall accord with the table within paragraph 5.1 of the First Schedule (subject to any amendments agreed to that table at the Reserved Matters Stage or otherwise by the Owner and the

Council); and shall be in accordance with the Clustering Strategy

1.6. "Affordable Housing Units"

means those Dwellings provided/to be provided as Affordable Housing comprising the Affordable Rented Units and Social Rented Units and the Shared Ownership Units together with:

- associated parking
- soft landscaped areas
- landscaping to private areas

and "Affordable Housing Unit" shall be construed accordingly

1.7. "Affordable Rent"

means rented housing provided by an Affordable Housing 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 to exceed the Local Housing Allowance levels or the equivalent replacement assessment

1.8. "Affordable Rented Units"

means Dwellings that are to be rented by the Affordable Housing Provider at an Affordable Rent to Eligible Persons and "Affordable Rented Unit" is to be construed accordingly

1.9. "Application"

means the application for outline planning permission submitted to the Council for the Development and allocated reference number 20/01069/OUT and currently subject to appeal to the Secretary of State under Planning Appeal Reference APP/B1605/W/21/3273053

1.10. "Approved Purchaser(s)"

means a person or persons in need of a Shared Ownership Unit and who are registered with the Help to Buy Agent and whose needs are not met by the market (or as otherwise approved in writing by the Council) and

who shall occupy the Shared Ownership Unit as their principal or main home and who have a Local Connection

- 1.11. "Building Regulations" means the statutorily approved regulations that are used to approve the standards of buildings in England and Wales of 2010 as amended or subsequently revised or replaced
- 1.12. "Capital Funding Guide" means the Homes England Guidance published 4 November 2016 as updated 16 July 2021 and subsequently or any replacement therefore
- 1.13. "Cat 2 " means Affordable Housing that complies with the discretionary Building Regulations as set out in Approved Document M4(2) Cat 2 (access to and use of buildings) of the Building Regulations 2010 standard current at the time of submission of the relevant application for Building Regulations approval
- 1.14. Cat M4(3)(2)(b) means Affordable Housing provided that complies with the discretionary Building Regulations standard for wheelchair user dwellings as set out in Approved Document M4(3)(2)(b) (access to and use of buildings) of the Building Regulations 2010 standard current at the time of submission of the relevant application for Building Regulations approval
- 1.15. "Clustering Strategy" means in relation to the Affordable Housing Units the location of the said Units in evenly dispersed locations across the Development with each cluster of Affordable Housing Units not exceeding ten (10) units unless otherwise agreed in writing by the Council and no group of Affordable Housing Units will be located contiguously to any other group of Affordable Housing Units (unless otherwise agreed in writing between the Owner and the Council)
- 1.16. "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

1.15. "Development"

means 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 as set out in the Application

1.16. "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

1.17. "Eligible Person(s)"

means a person or persons who either are:

- i) in need of an Affordable Rented Unit or a Social Rented Unit and are registered on the Homeseeker Plus Scheme and meet the criteria set out within the allocations policy of the Homeseeker Plus Policy; and have a Local Connection; or
- ii) approved in writing by the Council as someone otherwise in need of Affordable Housing

- 1.18. "Expert" means the independent expert appointed for the purposes of clause 14
- 1.19. "Fully Serviced" means that 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 electricity and telecommunications access to allow the Occupation of the Affordable Housing Units which shall be connected to the appropriate services constructed for the remainder of the Development
- 1.20. "Help to Buy Agent" means the Government appointed Help to Buy Agent from time to time or any body exercising the functions that are now the duty of the Help to Buy Agent that holds the register for the occupation of (inter alia) Shared Ownership Units
- 1.21. "Homeseeker Plus Policy" means the document so called and prepared and published and amended from time to time jointly by the local housing authorities in Gloucestershire and West Oxfordshire available at www.homeseekerplus.co.uk which governs the housing allocation procedure
- 1.22. "Homeseeker Plus Scheme" means a letting scheme set out in the Homeseeker Plus Policy where applicants are invited to express interest in an available home in accordance with the procedure detailed in the Homeseeker Plus Policy
- 1.23. "Homes England" means the Homes England of 110 Buckingham Palace Road London SW1W 9SA or such successor body for the time being having or being entitled to exercise the power to regulate registered providers now conferred on such organisation under the Housing and Regeneration Act 2008 or any legislation amending or replacing the same and the national government agency for the administration of affordable housing subsidy and that funds new Affordable Housing and means any

successor agency/organisation taking over such functions

1.24. "Lender"

means any mortgagee or chargee of an Affordable Housing Provider or any administrator fixed charge receiver including any receiver appointed under the Law of Property Act 1925 administrative receiver or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security

