

Appendix 1 – First draft version of a S106 Legal Agreement, sent to the Council for comment by representatives of the Appellant on 14/09/2021

DATED

2021

Between
BERKELEY HOMES (WESTERN) LIMITED
and
READING BOROUGH COUNCIL

SECTION 106 AGREEMENT
constituting Planning Obligations relating to
land at 55 Vastern Road, Reading, RG1 8BU

Application. No. 200188
Appeal Ref. APP/E0345/W/21/3276463

C J Brooks BSc
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S106 No XXXXXX

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THIS DEED is made the day of 2021

BETWEEN :

- (1) **BERKELEY HOMES (WESTERN) LIMITED** (Company Number 05383571 whose registered office is at Berkeley House, 19 Portsmouth Road, Cobham, Surrey, KT11 1JG (hereinafter referred to as "the Owner"); and
- (2) **READING BOROUGH COUNCIL** of Civic Offices Bridge Street Reading RG1 2LU ("the Council").

RECITALS

- (A) Planning Obligation

This Deed constitutes a planning obligation within the meaning of the term in Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act")

- (B) The Land

The Council is the Local Planning Authority for the purposes of the 1990 Act for the Borough of Reading in which the land at 55 Vastern Road, Reading, RG1 8BU ("the Land") more particularly described in Schedule 1 is situated and the Council is the local planning authority who can enforce the provisions of this Deed

- (C) Land Ownership

The Owner is the owner of the freehold of the Land and has an interest in the Land within the meaning of the term in Section 106(9)(b) of the 1990 Act

- (D) Appeal

The Owner submitted the Application to the Council on 4 February 2020 for the development of the Land and on 9 April 2021 the Council refused the Application. On 26 May 2021 the Owner made the Appeal. The Owner has entered into this Deed to mitigate the impact of the Development.

NOW IN PURSUANCE OF THE POWERS CONTAINED in Section 106 of the 1990 Act IT IS HEREBY AGREED AND DECLARED between the parties hereto as follows:-

1 DEFINITIONS AND INTERPRETATION

- 1.1 Definitions

The following expressions shall have the under mentioned meanings:-

- "**1990 Act**" means the Town and Country Planning Act 1990
- "**Accredited Car Club Provider**" means an organisation accredited in the United Kingdom which provides cars for use by members of a Car Club
- "**Affordable Housing**" means social rented housing, affordable rented housing and intermediate housing as defined in Annex 2 of the National Planning Policy Framework first published on 27 March 2012 and last updated on 20 July 2021 (or any subsequent definition in any revision amendment or re-enactment thereof published by the UK Government)

"Appeal"	means the appeal made by the Owner following the Council's refusal of the Application and which has been allocated reference APP/E0345/W/21/3276463
"Application"	means the application for planning permission submitted to the Council on 4 February 2020 and given reference number 200188
"Benchmark Land Value"	means nine million, six hundred thousand pounds (£9,600,000)
"Car Club"	means a local club operated and managed by an Accredited Car Club Provider
"Car Club Spaces"	means a minimum of two (2) parking spaces to be provided on the Land as part of the Development (or a nearby on-street location as may be agreed in writing between the Owner and the Council) the location of which shall be approved or deemed to be approved in accordance with Part 4 of Schedule 3 and which parking spaces shall be made available for use by the Car Club at no cost to the Council;
"Carbon Off-Setting Contribution"	means a financial contribution of Two Hundred and Twenty-Eight Thousand Four Hundred and Twenty Pounds (£228,420) towards ensuring the proposed development is complies with the carbon off-set targets as set out in the Local Plan
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010
"Completion"	means the completion of a New Dwelling as evidenced by a certificate given in relation to that New Dwelling by the architect, surveyor, contract administrator or other suitable person certifying that the said New Dwelling is complete (save for minor snagging items) and the relevant New Dwelling is capable of beneficial occupation
"Deed"	means this planning obligation entered into by the Owner and the Council pursuant to Section 106 of the 1990 Act
"Deferred Contribution"	<p>means the amount (if any) calculated in the Viability Reassessment as the excess profit over the Owner Margin Percentage amount, multiplied by 0.5, which has been either :</p> <p style="margin-left: 40px;">(a) Approved by the Council; or</p> <p style="margin-left: 40px;">(b) Determined by the Expert,</p> <p>PROVIDED ALWAYS THAT the amount shall not exceed the Deferred Contribution Cap</p>
"Deferred Contributions Cap"	means the amount calculated in accordance with the Viability Assessment as the equivalent of the cost of providing thirty per cent (30%) affordable housing in accordance with the Council's policy
"Development"	means the demolition of existing structures and erection of a series of buildings ranging in height from 1 to 11 storeys, including residential dwellings and retail floorspace, together with a new

