

Date:

2021

UNILATERAL UNDERTAKING

GIVEN BY

**THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST
ST EDWARDS SCHOOL CHARITABLE TRUST
WILLIAM MORRISON (CHELTENHAM) LIMITED**

TO

CHELTENHAM BOROUGH COUNCIL

Pursuant to Section 106 of the
Town and Country Planning Act 1990 (as amended)

IN RESPECT OF

Land Adjacent to Oakhurst Rise,
Charlton Kings, Cheltenham
in the County of Gloucestershire

THIS DEED is made on the day of 2021

BY

(1) **THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST**, a trust body incorporated under Part 12 of the Charities Act 2011, on trust for **THE CARMELITE CHARITABLE TRUST** of Churchill House, Suite 320/321, 120 Bunns Lane, Mill Hill, London, a non-exempt charity (charity registration number 1061342) ("**the Trust**")

(2) **ST EDWARDS SCHOOL CHELTENHAM TRUST** (Company Registration Number 1961978) of Cirencester Road Charlton Kings Cheltenham GL53 8EY (charity registration number 293360) ("**the Owner**")

(3) **WILLIAM MORRISON (CHELTENHAM) LIMITED** (Company Registration Number 09900099) of Pillar House, 113/115 Bath Road, Cheltenham, Gloucestershire, United Kingdom, GL53 7LS ("**the Developer**")

WHEREAS

1. Cheltenham Borough Council (**the "Council"**) is a local planning authority for the purposes of the Act and is entitled to enforce the obligations contained in this Deed
2. The Trust is registered as the proprietor of the freehold of the Site with absolute title at the Land Registry under title number GR416470
3. The Owner is registered as the proprietor of the leasehold of the Site with absolute title at the Land Registry under title number GR194071
4. The Developer submitted the Application to the Council and the Developer wishes to develop the Property pursuant to the Planning Permission.
5. In connection with the Application the Owner the Trust and the Developer have determined to enter into unilateral planning obligations by way of this

Deed as hereinafter set out with the intent that the covenants by the Owner contained in the Schedule hereto shall be Planning Obligations for the purposes of Section 106 of the Act

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed:

- 1.1. "Act" means the Town and Country Planning Act 1990 (as amended)
- 1.2. "Application" means the application for outline planning permission submitted to the Council for the Development and allocated reference number 20/00683/OUT for 43 Dwellings
- 1.3. "Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Town and Country Planning Act 1990 (as amended)) has taken place on the Land other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations and survey sampling inspections including soil investigations, investigations for the purpose of assessing ground conditions, site survey works, remedial or mitigation works in respect of any contamination or other adverse ground conditions, diversion and laying of services, demolition works, site clearance (including works to adjust ground levels on site and the removal of vegetation), access works, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and "Commence Development" "Commenced" and "Commencement" shall be construed accordingly
- 1.4. "Dwelling" means a residential dwelling to be constructed pursuant to the Planning Permission

- 1.5 “Market Units” means Dwellings which are not designated as Affordable Housing Units or designated to be constructed on the Self-Build and Custom Housebuilding Plots and the expression “Market Unit” shall be construed accordingly
- 1.6 “Occupation” means the availability of a self-build/custom housebuilding plot for 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
- 1.7 “Planning Obligations” means the covenant or covenants by the Trust and Owner contained in the Schedule hereto
- 1.8 “Planning Permission” means a planning permission granted (whether by the Council or otherwise) in respect of the Application
- 1.9 “Qualifying Self-Build and Custom Housebuilding Developer” means an individual or association of individuals (including bodies corporate that exercise functions on behalf of associations of individuals) who satisfy all of the following criteria: (i) they are aged 18 or over, (ii) they are a British citizen, (iii) they are seeking (either alone or with others) to acquire a serviced plot of land in the Council’s administrative area to commission or build a house to occupy as that individual’s sole or main residence
- 1.10 “Self-Build and Custom Housebuilding Plots” means those parts of the Land identified coloured blue in plan number SKPL1006 annexed hereto and entitled “Revised Layout Including Self-Build Plots” which shall be provided for the purposes of the construction of 4 (four) units of self-build and/or custom-build housing as defined in section 1(A1) and A(2) of the Self-build and Custom Housebuilding Act 2015 (as amended) in accordance with the details approved by the Council pursuant to

paragraph 1 of the Schedule and “Self-Build and Custom Housebuilding Plot” shall be construed accordingly

1.11 “Self-Build Register” means the list of individuals who are registered on the Council’s self and custom build register maintained pursuant to section 1 of the Self-build and Custom Housebuilding Act 2015 (as amended)

1.12 “Serviced” means having a suitable means of access to and egress from the Self-Build and Custom Housebuilding Plot to and from the public highway and having suitable connection points at the boundary of the Self-Build and Custom Housebuilding Plot to mains electricity, water, drainage and gas where gas is provided to the Development

1.13 Words importing one gender shall be construed as importing any other gender

1.14 Words importing the singular shall be construed as importing the plural and vice versa

1.15 The clause and paragraph headings in the body of this Deed and in the Schedule hereto do not form part of this Deed and shall not be considered in its construction or interpretation

1.16 This Undertaking will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act

1.17 None of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it even if the terms are expressed to be for their or their successors benefit and nor shall any third party have a right of veto over any future variations of this Deed.