1.25 "Lettings Plan"

means a plan produced by the Council and agreed in writing with the Owner/Affordable Housing Provider setting specific lettings requirements in accordance with the Homeseeker Plus Policy in respect of the Affordable Rented Units and Social Rented Units

1.26. "Local Connection"

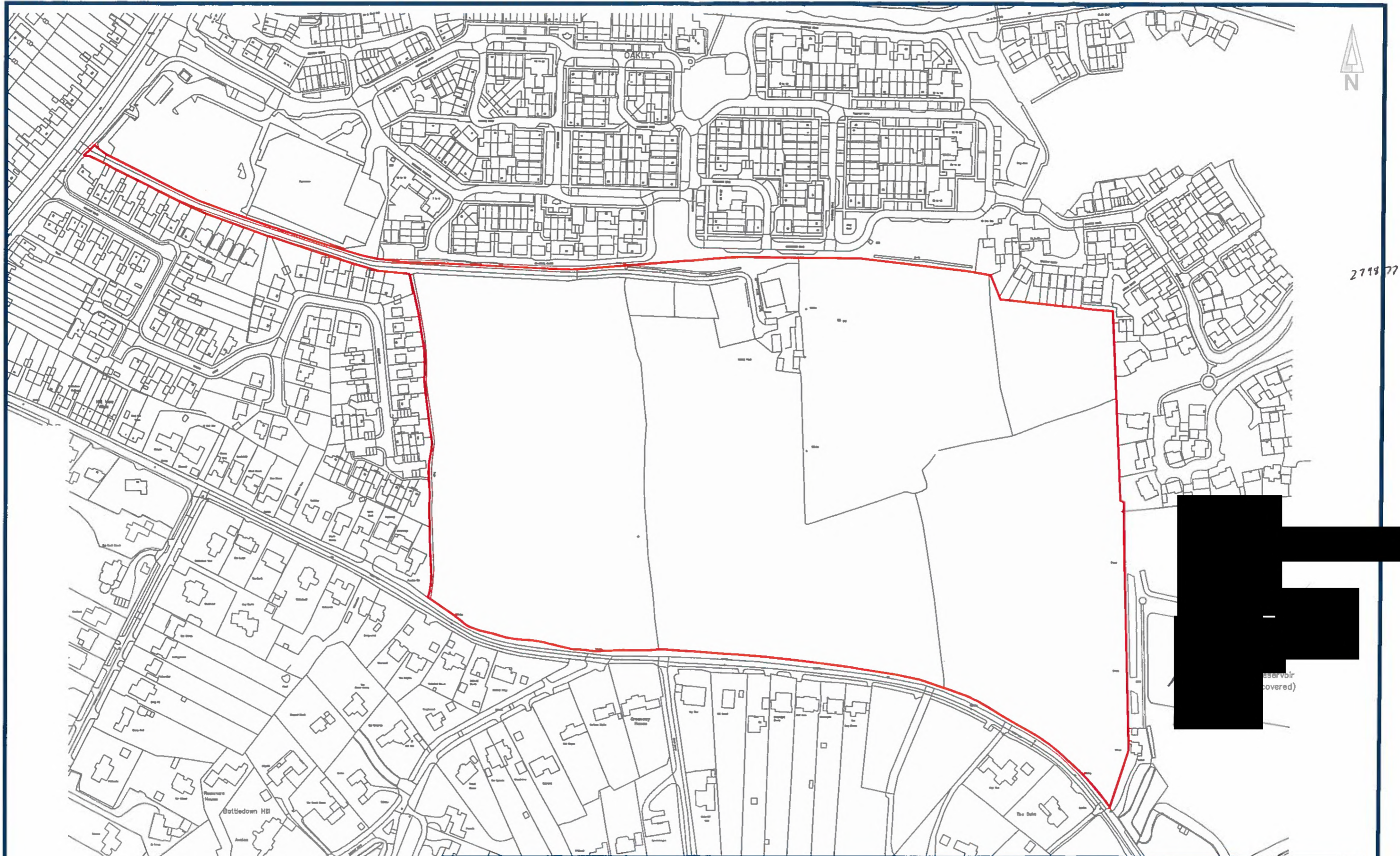
means a local connection (as defined in section 199 of the Housing Act 1996 and in accordance with any timescales contained in the Homelessness Code of Guidance for Local Authorities or any replacement thereof), in the following order of priority and with a local connection to:

- i) the administrative area of the Council, or if agreed with the Council in writing, the administrative areas of the Council, Tewkesbury Borough Council and/or Gloucester City 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 five (5) Working Days from receipt of their application on to the Homeseeker Plus Scheme or with the Help to Buy Agent as being in need of Affordable Housing and such consent shall not be unreasonably withheld or delayed

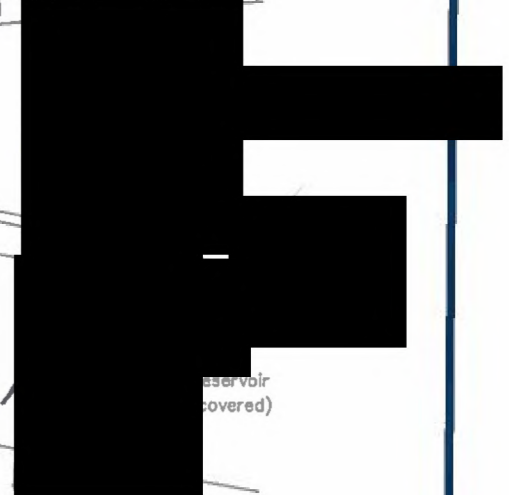
- 1.27 "Local Housing Allowance" means the rent rate set annually by the Valuation Office (or any successor body thereof) for the area within which the Affordable Rented Units and Social Rented Units are located and which is used to calculate the maximum housing benefit entitlement for each tenant thereof or any scheme which supercedes it
- 1.28 "Monitoring Fee" Means the sum of one thousand pounds (£1000.00) to be paid by the Owners to the Council to monitor compliance with this Agreement and the provisions hereof
- 1.29 "National Rent Regime" means the Government Guidance on Target Rents as set out in their advice including the Rent Standards April 2020 updated 3 December 2020 and any update modified or replacement thereof
- 1.30. "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
- 1.31. "Open Market Rent" means the rent charged for comparable properties rented on the open market (inclusive of service charges where applicable) within the same local area or such rent as valued by a qualified valuer (who is a member of the Royal Institute of Chartered Surveyors) as being the open market rent using the Royal Institute of Chartered Surveyors approved valuation methods and "Open Market Rents" shall be construed accordingly
- 1.32. "Open Market Units" means the Dwellings forming part of the Development (and assuming no restriction on use as Affordable Housing) on the Site that are not Affordable Housing Units and "Open Market Unit" is to be construed accordingly

- 1.33.** "Open Market Valuation" means the valuation of the price properly obtainable for the Dwelling (and assuming no restriction on use as Affordable Housing) on a sale at arms' length of the freehold or a long leasehold interest (as applicable) of it as would be achieved if on the open market (without restrictions on price or occupation) between a willing vendor/lessor and willing purchaser/lessee with vacant possession and free of any subleases or other encumbrances after proper marketing wherein the parties had acted knowledgeably prudently and without compulsion
- 1.34.** "Plan" means the plan attached to this Agreement marked 'Section 106 Plan (ref:333.L.1)'
- 1.35** "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
- 1.36.** "Reserved Matters Stage" means the stage of the planning process following grant of outline planning permission that deals with some or all of the outstanding details of the outline application proposal and "Reserved Matters" "Reserved Matters Application" and "Reserved Matters Approval" shall be construed accordingly
- 1.37.** "Sales Plan" means for the Shared Ownership Units a plan produced by the Owner/Affordable Housing Provider and agreed in writing by the Council setting out the price of each Shared Ownership Unit and the method of marketing the Shared Ownership Units to Approved Purchasers
- 1.38.** "Service Charge" means a reasonable charge made to the Occupiers of individual Dwellings or in the case of the Affordable Rented Units, Social Rented Units and the Shared Ownership Units a charge made to the Affordable



2719 77

Site Name: Land at Oakley Farm, Battledown	Drawing Number: 333.L.1	Revision:
Drawing Title: S106 Plan	Drawn By: SJH	Checked By: EJA
	Date: 22.06.2021	Scale: 1:2500@A3