	north-south pedestrian link, connecting Christchurch Bridge to Vastern Road to be permitted by the Planning Permission
"Ecological Works"	means the provision of ecological mitigation containing proposed details, management and maintenance for the provision and installation of additional marginal planting on the South bank of the River Thames in the location shown on Plan 4
"Ecological Works Scheme"	means a scheme for the provision of the Ecological Works which is approved or deemed to be approved by the Council in accordance with Part 2 of Schedule 4 and which scheme may thereafter be amended from time to time with the written approval of the Council
"the Effective Date"	means the date of the Planning Permission granted by the Inspector or the Secretary of State (as the case may be)
"Expert"	means the person appointed in accordance with clause 17.1 or 17.2
"Employment Skills and Training Contribution"	means a financial contribution of forty-six thousand four hundred and eighty-seven pounds and fifty pence (£46,487.50) calculated in relation to the construction phase of the Development and payable in accordance with and towards the purposes specified in the Council's Employment, Skills and Training Supplementary Planning Document adopted 15 April 2013
"Framework Travel Plan"	means the Framework Travel Plan submitted as part of the Application attached to this Deed as Annexure 5
"Highway Agreement"	means an agreement under sections 38 and/or 278 of the Highways Act 1980 required in order to carry out the Highway Works and (if applicable) to secure their adoption as highway maintainable at public expense (or such additional or alternative statutory provisions required for the purposes of carrying out the Highway Works and (if application) securing their adoption as highway maintainable at public expense)
"Highway Works"	means footway improvements and improvements to the entrance to the Development from Lynmouth Road which are shown on Plan 2
"Highway Improvements Contribution"	means a financial contribution of Two Hundred Thousand Pounds (£200,000) towards the cost of a new crossing on Vastern Road
"Implementation"	means the carrying out of a "material operation" as defined in Section 56(4) of the 1990 Act but disregarding for the purposes of this Deed and for no other purpose, the following operations: <ul style="list-style-type: none"> (a) demolition works; (b) site clearance; (c) ground investigations; (d) site survey works; (e) laying or diversion of services;

- (f) temporary access construction works;
- (g) archaeological investigation; and
- (h) erection of any fences and hoardings around the Land.

and "Implement" and "Implemented" shall be construed accordingly

"Index"	means the All Items Index of Retail Prices issued by the Office for National Statistics
"Inspector"	means the Inspector appointed by the Secretary of State to determine the Appeal
"the Land"	means the land described in Schedule 1
"Kenavon Drive Car Club"	means the Car Club in operation at the Kenavon Drive Development
"Kenavon Drive Development"	means the development at Kenavon Drive, Reading authorised by a planning permission granted by the Council on 10 October 2018 with reference 170509
"New Dwelling"	means any one of the new dwellings comprised in the Development
"North-South Link"	means a permissive route through the Development connecting Vastern Road to Christchurch Bridge to be provided in accordance with Part 1 of Schedule 3 and which is shown on Plan 3
"Occupation"	means the first beneficial occupation of a New Dwelling for residential purposes following Implementation of the Planning Permission but not including occupation by personnel engaged in construction or fitting out, or occupation for marketing and display, or occupation in relation to security operations and "Occupied" shall be construed accordingly
"Open Space Contribution"	means a financial contribution of one hundred thousand pounds (£100,000) towards the investment in new facilities at Christchurch Meadows and/or Hills Meadow
"Owner Margin Percentage"	means an allowance to the Owner of [twenty per cent (20%)] in the Viability Reassessment undertaken in accordance with Part 1 of Schedule 2 Deed in respect of the Owner's profit return on gross development value (GDV)
"Plan 1"	means the plan with drawing reference 448.PL.SL001_B attached to this Deed as Annexure 1
"Plan 2"	means the plan with drawing reference 448.PL.SL.002 E attached to this Deed as Annexure 2 which plan may be amended from time to time with the written agreement of the Council
"Plan 3"	means the plan with drawing reference [INSERT] attached to this Deed as Annexure 3 which plan may be amended from time to time with the written agreement of the Council

