

DATED

2021

(1) THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST

(2) ST EDWARDS SCHOOL CHELTENHAM TRUST

(3) WILLIAM MORRISON (CHELTENHAM) LIMITED

-and-

(4) CHELTENHAM BOROUGH COUNCIL

AGREEMENT

**pursuant to s.106 Town and Country Planning Act 1990
in relation to Land Adjacent to Oakhurst Rise, Charlton Kings,
Cheltenham**

App Ref: 20/00683/OUT

**G S Legal Service for
One Legal
Tewkesbury Borough Council
Council Offices
Gloucester Road
Tewkesbury**

5. The Developer in the name of Developer and the Trust has submitted the Application to the Council which was refused on the 16th September 2020
6. The Owner the Trust and the Developer have agreed to enter into this Agreement in accordance with s.106 of the Act in order to facilitate the Development and deliver the necessary planning obligations as set out in this Agreement if the Application is allowed by the Secretary of State on Appeal

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 February 2019 as updated from time to time or as defined in any government documentation that shall supersede it
- 1.3. "Affordable Housing Contribution" means the sum of money calculated in accordance with Schedule 2 paragraph 4 hereof as is the difference between the whole number of Affordable Housing Units to be provided on the Site and the financial contribution that would take the overall contribution (the Affordable Housing Units and financial payment) to 40% of the

Dwellings being Affordable Dwellings and payable upon completion of 90% of the Market Dwellings

- 1.4.** “Affordable Housing Land” means the land upon which the Affordable Housing is to be constructed including all curtilages and communal areas associated with it
- 1.5.** “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 and Communities Agency; or
 - (c) a body approved or accredited by the Homes and Communities Agency or equivalent successor body whose terms of approval or accreditation have been evidenced to the satisfaction of the Council in writing; or
 - (d) any other body previously agreed in writing by the Council
- 1.6.** “Affordable Housing Scheme” means the current scheme to provide the Affordable Housing Units on the Site already submitted to and approved by the Council pursuant to paragraph 1 of Schedule 2 (which may be amended by written agreement between the Owners and the Council provided that such scheme remains in accordance with

the approval of relevant Reserved Matters) detailing the general location design in accordance with the Partnership Design Standard property type size and tenure of each of the Affordable Housing Units within the Site and identified on Plan 1 and in accordance with the table within paragraph 6.1 of Schedule 2 (subject to any amendments agreed to that table at the Reserved Matters Stage by the Owners and the Council)

1.7. "Affordable Housing Units"

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

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

designed to meet the minimum gross internal floor area size measurements space design and quality standards described by Homes England and "Affordable Housing Unit" shall be construed accordingly

1.8. "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 or the Local Housing Allowance whichever is lower 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 and shall include those properties identified as Social Rented in Schedule 2 Para 6

- 1.9.** “Affordable Rented Units” means Dwellings that are to be rented by the Affordable Housing Provider at an Affordable Rent or Social Rent to Eligible Persons and “Affordable Rented Unit” is to be construed accordingly
- 1.10.** “Appeal” means any appeal under the Act by the Owners and/or Developers to the Secretary of State against the refusal of the Application by the Council
- 1.11.** “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
- 1.12.** “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
- 1.13.** “Biodiversity Management Plan” means a plan to be agreed between the Council and the Owners/Developers for the management of the Local Wildlife Area under Schedule 2 Part II Paragraph 1(b) which for the avoidance of doubt means that no public

access shall be permitted and the Owner/Developer shall preserve and enhance the biodiversity of the site in particular the species “Lady’s Bedstraw” and provide for an educational role

1.14. “Building Regulations” means the approved documents that are used to approve the standards of buildings in England and Wales

1.15. “Category 2 Housing” means housing that complies with the discretionary Building Regulations as set out in Approved Document M (access to and use of buildings) of the Building Regulations 2010 as amended or subsequent revision or replacement standard current at the time of submission of the relevant application for Building Regulations approval

1.16. “Category 3 Housing” means housing that complies with the discretionary Building Regulations standard for wheelchair user dwellings as set out in Approved Document M (access to and use of buildings) of the Building Regulations 2010 as amended or subsequent revision or replacement standard current at the time of submission of the relevant application for Building Regulations approval