Robert Hitchins
The Complete Development Solution
The Manor, Boddington, Cheltenham, Gloucestershire, GL51 0J
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www.robert-hitchins.co.uk

Housing Provider to cover the reasonable cost of the yearly maintenance and management of common parts communal gardens or landscaping areas of the Development that directly benefit the Affordable Housing Units to a standard reasonably required but for the avoidance of doubt shall not include any charge made in respect of the provision of health care services and utilities supplied to or used by Occupiers of an individual Dwelling

- 1.39.** "Shared Ownership" means subsidised Affordable Housing provided by an Affordable Housing Provider for sale by way of a standard Homes England 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
- 1.40.** "Shared Ownership Lease" means a standard Homes England shared ownership lease granted at a premium to be paid by the lessee or sub lessee upon completion or raised by mortgage or charge and under which the initial purchaser or lessee acquires an initial share of the equity in that Affordable Housing Unit and pays a rental element if required by the Affordable Housing Provider and which permits staircasing
- 1.41.** "Shared Ownership Unit" means Affordable Housing Units which are to be provided by way of Shared Ownership on the Affordable Housing Land
- 1.42.** "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 Second Schedule
- 1.43** "Social Rent" means rent set using a government formula, creating a 'formula rent' for each property which is calculated

based on the relative value of the property the size of the property and relative local income levels.

- 1.44** "Social Rented Units" means rented housing owned and managed by local authorities or Registered Providers for which guideline Target Rents are determined through the National Rent Regime
- 1.45** "Target Rents" means rents and service charges to be set by the Affordable Housing Provider calculated using the formula and data set out in the Ministry of Housing, Communities and Local Governments Guidance on Rent for Social Housing or any successor bodies guidance on the same;
- 1.46.** "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 Agreement 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 Agreement
- 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 Agreement 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 Agreement and shall have no effect upon the meaning or construction of the provisions of this Agreement
- 2.10. Except where expressly stated to the contrary where agreement approval consent or expression of satisfaction is required from the Council under the terms of this Agreement such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 2.11. 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

3. LEGAL BASIS

- 3.1. This Agreement is entered into as a Deed 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 Agreement are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council
- 3.2. To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into 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 Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority

4. CONDITIONALITY

- 4.1. This Agreement is (save for Clauses 2.1 to 2.10, 6.1, 6.2, 6.3, 6.5, 7, 8, 10 and 11 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 Agreement are conditional upon the first Reserved Matters Application

4.3. In the event that the Application falls to be determined by 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 Planning 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 in relation to such determination not be enforced)

5. THE OWNER'S COVENANTS

5.1. The Owner covenants with the Council as set out in the First Schedule

5.2. The Owner covenants not to develop or cause or permit the Site or any part or parts of the Site to be developed pursuant to the Planning Permission otherwise than in strict conformity with the terms of this Agreement

6. THE COUNCIL'S COVENANTS

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

6.2. The Owners hereby consent to the registration of the Agreement as a local land charge

6.3. Any notices required to be given under this Agreement 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:

6.3.1 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 Agreement 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 Agreement

6.5. This Agreement 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 or 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 Agreement insofar as it has not already been complied with or should have been complied with

6.6. Nothing in this Agreement 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 Agreement

7. WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement 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 Agreement 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. VAT

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

10. JURISDICTION

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

11. DELIVERY

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

12. EXCLUSIONS/LIABILITY FOR BREACH OF COVENANTS

12.1. No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement 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 12.1

12.2. This Agreement shall not be enforceable against:

12.2.1. any owner or occupier or tenant of the Open Market Units nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing (save for those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged);

12.2.2. save for those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged, any owner or occupier or tenant of the Affordable Housing Units nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing

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

- 12.2.4. save for those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged any Affordable Housing Provider so far as the obligations attach to those parts of the Site that do not comprise Affordable Housing Land nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing

13. 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 at 11:26:44

14. DISPUTE RESOLUTION

- 14.1. 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 14.2 below acting in accordance with clauses 14.3 to 14.9
- 14.2. 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
- 14.3. 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
- 14.4. 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
- 14.5. The Expert shall not unless he directs to the contrary hear oral representations from any party to the dispute