1.18 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated and subject to clause 4 below

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

2 PLANNING OBLIGATIONS

2.1. The Planning Obligations are planning obligations for the purposes of Section 106 of the Act

2.2. The Council is a local planning authority by whom the Planning Obligations are enforceable

2.3. Any person deriving title from the Trust or the Owner shall not be bound by the Planning Obligations during any period in which he no longer has an interest in any part of the Land

2.4. The obligations in this Deed shall not be binding upon any plot holder statutory undertaker or mortgagee of any plot holder of any Dwelling constructed on the Land nor a receiver appointed by such mortgagee of any one or more of the Dwellings nor successors in title to those deriving title from such mortgagee or receiver

3 LIABILITY

3.1 No person shall be liable for a breach of covenant contained in this Deed after s/he shall have parted with her/his interest in the Land said interest being in part or whole but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

- 3.2 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

4 CONDITIONALITY

- 4.1 This Deed shall be conditional on and shall only take effect on:
- 4.1.1 the grant of the Planning Permission; and
 - 4.1.2 Commencement of Development.
- 4.2 The Trust and the Owner shall be released from any planning obligation in this Deed that the Inspector states in his/her decision letter is not necessary to enable the Planning Permission to be granted.
- 4.3 This Deed shall not be enforceable against the provision of any drainage rights across the Land as shown by the area of land identified on Plan Drawing No. PL004 Rev D hatched black annexed hereto

5 WAIVER

Failure by the Council 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, covenants, agreements, or obligations of this Deed or any failure or delay by the Council to exercise any act right or remedy shall not:

- (a) be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation; nor
- (b) 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 the Deed which shall remain in full force and effect subject to such agreed amendments

6 CONSENT TO REGISTRATION

The Trust and Owner hereby consents to the registration of this Deed by the Council as a Local Land Charge and if the Council so requires with the Land Registry

7 CHANGE IN OWNERSHIP

The Trust and Owner shall give the Council immediate written notice of any change in ownership of any of its interests in the Land (save for any transfer or lease in respect of any Dwelling) such notice to give details of the transferee's or lessee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan

8 WARRANTY

The Trust and Owner hereby warrants to the Council that it has not leased mortgaged charged or otherwise created any interest in the Land other than already stated above at the date of this Deed

THE FIRST SCHEDULE

The Land

The land shown edged red on the plan annexed hereto referenced drawing number PL005 Rev C being part of the land known as land at St Edward's

School, Charlton Kings, Cheltenham, GL52 6NR and forming part of the freehold title registered at the Land Registry under title number GR416470 and part of the leasehold title registered at the Land Registry under title number GR194071.

THE SECOND SCHEDULE

Covenants by the Owner – the Self-Build and Custom Housebuilding Plots Planning Obligations

The Trust and Owner hereby covenant with the Council that

1. Prior to the commencement of the construction of the first dwelling to submit for the approval of the Council details of a programme for the marketing of the Self-Build and Custom Housebuilding Plots for a period of two (2) years from the date of Commencement of Development and not to permit any works relating to the Self-Build and Custom Housebuilding Plots other than being serviced as required by paragraph 2 until such details have been approved in writing by the Council.
2. Prior to the first Occupation of 50% of the Dwellings to procure that the Self-Build and Custom Housebuilding Plots are Serviced and available for Occupation.
3. To market the Self-Build and Custom Housebuilding Plots in accordance with the details approved by the Council pursuant to paragraph 1 of this Schedule
4. Unless agreed otherwise in writing with the Council the Self-Build and Custom Housebuilding Plots shall only be transferred to either:
 - i) those on the Self-Build and Custom Housebuilding Register,
 - ii) a Qualifying Self-Build and Custom Housebuilding Developer, or

- iii) such other person or persons approved in writing by the Council prior to any disposal of the relevant Self-Build and Custom Housebuilding Plot in question.
5. To give notice in writing to the Council of the date of commencement of marketing of each individual Self-Build and Custom Housebuilding Plot not later than fourteen (14) Working Days after the that date.
 6. If after two (2) years from the date of the commencement of marketing of the Self-Build and Custom Housebuilding Plots pursuant to paragraph 1 of this Schedule contracts for the sale of any of the Self-Build and Custom Housebuilding Plots have not been exchanged;
 - i) the restrictions and obligations in this Schedule shall be released in relation to the relevant Self-Build and Custom Housebuilding Plot(s) and shall no longer apply to those Self-Build and Custom Housebuilding Plot(s), and
 - ii) the relevant Self-Build and Custom Housebuilding Plot(s) may be sold on the open market as completed dwellings free from the provisions of this Schedule.

IN WITNESS whereof this instrument has been executed as a Deed by the Owner the Trustee and the Developer the day and year first before written

SIGNED as a **Deed** by **ST EDWARDS**
SCHOOL CHELTENHAM TRUST

acting by two Trustees

.....
 Trustee

.....
 Trustee

Executed as a Deed by
**THE TRUSTEES OF THE
CARMELITE CHARITABLE
TRUST**

Under an authority under s261
of the Charities Act 2011

.....
Trustee

.....
Trustee

SIGNED as a **Deed** by **WILLIAM
MORRISON (CHELTENHAM)
LIMITED** acting by two Directors

.....
Director

.....
Director