1.17. “Clustering Strategy” means in relation to the Affordable Housing Units the location of the said Units in dispersed locations across the Development with each cluster of Affordable Housing Units not exceeding eight (8) units unless otherwise agreed in writing by the Council and the Clustering Strategy shall also ensure that 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 Owners and the Council)

1.18. “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

1.19. “Development” means the outline application for residential development of 43 dwellings based upon Drawing No. PL005 Rev B including access layout and scale as set out in the Application

1.20. “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

- 1.21.** “Eligible Person(s)” means a person or persons who:
- either are
- i) in need of an Affordable 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
- 1.22.** “Expert” means the independent expert appointed for the purposes of clause 16
- 1.23.** “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
- 1.24.** “Help to Buy Agent” means the Government appointed Help to Buy Agent from time to time or anybody 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

- 1.25.** “Homes England” means 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
- 1.26.** “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 and available at www.homeseekerplus.co.uk which governs the housing allocation procedure
- 1.27.** “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
- 1.28.** “Housing Mix” means the proportion of Affordable Housing Units to Open Market Units

- 1.29.** “Index” means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
- 1.30.** “Interest” means interest at three per cent (3%) above the base lending rate of the Barclays Bank Plc from time to time
- 1.31.** “LEMP” means the Landscape and Ecological Management Plan drawn up and agreed with the Council prior to the Commencement of Development to maintain enhance protect and improve the areas of the Site including inter alia the construction of a badger set and pond attenuation works contained within the application documents to ensure the protection of the biodiversity on the Site as required by the Natural Environment and Rural Communities Act 2006
- 1.32.** “Lender” means any mortgagee or chargee of an Affordable Housing Provider or any housing 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
- 1.33.** “Lettings Plan” means a plan produced by the Council and agreed in writing with the Owners/Affordable Housing Provider setting specific lettings requirements in accordance with the Homeseeker Plus Policy in respect of the Affordable Rented Units

1.34. "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 therefor), 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

1.35. "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 Housing Units are located and which is used to calculate the maximum housing benefit entitlement for each tenant thereof or any scheme which supersedes it

- 1.36.** “LWA” means the area shown edged green on Plan 2 attached hereto is an identified area as a Local Wildlife Area forming part of the Site which is identified in the Gloucestershire Local Wildlife Site Selection Criteria 2015 as a key wildlife site.
- 1.37** “Management Body” Means a Limited Company set up specifically for the purpose of maintaining improving managing and financing the work on the LEMP and all the requirements thereof agreed therein
- 1.38.** “Monitoring Fee” means the sum of £1,000 payable to the Council upon the Commencement of Development to allow the Council to monitor the compliance of the Owners with their obligations hereunder
- 1.39.** “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
- 1.40.** “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

1.41. “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

1.42. “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

1.43. “the Owners” means the Owner and the Developer whether together or separately

1.44. “Partnership Design Standard” means the design standards and minimum space standards to be agreed by the Council as set out in Gloucester, Cheltenham and Tewkesbury JCS

Partnership Guidance Note to support the application of affordable housing policies which can be accessed on the Joint Core Strategy website

- 1.45.** “Plan 1” means the plan attached to this Agreement marked 'Plan 1' and referenced drawing number PL005 Rev C
- 1.46.** “Plan 2” means the plan attached to this Agreement marked “Plan 2” and referenced drawing number 5487 RGR1 B and showing the LWA
- 1.47.** “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
- 1.48.** “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” and “Reserved Matters Approval” shall be construed accordingly
- 1.49.** “Sales Plan” means for the Shared Ownership Units a plan produced by the Developer/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
- 1.50.** “Service Charge” means a charge made to the Occupiers of individual Dwellings or in the case of the Affordable Rented Units

and the Shared Ownership Units a charge made to the Affordable 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

1.51. “Shared Ownership” means subsidised housing provided by an Affordable Housing Provider for sale by way of a standard Homes England model 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

1.52. “Shared Ownership Lease” means a 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

- 1.53.** “Shared Ownership Unit” means Affordable Housing Units which are to be provided by way of Shared Ownership on the Affordable Housing Land
- 1.54.** “Site” means the land against which this Deed may (subject to clause 14.2) be enforced as shown edged red on Plan 1 for identification purposes only and as more particularly described in Schedule 1
- 1.55.** “Social Rented” means those properties required by Schedule 2 para 6 and let at a rent below the Affordable Rent and determined in accordance with the Target Rents
- 1.56.** “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
- 1.57.** “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 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 Owners 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 SUBJECT TO clauses 3.4 and 3.5 below

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 Section 40 Natural Environment and Rural Communities Act 2006 and all other enabling powers

3.3 The covenants restrictions and requirements imposed upon the Owners under this Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority SUBJECT TO clauses 3.4 and 3.5 below

3.4 Notwithstanding any other clause or proviso in this Agreement, the covenants, restrictions, obligations and requirements imposed on the Trust and the Owner under this Agreement shall only take effect on the grant and first application for reserved matters of the Planning Permission.

