

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 099000099) of Pillar House, 113/115 Bath Road, Cheltenham, Gloucestershire, United Kingdom, GL53 7LS ("**the Developer**")

**TO**

**CHELTENHAM BOROUGH COUNCIL** of Municipal Offices Promenade, Cheltenham GL50 9SA ("**the Council**")

**WHEREAS**

1. 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 subject to the leasehold title held by the Owner referred to below

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 in the name of the Developer and the Trust submitted the Application to the Council and the Developer wishes to develop the Property pursuant to the Planning Permission.
5. The Council refused the Application and the Developer has appealed to the Secretary of State against such refusal under appeal reference APP/B1605/W/20/3261154
6. The Owner the Trust and the Developer have agreed to enter into this Deed in accordance with s.106 of the Act in order to facilitate the grant of the Planning Permission and deliver the necessary planning obligations as set out in this Deed if the Application is allowed by the Secretary of State on Appeal

**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. "Appeal" means the appeal under the Act by the Developers to the Secretary of State against the refusal of the Application by the Council
- 1.3. "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
- 1.4. "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 Site 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 of services, demolition works, site clearance (including works to adjust ground levels on site and the removal of vegetation), 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

- 1.5. “Dwelling” means a residential dwelling to be constructed pursuant to the Planning Permission
- 1.6. “Inspector” means the Inspector appointed by the Secretary of State or Minister for Housing, Communities and Local Government appointed to determine the Appeal
- 1.7 “Monitoring Fee” means the sum of £1,200 (One thousand two hundred pound) payable to the Council upon the Commencement of Development to allow the Council to monitor the compliance of the Owners with their obligations hereunder
- 1.8 “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 or occupation in relation to security operations during construction and “Occupied” and “Occupier(s)” shall be construed accordingly
- 1.9 “Owners” means the Owner and the Trust whether together or separately

- 1.10 Plan 1” means the plan attached to this Agreement marked 'Plan 1' and referenced drawing number PL005 Rev C
- 1.11 “Plan 2” means the plan attached to this Agreement marked “Plan 2” and referenced drawing number PL004 Rev D
- 1.12 “Planning Obligations” means the covenant or covenants by the Trust and Owner contained in the Schedule hereto
- 1.13 “Planning Permission” means any planning permission granted by the Secretary of State pursuant to the Appeal in respect of the Application and includes the approved plans thereto and any duly authorised non-material amendments thereto
- 1.14 “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
- 1.15 “Self-build and Custom Housebuilding Act 2015” means the Act of Parliament (as amended) so named or any statutory re-enactment or amendment thereof and any regulations made thereunder
- 1.16 “Self-Build and Custom Housebuilding Plots” means those parts of the Site 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

- 1.17 “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)
- 1.18 “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 telecommunications and gas where gas is provided to the Development as defined in the Self-build and Custom Housebuilding Act 2015
- 1.19 “the Site” means the land against which this Deed may be enforced as shown edged red on Plan 1 for identification purposes only and as more particularly described in Schedule 1
- 1.20 “Working Day” means any day except Saturday and Sunday or a bank holiday or any days which in England and Wales are public holidays
- 1.21 Words importing one gender shall be construed as importing any other gender
- 1.22 Words importing the singular shall be construed as importing the plural and vice versa
- 1.23 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
- 1.24 This Undertaking will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act

- 1.25 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.
- 1.26 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
- 1.27 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
- 1.28 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 Trust and the Owner covenant with the Council as set out in Schedule 2
- 2.3 The Council is a local planning authority by whom the Planning Obligations are enforceable
- 2.4 The Trust and the Owner and any person deriving title from the Trust or the Owner shall not be bound by the Planning Obligations (or relevant individual planning obligation) during any period in which that person no longer has an interest in the relevant part of the Site to which the Planning Obligation applies.

### **3 LIABILITY**

- 3.1 No person shall be liable for a breach of covenant contained in this Deed after they shall have parted with their interest in the Site or the relevant part of the Land to which the relevant covenant applies 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 their decision letter is not necessary to enable the Planning Permission to be granted.
- 4.3 This Deed shall not be enforceable against the owner of the drainage land as shown by the area of land identified on Plan 2 referenced drawing No. PL004 Rev D hatched black annexed hereto where that is its only interest in the Site
- 4.4 The Developer the Trust and the Owner covenant not to Commence Development whilst the current lease dated 20<sup>th</sup> November 1990 between the School and Trust subsists over any part of the Site shown



edged red on Plan1 for identification purposes only and the Owner remains in legal occupation

## **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 Trust or 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 Trust 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 Owner and / or the Trust shall give the Council immediate written notice of any change in ownership of any of its interests in the Site (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 Site purchased by reference to a plan

## **8 WARRANTY**

The Trust and Owner hereby respectively warrant to the Council that they have not leased mortgaged charged or otherwise created any interest in the their respective interests in the Site other than as already stated above at the date of this Deed

### **THE FIRST SCHEDULE**

#### **The Site**

The land shown edged red on Plan 1 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 as follows

1. Prior to the Commencement of Development to submit for the approval of the Council details of a design code for the Self Build and Custom Housebuilding Plots which will take into account sustainability issues and the 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 such programme for marketing to include sales valuations of the plots to be undertaken by an independent expert who is a member of RICS with the appointed valuer to be agreed in writing with 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 s.261 of the Charities Act 2011

.....