Commented [JC1]: Plan to show N-S Link to follow

"Plan 4"	means the plan with drawing reference [INSERT] attached to this Deed as Annexure 4 which plan may be amended from time to time with the written agreement of the Council
"Planning Permission"	means planning permission granted by the Inspector pursuant to the Appeal
"Travel Plan"	means a full and final form of travel plan based on the Framework Travel Plan which is approved or deemed to be approved by the Council in accordance with Part 3 of Schedule 3 and which plan may thereafter be amended from time to time with the Council's written approval
"Travel Plan Co-ordinator"	means the person appointed by the Owner and who is responsible for setting up and managing the implementation of the Travel Plan in accordance with the terms of the Travel Plan
"Viability Assessment"	means a financial appraisal to assess the viability of the Development which appraisal shall be carried out (unless otherwise agreed in writing by the Council) using the inputs and methodology set out pro forma attached to this Deed as Annexure 6
"Viability Reassessment"	<p>means an updated Viability Assessment which demonstrates:</p> <ul style="list-style-type: none"> (a) whether or not the Development achieves the Owner Margin Percentage; and (b) the amount (if any) which is available for the Deferred Contribution <p>Provided always that;</p> <ul style="list-style-type: none"> (c) the agreed percentage return to the Owner shall be no less than the Owner Margin Percentage; (d) the Benchmark Land Value; and (e) those costs and revenue figures which were shown as estimated amounts in the Viability Assessment shall be replaced by the actual costs and revenue figures at the date of the Viability Reassessment.
"Working Day"	any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

Commented [JC2]: Plan to show location of ecological works to follow

1.2 Interpretation

IT IS HEREBY FURTHER AGREED that unless the context otherwise requires:

- (a) the singular shall include the plural and vice versa
- (b) references to any party shall include the successors in title of that party
- (c) where a party includes more than one person the obligations of those persons shall be joint and several

- (d) references to Clauses Schedules and Annexures are references to clauses schedules and the annexures respectively in this Deed
- (e) references to a statute or statutory instrument shall mean and include any statutory revision amendment or re-enactment thereof
- (f) words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit infringement of the restriction

AND THAT Clause headings do not form part of this Deed and shall not be taken into account in its construction or interpretation

2 CONDITIONALITY

2.1 Subject to Clause 2.2 below this Deed shall have immediate effect

2.2 The covenants by the Owner in Clause 4 are conditional upon:

- (a) the grant of the Planning Permission; and
- (b) Implementation of the Development

3 COVENANTS BY THE OWNER: DECLARATION

The covenants by the Owner hereinafter set out are entered into with the intent that those covenants shall (subject to Clauses 6 and 16) be enforceable without any limits of time against the Owner and any person deriving title from the Owner to all or any part of the Land and any person deriving title under them in respect of a lesser interest in the whole or any part of the Land as if that person had also been an original covenanting party in respect of the interest for the time being held by him

4 THE OWNER'S COVENANTS

Subject to Clause 16, the Owner COVENANTS AND AGREES with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 2, Schedule 3, Schedule 4, Schedule 5, and Schedule 6

5 THE COUNCIL'S COVENANTS

5.1 the Council COVENANTS AND AGREES with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 7

6 LIABILITY

6.1 The liabilities of the person who for the time being is the Owner under this Deed in relation to the Land shall cease (subject to and without prejudice to the Council's rights in relation to any antecedent breach of the obligations contained in this Deed) after the person has parted with all his interest in the Land

6.2 The covenants and other provisions contained in this Deed shall not be enforceable against:

- (a) any statutory undertaker or other service provider who acquires any part of the Land or an interest or right in the Land for the purpose of providing infrastructure or services;
- (b) owners or occupiers of any commercial floor space within the Development and their successors in title and any mortgagees or chargees of such persons;

- (c) owners or occupiers of any New Dwelling and their successors in title and any mortgagees or chargees of such persons.

7 NO WAIVER

No waiver (whether express or implied) by the Council of any breach of or default by the Owner in performing or observing any of the terms of or covenants obligations or restrictions in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms covenants obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Owner

8 RIGHTS OF THIRD PARTIES

It is not intended that any of the provisions of this Deed be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the parties to this Deed

9 LOCAL LAND CHARGE

This Deed is a Local Land Charge and shall be registered as such by the Council

10 DETERMINATION

10.1 In the event that:

- (a) the Planning Permission expires or is quashed before implementation or is (without the consent of the Owner) revoked or modified by any statutory enactment; or
- (b) the Inspector dismisses the Appeal and (if applicable) such dismissal is later upheld following statutory challenge or redetermination following a successful statutory challenge

then in such event this Deed shall cease to be enforceable and shall determine absolutely

11 NOTICES

11.1 Any notice or other communication to be given under this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

11.2 Any notice or other communication to be given under this Deed must be sent to the Council at the address stated at the beginning of this Deed and marked for the attention of [NAME/POSITION] or to such alternative address or person as may be notified by the Council to the Owner in writing.

11.3 Any notice or other communication given in accordance with Clause 11.1 and Clause 11.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second (2nd) Working Day after posting.