3.5 Notwithstanding any other clause or proviso in this Agreement, the Trust and the Owner shall not be liable for compliance with or any breach of a covenant, restriction, obligation or requirement contained in this Agreement after it has parted with its interest in the Site (or the relevant part to which the covenant

restriction obligation or requirement relates) except in so far as compliance with or the breach of relates to a period of time when the Trust or the Owner had an interest in the Site.

4. CONDITIONALITY

4.1. This Agreement shall be (save for Clauses 2.1 to 2.11, 3, this clause 4, 6.1, 6.2, 6.3, 6.5, 7, 8, 9, 12 13 14.1 15 16 19 and 20 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

- a) the grant of Planning Permission through the Appeal; and
- b) the Inspector's decision letter on the Appeal finding any of the obligations to be not relevant to the grant of Planning Permission and
- c) the first application for Reserved Matters

4.3 The Developer the Trust and the Owner covenant not to Commence Development whilst the current lease dated 20th November 1990 between the School and Trust subsists over any part of the Site shown edged red on Plan 1 for identification purposes only and the Owner remains in legal occupation

4.4 The Developer covenants with the Trust not to make any application for approval of Reserved Matters or in relation to the LWA of LEMP without the prior written consent of the Trust.

4.5 The Trust hereby acknowledges and agrees to the Owner and Developer entering into this Agreement and the Trust hereby covenants that if the Site reverts back to the Trust with vacant possession free of the current lease dated 20th November

1990 between the School and Trust and the Trust Commences Development of the Planning Permission the Trust shall be bound by the terms of this Agreement

5. THE OWNERS' COVENANTS

- 5.1** The Owners covenant with the Council as set out in Schedule 2 and 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
- 5.2** The Developer agrees to pay the Council's reasonable legal fees in connection herewith upon the Completion 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

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

6.7 The Council hereby agrees that the Owners shall have the have the choice of whether to set up a Management Company (as a Limited Company or such other body as may be agreed with the Council) specifically for the purpose of ensuring the Owners compliance with the duties and responsibilities under the LEMP and as specified in Schedule 2 hereof or for the Owners themselves to carry out such duties and responsibilities therein contained so long as the information as to how the LEMP is to be complied with is passed to the Council (the "Management Body")

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 Developer 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. INDEXATION

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

10. INTEREST

If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment

11. VAT

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

12. JURISDICTION

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

13. DELIVERY

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

14. EXCLUSIONS/LIABILITY FOR BREACH OF COVENANTS

14.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after they shall have parted with their 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 benefit of any exception and reservation and/or covenant including for 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 14.1

14.2. This Agreement shall not be enforceable against:

14.2.1. 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);

14.2.2. save for the obligations in Schedule 2 and 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

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

14.2.4. save for the obligations in Schedule 2 and 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

15. WARRANTY

15.1 The Trust warrants to the Council that as at the date hereof it has not leased mortgaged or charged the Site other than those contained mentioned or referred to in Title Number GR416470 as at 02 March 2021 at 12:48:50 including the lease to the Owner

15.2 The Owner warrants to the Council that as at the date hereof it has not leased mortgaged or charged the Site other than those contained mentioned or referred to in Title Number GR194071 as at 02 March 2021 at 12:51:42

15.3 The Developer warrants to the Council that as at the date hereof it has not leased mortgaged or charged the Site

16. DISPUTE RESOLUTION

16.1. 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 16.2 below acting in accordance with clauses 16.3 to 16.9

- 16.2.** 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
- 16.3.** 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
- 16.4.** 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
- 16.5.** The Expert shall not (unless he directs to the contrary) hear oral representations from any party to the dispute
- 16.6.** The Expert shall fully consider all submissions and evidence when making his decision
- 16.7.** The Expert shall give his decision in writing and shall give reasons
- 16.8.** 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.
- 16.9.** 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