Trustee

.....

Trustee

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

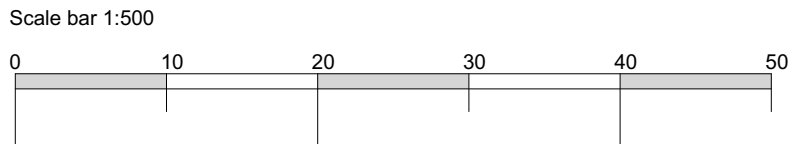
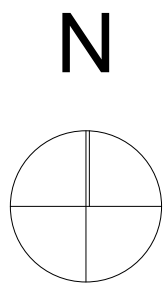
.....  
Director

.....  
Director





Land off Oakhurst Rise,  
Charlton Kings,  
Cheltenham



Open Market Units						
Ref	Type	Bedrooms	Beds	spaces	No. Off	G.I.A sq/m / Total G.I.A sq/m
Pa	2.0	2	4	2	89.9	179.80
Hi	2.5	4	6	16	107.5	1720.00
Dy	2.0	3	5	2	108.5	217.00
Te	2.0	3	5	3	117.5	352.5
An	2.0	4	8	2	150.4	300.8
					25	2770.10
Affordable Units						
Ref	Type	Bedrooms	Beds	spaces	No. Off	G.I.A sq/m / Total G.I.A sq/m
Af 1	M(Uf)	1	2	2	50	100.00
Af 2	M(Gf)	1	2	2	50	100.00
Af 3	2.0	1	2	1	50	50.00
Af 4	M(Gf)	2	4	1	71	71.00
Af 5	M(Uf)	2	4	1	71	71.00
Af 6	2.0	2	4	3	79	237.00
Af 7	2.0	2	4	3	67	201.00
Af 8	2.0	3	5	3	82	246.00
Af 9	2.0	3	6	1	95	95
Af 10	2.0	4	7	1	108	108
Totals					18	1279.00
					No. Off	Total G.I.A sq/m
					43	4049.10

- ☐ Preliminary
- ☐ Feasibility
- ☐ Planning
- ☐ Building Regulations
- ☐ Tender
- ☐ Construction issue
- ☐ As Built



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3. Do not use this drawing for setting out unless drawing specifically indicates setting out points.
4. Engineering information is indicative only and should be taken from structural engineers design.

Rev A - Layout ammended to reflect LA Affordable housing needs - May 2020  
Rev B - Layout ammended to reflect GCC Highways comment re parking - June 2020  
Rev C - Revision indicating position of Self build / Custom Build Units - January 2021

Drawing title: Site Plan

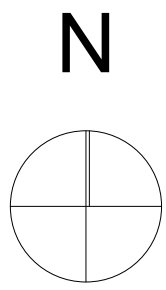
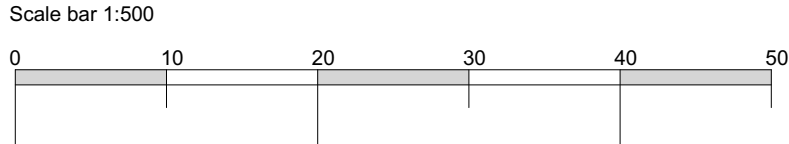
Client: William Morrison (Cheltenham) Ltd & The Trustees of the Carmelite Charitable Trust  
Drawn by: AH Checked: JE  
Project No: 16.20.034

Project: Land off Oakhurst Rise,  
Charlton Kings,  
Cheltenham

Scale: 1:500 @ A1  
Date: April 2020  
Project / Drawing No: PL005 Rev C



Land off Oakhurst Rise,  
Charlton Kings,  
Cheltenham



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- ☐ Preliminary
- ☐ Feasibility
- ☐ Planning
- ☐ Building Regulations
- ☐ Tender
- ☐ Construction issue
- ☐ As Built

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4. Engineering information is indicative only and should be taken from structural engineers design.



Drawing title: Revised Layout including  
self build plots

Client: William Morrison (Cheltenham) Ltd & The Trustees  
of the Carmelite Charitable Trust

Drawn by: AH Checked: JE

Project No: 16.20.034

Project: Land off Oakhurst Rise,  
Charlton Kings,  
Cheltenham

Scale: 1:500 @ A1

Date: Jan 2021

Project / Drawing No: SKPL1006