- 14.6. The Expert shall fully consider all submissions and evidence when making his decision
- 14.7. The Expert shall give his decision in writing and shall give reasons
- 14.8. 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.
- 14.9. 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

15. 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 Agreement has been amended by way of a deed of variation prior to the grant of such planning permission references in this Agreement to the Application shall (save for the purposes of the definition of Planning Permission in relation to clauses 4.1, 6.5 and 6.6) be deemed to include any such subsequent planning applications as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly

16. 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 Working 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 Agreement and the Schedules hereto

17 NOTICE OF COMMENCMENT

The Owner agrees that it will serve written notice on the Council of the following;

- 17.1 (a) Fourteen (14) Working Days' notice prior to the

(i) proposed Commencement of Development and

(ii) Occupation of the first Open Market Unit

(b) within seven (7) Working Days after

(i) Commencement of Development

(ii) the appointment of an Affordable Housing Provider

(iii) the completion of the transfer of the Affordable Housing Land to the
Affordable Housing Provider

(iv) Occupation of 50% of the Open Market Units and

(v) Occupation of 90% of the Open Market Units

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

FIRST SCHEDULE

The Owner's Covenants with the Council

PART I

AFFORDABLE HOUSING OBLIGATIONS

The Owner hereby covenants with the Council as follows;

General

1. Prior to or at the same time as any application for Reserved Matters Approval 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 Reserved Matters Approval and the approved Affordable Housing Scheme and Fully Serviced
3. That forty per cent (40%) of the Dwellings to be constructed as part of the Development shall be 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 or if Reserved Matters Approval is obtained for less than 250 Dwellings then the number of Affordable Housing Units shall be recalculated but the number shall not be less than forty per cent (40%) of the total number of Dwellings rounded to the nearest whole number with a tenure mix of 38% Affordable Rented Units 32% Social Rented Units and 30% Shared Ownership Units (rounded to the nearest whole number)
4. The Affordable Housing Units shall not be Occupied until the relevant Affordable Rented Units, Social Rented Units and the Shared Ownership Units that are ready to be Occupied are transferred to an Affordable Housing Provider in accordance with paragraph 11 below
5. Unless otherwise agreed at the Reserved Matters Stage (or at any other time between the Owners and the Council) (and subject to such adjustment as may be necessary where the number and tenure of

Affordable Housing Units has been recalculated pursuant to paragraph 3 above) the Affordable Housing Units shall be provided as follows:

5.1 in the following proportions:

	Social Rent	Affordable Rent (capped at LHA)	Shared Ownership	Total	%
100 (40%)					
1b2p GF Maisonette M4(2) Cat 2, 50m2.	9	0	0	9	9%
1b2p UF Maisonette, 50m2.	9	0	0	9	9%
1b2p Bungalow, M4(3)(2)(b), 60m2.	2	0	0	2	2%
1b2p Bungalow, M4(2) Cat 2, 50m2.	4	0	0	4	4%
2b4p House, 71m2.	0	0	14	14	14%
2b4p House, M4(2) Cat 2, 79m2.	0	12	4	16	16%
2b4p GF Maisonette, M4(2) Cat 2, 71m2.	0	5	0	5	5%
2b4p UF Maisonette, 71m2.	0	5	0	5	5%
3b5p House, 83m2.	0	6	8	14	14%
3b5p House, M4(2) Cat 2, 93m2.	0	6	0	6	6%
3b6p House, 95m2.	0	4	4	8	8%
4b7p House, 108m2	6	0	0	6	6%
5b8p House, 121m2	2	0	0	2	2%
TOTALS:	32	38	30	100	100%

(subject to such adjustment as may be necessary where the number of Affordable Housing Units has been recalculated pursuant to paragraph 3 above) of the type accessibility requirements and size and Occupied only in accordance with the tenures set out in this paragraph 5.1 of this Schedule except as otherwise agreed in writing with the Council at Reserved Matters Stage or otherwise and the Shared Ownership Units will only be Occupied via a Shared Ownership Lease and the Affordable Rented Units shall only be let at an Affordable Rent and Social Rented Units shall only be let at an Target Rent