17. 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 or Amended Scheme 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

18. 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 Owners 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

19. INDEMNITY

The Developer hereby indemnifies the Trust and the Owner against all liabilities, expenses, costs (including but not limited to any solicitors', surveyors' or other professionals' costs and expenses, and any VAT on them, assessed on a full

indemnity basis) suffered or incurred by the Trust or the Owner arising out of or in connection with this Agreement (including but not limited to in relation to or arising out of or in connection with the compliance with or any breach of any covenants, conditions, obligations or restrictions contained in this Agreement)

20. OWNERS' COSTS

The Developer shall pay to the Trust and the Owner on or before the date of this Agreement the Trust's reasonable and proper legal and surveyor's costs together with all disbursements incurred in connection with the negotiation, completion and registration of this Agreement.

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

SCHEDULE 1

The land shown edged red on Plan 1 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 HM Land Registry under title number GR416470 and part of the leasehold title registered at HM Land Registry under title number GR194071.

SCHEDULE 2

The Owners' Covenants with the Council

PART I

AFFORDABLE HOUSING OBLIGATIONS

The Owners covenant that they shall;

- 1 Prior to any application for approval of Reserved Matters submit to the Council for approval the proposed Affordable Housing Scheme and the Owners may submit as many as they choose until one is approved
- 2 If the Development is Commenced, provide the Affordable Housing Units in accordance with the relevant approved Affordable Housing Scheme and approved Reserved Matters and Fully Serviced
- 3 Construct Forty per cent (40%) of the Dwellings constructed on the Development as Affordable Housing Units but for the avoidance of doubt if the Planning Permission is amended or modified with the result that the overall number of Dwellings is increased or decreased the number of Affordable Housing Units shall be recalculated but the number shall be not be less than Forty per cent (40%) of the total number of Dwellings rounded to the nearest whole number PROVIDED FURTHER that at each and every application for Reserved Matters the Owners shall ensure that Forty per cent (40%) of the Dwellings contained within such an application at the Reserved Matters Stage are Affordable Housing Units
- 4 If the number of Affordable Dwellings as a proportion of Dwellings on the Development does not reach Forty per cent (40%) then the Affordable Housing Contribution shall be paid which (together with the Affordable Dwellings) shall equate to Forty Percent (40%) provision provided that if any Affordable Housing Contribution is payable hereunder the same shall be liable to Indexation from the date hereof and to Interest if it shall be paid late and the Additional Affordable Housing

Contribution shall be calculated by determining the relevant shortfall from 40% expressed as a percentage of a whole Dwelling which is then multiplied by the Open Market Value of a plot of land on the Site of the average size as the Affordable Housing Units on the Site (for example; if 40% of the number of Dwellings equates to 18.25 dwellings the 0.25 of a Dwelling would be taken and multiplied by the average of the Open Market Value of the plots on the Site as close as possible to the average size of the Affordable Dwellings to give a monetary consideration)

5. Not Occupy or permit to be Occupied the Affordable Housing Units until the 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 13 below
6. Unless otherwise agreed at the Reserved Matters Stage (or at any other time between the Owners and the Council) provide the Affordable Housing Units as follows:

6.1 in the following proportions:

Tenure type/bedroom size (42% AH)	Social Rent:	Affordable Rent: (Capped at LHA)	Shared Ownership:	Total:	% for each bedroom size:
1b2p GF Maisonette, M4(2) Cat 2, 50m ²	2	0	0	2	28%
1b2p Upper Floor Maisonette, M4(2) 50m ²	2	0	0	2	
1b2p House, M4(2) Cat 2, 50m ²	1	0	0	1	
2b4p GF Maisonette, M4(2) Cat 2, 71m ²	0	1	0	1	44%
2b4p Upper Floor Maisonette, M4(2), 71m ²	0	1	0	1	
2b4p House, M4(2) Cat 2, 79m ²	0	3	0	3	
2b4p House, 67m ²	0	0	3	3	
3b5p House, 82m ²	0	1	2	3	22%
3b6p House, 95m ²	0	1	0	1	
4b7p House, 108m ²	1	0	0	1	6%
	6	7	5	18	
		72%	28%		100%

Category 2 – 39%

Social Rent – 33%

6.2 in the locations and of the size and design agreed in the Affordable Housing Scheme and Occupied only in accordance with the tenures therein contained unless otherwise agreed in writing with the Council and the Shared Ownership Units will only be Occupied via a Shared Ownership Lease the Social Rented only let on a Social Rent and the Affordable Rented Units shall only be let at an Affordable Rent

7. 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 Open Market Units and the Shared Ownership Units shall be submitted in writing to the Council 28 days prior to being advertised to prospective purchasers

8. Not use or permit the Affordable Housing Units to be used for any other purpose than as Affordable Housing in accordance with this Agreement

9. Clustering Strategy

9.1 provide the Affordable Housing Units on the Site in accordance with the Clustering Strategy provided pursuant to paragraph 9.2 below as approved by the Council

9.2 No development shall take place on the Site unless and until a Clustering Strategy has been submitted to and approved in writing by the Council for the Development

10. Design and Construction

10.1 To ensure integration of the Affordable Housing Units with the Open Market Units to the extent that the Affordable Housing Units shall be indistinguishable in appearance from the Open Market Units

10.2 All ground floor apartments and bungalows of the Affordable Housing Units shall be built in accordance with Category 2 Housing standards and a minimum of 2% of Affordable Housing Units (with a minimum of one Unit) shall be wheelchair user dwellings and shall be built in accordance with Category 3 Housing standards

10.3 All other Dwellings to be designed to meet the Building Regulations 2010 M4(1) as amended

11. Affordable Housing Providers

11.1 the Owners shall use reasonable endeavours to conclude an agreement with an Affordable Housing Provider for the transfer of the Affordable Housing Units (such endeavours being evidenced in writing to the reasonable satisfaction of the Council) with the Affordable Housing Units being sold to that Registered Provider for letting or disposal as appropriate to Eligible Persons and Approved Purchasers in accordance with the terms of this Agreement

11.2 pursuant to paragraph 11.1 above should it become necessary for the Owners to seek an alternative Affordable Housing Provider(s) the Owners shall give written notice to the Council specifying the reasons therefore and supplying appropriate evidence the Owners shall consult with the Council on the selection of any such alternative Affordable Housing Provider(s) and the Council's decision on selection shall be given in writing with both parties acting reasonably in the matter and will be abided to by the Owners

11.3 prior to Commencement of Development the Owners shall submit to the Council a plan for the marketing of the Affordable Rented Units Social Rented Units and the Shared Ownership

Units to Affordable Housing Providers and such marketing shall include marketing the Affordable Rented Units Social Rented units and the Shared Ownership Units to the Affordable Housing Provider

11.4 not to permit Occupation of the Development unless and until the Owners have submitted a plan for the marketing of the Affordable Rented Units and Social Rented Units and agreed a Lettings Plan in writing with the Council in accordance with paragraphs 11.3 above and 12.1 below

12. Lettings Plan and Sales Plan

12.1 Prior to the commencement of advertising any of the Social Rented units or Affordable Rented Units the Owners will agree the Lettings Plan in writing with the Council for the Social Rented units and Affordable Rented Units

12.2 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 agree the Sales Plan in writing with the Council for the Shared Ownership Units

13. Restrictions on Occupation; Lettings and Management

13.1 Not cause or permit the Occupation of more than Fifty percent (50%) of the Open Market Units until Fifty percent (50%) of the Affordable Housing Units have been completed and made available for Occupation and Fifty percent (50%) of the Affordable Rented Units Social Rented Units and the Shared Ownership Units have been transferred on the terms set out in this paragraph 13 and not to cause or permit the Occupation of more than Ninety percent (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 Social Rented

Units and the Shared Ownership Units in that Phase have been transferred on the terms set out in paragraph 13.2 below unless otherwise agreed in writing by the Council

13.2 Not Occupy or allow the Occupation of the Affordable Housing Units unless and until:

13.2.1 the Affordable Housing Land on which the Affordable Housing Unit that is ready to be Occupied has been transferred to an Affordable Housing Provider:

- i) at a cost that will ensure that the Affordable Rented Units will be let at Affordable Rents (and for the avoidance of doubt this includes the reference to the Local Housing Allowance) the Social Rented units at a Social Rent 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

13.2.2 Provision has been made for 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

13.3 Not permit the letting and management of the Affordable Rented Units or Social Rent units and the Shared Ownership Units otherwise than by an Affordable Housing Provider