6. To ensure that the Shared Ownership Units will be delivered at a level that is affordable with regard to local income and house prices the Open Market Valuation of the Shared Ownership Units shall be submitted in writing to the Council 28 days prior to being advertised to prospective purchasers
7. Not to use or permit the Affordable Housing Units to be used for any other purpose than as Affordable Housing in accordance with this Agreement
8. **Clustering Strategy**
 - 8.1 To provide the Affordable Housing Units in accordance with the Clustering Strategy
9. **Design and Construction**
 - 9.1 To ensure the seamless integration of the Affordable Housing Units amongst the Open Market Units to the extent that the Affordable Housing Units shall be generally indistinguishable in appearance from the Open Market Units in relation to the unit design parking provision and the green environmental with the soft and hard landscaping
 - 9.2 For the avoidance of doubt 40% (forty per cent) of the Affordable Housing Units will be built to Cat 2 standards and 2% (two per cent)

or a minimum of 2 (Two) Dwellings whichever is the higher of the Affordable Housing units will be built to Cat M4(3)(2)(b) standards

10. Lettings Plan and Sales Plan

10.1. Prior to the commencement of advertising any of the Affordable Rented Units and Social Rented Units the Owner shall agree the Lettings Plan in writing with the Council for the Affordable Rented Units and Social Rented Units

10.2. Within 28 days of the Shared Ownership Units being transferred to the Affordable Housing Provider and prior to the Shared Ownership Units being advertised or marketed in any way the Affordable Housing Provider shall agree the Sales Plan in writing with the Council for the Shared Ownership Units

11. Restrictions on Occupation; Lettings and Management

11.1. Not to cause or permit the Occupation of more than fifty per cent (50%) of the Open Market Units until fifty per cent (50%) of the Affordable Housing Units have been completed and made available for Occupation and that fifty per cent (50%) each of the Affordable Rented Units and Social Rented Units and the Shared Ownership Units have been transferred on the terms set out in paragraph 11.2 below and not to cause or permit the Occupation of more than ninety per cent (90%) of the Open Market Units until all of the Affordable Housing Units have been completed and made available for Occupation and all of the Affordable Rented Units and Social Rented Units and the Shared Ownership Units have been transferred on the terms set out in paragraph 11.2 below unless otherwise agreed in writing by the Council

11.2. Not to Occupy or allow the Occupation of the Affordable Housing Units unless and until:

11.2.1. the Affordable Housing Land on which the Affordable Housing Unit that is ready to be Occupied has been-transferred to an Affordable Housing Provider in accordance herewith and:

- i) at a cost that will ensure that the Affordable Rented Units will be let at Affordable Rents and Social Rented Units will be let at Target Rents and that the Shared Ownership Units will be let or sold as Affordable Housing
- ii) with a good and marketable freehold title having been deduced and the Affordable Housing Land having been transferred with full title guarantee (save that the transferor shall not be liable under the covenants implied by section 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 by reason of the Affordable Housing Land being transferred subject to disclosed subjections and all matters imposed and rights conferred by or under any statute and for the purposes of such Act all matters then recorded in registers open to public inspection shall be considered within the actual knowledge of the transferee) or in any case where the transferor only holds the legal interest to be transferred as a trustee or trustees, with limited title guarantee and with vacant possession free of any registered charges (save for this Agreement)
- iii) on the Standard Conditions of Sale (current at time of transfer) which shall apply insofar as the same are not inconsistent with the expressed terms in this Agreement with such amendments as a reasonable seller and buyer would incorporate

11.2.2 Provision has been made for a vehicular access foul and surface water sewers and water electricity and telecommunications services and all other services necessary for the occupation of each Affordable Housing Unit linking in each case to estate roads sewers and services systems to be constructed and laid as part of the remainder of the Site and connected ultimately to highways and sewers maintainable at public expense (where required) and the transfer shall include all necessary easements to be in place to use and maintain the same

- 11.3. Not to permit the letting and management of the Affordable Rented Units and Social Rented Units and the Shared Ownership Units otherwise than by an Affordable Housing Provider
- 11.4. Not to permit the letting and Occupation of any Affordable Housing Unit:
 - 11.4.1. in respect of the Shared Ownership Units other than by Approved Purchasers
 - 11.4.2. in respect of the Affordable Rented Units and Social Rented Units, other than by an Eligible Person
- 11.5. Not to permit the letting of each of the Affordable Rented Units and Social Rented Units to an Eligible Person unless:
 - 11.5.1. On the first letting of each of the Affordable Rented Units and Social Rented Units the Council shall at all times be entitled to nominate the Eligible Person for one hundred per cent (100%) of the Affordable Rented Units and Social Rented Units; and
 - 11.5.2. On subsequent re-lettings of the Affordable Rented Units and Social Rented Units the Council shall at all times be entitled to nominate the Eligible Person for seventy five per cent (75%) of the Affordable Rented Units and Social Rented Units subsequently rented, save for any units built to Cat M4(3)(2)(b) and Cat 2 where the Council shall at all times be entitled to nominate the Eligible Person for one hundred percent (100%) of these units unless otherwise agreed in writing between the Council and the Affordable Housing Provider, with the remaining lettings made by the Affordable Housing Provider in accordance with the requirements of this Agreement and details to be provided in writing annually to the Council and IN ADDITION details of the lettings for the remaining twenty five per cent (25%) shall also be reported in writing annually to the Council
- 11.6. That if at any time prior to the entering into a contract with the Affordable Housing Provider the originally agreed Affordable Housing Provider shall no longer wish to be or is not capable for any reason of so being the Affordable Housing Provider for the relevant Affordable Rented Units and Social Rented Units and the Shared Ownership

Units the Owner shall immediately give written notice to the Council specifying the reasons therefore and the Owner shall consult with the Council on an alternative Affordable Housing Provider to be appointed in their place with both parties acting reasonably and evidencing the discussions and decision in writing and as so soon as is reasonably practical arrange for them to take a novation of any (or enter into new contracts if applicable) development agreement and all other relevant rights and duties of the original Affordable Housing Provider

11.7. No Service Charge will apply to the Affordable Housing Units unless all elements of the Service Charge are eligible for Local Housing Allowance or equivalent subsequent scheme

11.8. Not to permit the Occupation and management of the Affordable Rented Units and Social Rented Units and the Shared Ownership Units otherwise than through an Affordable Housing Provider

12. **Mortgagee in Possession & Exclusions**

12.1. The affordable housing provisions in this Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or the Affordable Housing Land or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

12.1.1. such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units or the Affordable Housing Land and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units or the Affordable Housing Land to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation

including all accrued principal monies, interest and costs and expenses; and

12.1.2. if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units or the Affordable Housing Land free from the affordable housing provisions in this Agreement which provisions shall determine absolutely in respect of the said Affordable Housing Units or the Affordable Housing Land

12.2. The covenants in this Schedule shall not be binding on:

- 12.2.1. any person exercising a statutory right to acquire any of the Affordable Rented Units and Social Rented Units;
- 12.2.2. any person or occupier who staircases out to one hundred per cent (100%) ownership of any Shared Ownership Unit;
- 12.2.3. any person exercising a statutory right to buy introduced in favour of the occupiers of the Affordable Rented Units and Social Rented Units or similar statutory right introduced in favour of occupiers of them; and
- 12.2.4. any successor in title to the persons in 12.2.1 to 12.2.3

13 To pay to the Council the Monitoring Fee at or prior to the Commencement of Development

SECOND SCHEDULE

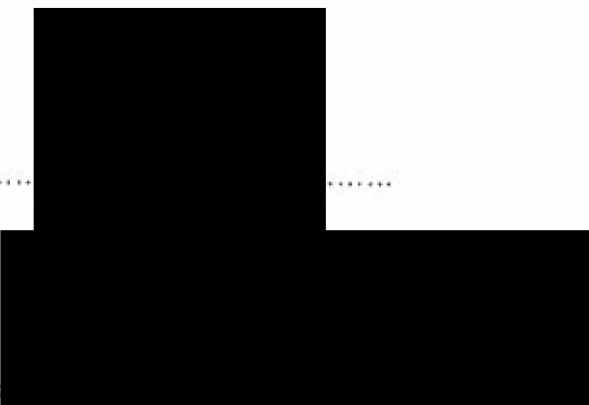
The Site

All that freehold land known as Oakley Farm, Priors Road, Cheltenham, GL52, 5AQ being the land comprised in Land Registry title number GR215822

**THE COMMON SEAL of
ROBERT HITCHINS LIMITED**
was hereunto affixed in the presence of:

.....
Director

.....
Director/~~Company Secretary~~



**THE COMMON SEAL of
CHELTENHAM BOROUGH COUNCIL**
affixed hereunto is authenticated by
undermentioned person authorised
by the Council to act for that purpose:

.....
Authorised Signatory