13.4 Not permit the letting and/or Occupation of any Affordable Housing Unit otherwise than in accordance with paragraph 13(5) below and:

13.4.1 in respect of the Shared Ownership Units other than by Approved Purchasers

13.4.2 in respect of the Social Rent or Affordable Rented Units other than by an Eligible Person

13.5 Not permit the letting of each of the Social Rent or Affordable Rented Units to an Eligible Person unless:

13.5.1 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 same; and

13.5.2 on subsequent re-lettings of the Affordable Rented Units and/or 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/Social Rented Units subsequently rented (unless otherwise agreed in writing between the Council and the Affordable Housing Provider) with the remainder 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

13.6 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 Social Rented Units and the Shared Ownership Units the Owners shall immediately they are so aware arrange for an alternative Affordable Housing Provider to be appointed in their place and as so soon as is reasonably practical arrange for them to take a novation of any development agreement (or enter into new contracts if applicable) and all other relevant rights and duties of the original Affordable Housing Provider

13.7 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

14. Mortgagee in Possession & Exclusions

14.1 The covenants contained in Schedule 2 of this Agreement shall not be binding or enforceable against a Lender with security over the whole or any part of the Affordable Housing Land/Unit(s) ("the Mortgage Land") nor a receiver or housing administrator appointed by such Lender to the intent that such Lender exercising a security may sell and dispose of the Affordable Housing

Land/Unit(s) over which it has exercised its security free from the provisions of this Schedule 2 and that such provisions shall not bind any successors in title to or those deriving title from such Lender PROVIDED THAT: -

- i) a Lender seeking to dispose of any Affordable Housing Land/Unit(s) in pursuance of any default under the terms of their mortgage or charge notifies the Council in writing that it has taken possession of or intends to dispose thereof under the security documentation the Affordable Housing Land/Unit(s) or has appointed a receiver and either the Lender or the receiver is seeking a purchaser thereof; and
- ii) the Lender (or the Lender procures that the receiver(s) appointed by the Lender) uses reasonable endeavours to sell or transfer the Affordable Housing Land/Unit(s) to an approved Affordable Housing Provider subject to the terms of this Deed at a price equal to its market value as Affordable Housing and covering any outstanding monies due or accrued including principal monies interests and reasonable costs and expenses under the mortgage or security documentation taking into account this Deed; and
- iii) if the Council within two (2) months following such notice pursuant to paragraph 14.1(i) indicates in writing that arrangements can be made for the transfer of the Affordable Housing Land/Unit(s) at a price equal to its market value as Affordable Housing taking into account this Deed and covering any outstanding monies due or accrued including principal monies interests and reasonable costs and expenses under the mortgage or security documentation so as to safeguard them as Affordable Housing the Lender (or the Lender shall procure that the receiver or housing administrator) shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer; and
- iv) if the Council does not indicate as referred to in paragraph 14.1(iii) above within the two (2) months therein specified then the Lender (or the receiver or housing administrator) shall be entitled to dispose of the relevant Affordable Housing Land/Unit(s) in accordance with Paragraph (v) below; and

- v) if the Council the Lender or any receiver or housing administrator appointed or any other person cannot within three (3) months following the service of the indication referred to in paragraph 14.1(i) secure the transfer or exchange of contracts of the relevant Affordable Housing Land/Unit(s) with all parties acting reasonably (or otherwise consents to a transfer secured by the Lender or the receiver in accordance with paragraph 14.1(ii)) then so long as the Lender has complied with this paragraph 14.1 it shall be fully and freely entitled to dispose of the relevant Affordable Housing Land/Unit(s) free from the restrictions of this Schedule 2.

14.2 The covenants in this Schedule shall not be binding on:

14.2.1 any person exercising a statutory right to acquire any of the Affordable Rented Units;

14.2.2 any person or occupier who staircases out to one hundred per cent (100%) ownership of any Shared Ownership Unit;

14.2.3 any person exercising a statutory right to buy introduced in favour of the occupiers of the Affordable Rented Units or similar statutory right introduced in favour of occupiers of them;
and

14.2.4 any successor in title to the persons in 14.2.1 to 14.2.3

PART II

Other Obligations to the Council

The Owners shall

1)

- a. in the event the Site is developed pursuant to the Planning Permission agree that the area shown edged green on Plan 2 which is currently designated as a LWA is a site that can preserve and enhance the study and understanding of

biodiversity and should be fenced off from public access and managed by a Biodiversity Management Plan

b) The Biodiversity Management Plan shall be submitted by the Owners/Developers to the Council one month of the first application for reserved matters for approval and shall deal inter alia with the following matters in relation to the LWA;

- i. the intentions for long term ownership and protection
- ii. protection prior to and during nearby construction work
- iii. enhancement of the flora and fauna
- iv. short and long term management
- v. the enhancement of the educational potential
- vi. the funding of the above in both the short, medium and long term
- vii a method statement for the installation of the artificial badger sett and any associated works, and the restoration of the ground following the completion of the works
- viii a method statement for the installation of foul and surface water drainage infrastructure and the restoration of the ground following the completion of the works
- ix a method statement for the for the formation of the pond and the restoration of the ground following the completion of the works.
- x provision for future maintenance of the above works

2) pay the Monitoring Fee to the Council upon the Commencement of Development which for the avoidance of doubt shall be Indexed

3) agree the LEMP with the Council prior to the Commencement of Development and ensure that

a) the LEMP shall contain (inter alia) the details of the future funding for the maintenance and improvement of all the works and matters referred to therein by the Management Body

b) all necessary and fully adequate funding is and shall be provided to the Management Body to ensure it shall have the finance capacity and ability to carry out all the works of maintenance replacement improvement and other requirements placed upon it by the LEMP for the duration of the LEMP

c) if at any time the Management Body shall not carry out or be capable of carrying out its roles and responsibilities or be wound up or become bankrupt arrange for a replacement body to be set up to take on the roles and responsibilities thereof or undertake the role themselves

provide to every Occupier on the Site an explanation of what the LEMP is and how it will work and be paid for either as part on any homeowner's pack or as a separate document the contents of which shall be agreed with the Council

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

**Executed as a Deed by
THE COMMON SEAL of
CHELTENHAM BOROUGH
COUNCIL being affixed**

hereunto and authenticated
by undermentioned person
authorised by the Council to
act for that purpose:

.....

Authorised Signatory

SIGNED as a **Deed** by **ST EDWARDS**

SCHOOL CHELTENHAM TRUST

acting by two Directors

.....

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)

LTD by two Directors or one

Director and the Company Secretary

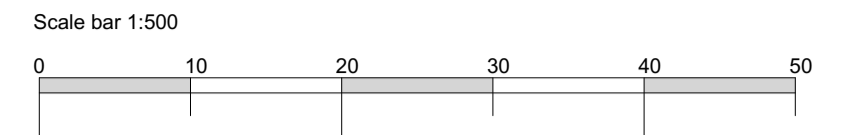
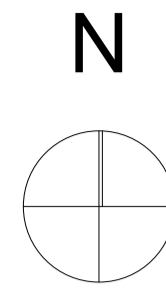
.....

Director

.....

Director

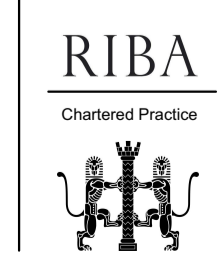
Land off Oakhurst Rise,
Charlton Kings,
Cheltenham



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	3	108.5	217.00
Tb	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

coombes : everitt architects limited
 Unit No.1, The Old Dairy
 Rushley Lane
 Winchcombe
 Gloucestershire
 GL54 5JE
 t: 01242 807727 f: 0845 5575833
 e: info@ce-architects.co.uk
 www.ce-architects.co.uk

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




1. This drawing and content is copyright © of coombes : everitt architects limited and should not be copied without their prior written consent.
 2. Do not scale drawing. all dimensions to be checked on site prior to construction and any discrepancies reported to contract administrator.
 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 amended to reflect LA Affordable housing needs - May 2020
 Rev B - Layout amended 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



Key:
 Retained Grassland for Restoration



Aspect Ecology Limited - West Court - Hardwick Business Park
 Noral Way - Banbury - Oxfordshire - OX16 2AF
 01295 279721 - info@aspect-ecology.com - www.aspect-ecology.com

Land Adjacent to Oakhurst Rise,
 Cheltenham
 Location of Retained Grassland
 for Restoration

PROJECT	
TITLE	
DRAWING NO.	5487/RGR1
REV.	B
DATE	March 2021