11.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12 INDEXATION

The amount of any contribution payable under this Deed shall be increased by an amount equivalent to the increase in the Index from the Effective Date until the date on which the respective contribution is payable

13 LEGAL FEES

The Owner agrees to reimburse the Council the legal costs and expenses incurred by the Council in the preparation and completion of this Deed in the sum of one thousand pounds (£1,000) such sum to be paid to the Council within ten (10) Working Days from the Effective Date

14 MONITORING FEE

The Owner agrees to pay the Council's costs and expenses incurred or to be to be incurred by the Council in the administration and monitoring of the provisions of this Deed in the sum of four hundred pounds (£400) such sum to be paid to the Council within ten (10) Working Days from the Effective Date

15 PAYMENTS TO THE COUNCIL

Any payments due to the Council under the terms of this Deed (SAVE AND EXCEPT for the legal fees payable to the Council under the provisions of the Clause 13 and the monitoring fee under the provisions of Clause 14) shall be paid to the Council by means of bank transfer to the Council as follows:

Reading Borough Council

Sort Code: 30-91-31

Account Number: 00271502

Lloyds Bank plc 24 Broad Street Reading RG1 2BT

quoting reference: [XXXXXX] or other reference quoted in relevant S106 Demand Notice issued in respect of the obligation

16 REGULATION 122

If, in relation to any of the obligations contained in Schedule 2, Schedule 3, Schedule 4, Schedule 5 and/or Schedule 6 the Inspector (or Secretary of State as the case may be) determining the Appeal states in their decision that the obligation does not comply with all of the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (such that it does not constitute a reason for granting planning permission or shall not be accorded any weight) then that obligation or those obligations shall not apply and shall be unenforceable.

17 DISPUTES

17.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute

- 17.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 17.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Royal Institution of Chartered Surveyors for him to appoint a surveyor to determine the dispute
- 17.3 Any person whether appointed pursuant to clause 17.1 or 17.2 above shall act as an expert and his decision shall be final and binding on all parties in the absence of manifest error or fraud and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 17.4 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than forty (40) Working Days after notification of his appointment.
- 17.5 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten (10) Working Days of request written submissions and supporting material ("the Original Submissions") and all parties will be entitled to make a counter written submission within ten (10) Working Days of receipt of the Original Submissions.
- 17.6 Any period of time specified in this clause 17 may be substituted for such longer period of time as may be agreed by all of the parties to the said dispute or difference and approved by the expert.

18 NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

19 FUTURE PERMISSIONS

Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

20 FUTURE MORTGAGEES

- 20.1 It is acknowledged and declared that this Deed has been entered into by the Owner with the intent that the obligations shall be binding on the Land and that the security of any future mortgage / charge over the Land shall take effect subject to this Deed PROVIDED THAT any such mortgagee / chargee of that part of the Land to which a breach relates shall only be liable for any breach that it has itself caused whilst mortgagee in possession and shall not be liable for any pre-existing breach but FOR THE AVOIDANCE OF DOUBT any successor in title to any such mortgagee / chargee will subject to clause 6 be responsible as successor in title to the Owner for:

- (a) any obligation still to be performed; and
- (b) any obligation which has not been satisfied in full due to a breach that has not been remedied or has been remedied only in part.

21 AGREEMENT AND DECLARATION

It is agreed by the Owner and the Council that should the Development the subject of the Planning Permission be varied under a new planning permission granted by the Council under Section 73 of the 1990 Act the planning obligations in this Deed shall apply to such planning permission

22 GOVERNING LAW

22.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

EXECUTED as a deed by the parties hereto and delivered on the date written at the start of this deed

Schedule 1
The Land

All that land at 55 Vastern Road, Reading (RG1 8BU) registered at the Land Registry under Title Number BK500851 shown for illustrative purposes edged red on Plan 1

Schedule 2
Affordable Housing

Part 1 - Viability Review

- 1 Prior to the Completion of the one hundred and forty sixth (146th) New Dwelling, but no earlier than the Completion of the eighty fourth (84th) New Dwelling) the Owner will submit to the Council a Viability Reassessment for the Council's review and approval.
- 2 Subject to the provisions of paragraph 5 of this Part 1 of Schedule 2, the Owner shall not Occupy or permit to be Occupied more than one hundred and forty-six (146) New Dwellings until the final Viability Reassessment has been agreed in accordance with this this Part 1 of Schedule 2 and the resulting Deferred Contribution (if any) has been paid.
- 3 The Council will consider the respective Viability Reassessment and it shall within three (3) weeks of receipt give written notice to the Owner confirming either:
 - 3.1 that it accepts the conclusions of the Viability Reassessment (the "Acceptance Notice"); or
 - 3.2 that it rejects (with reasons) the conclusions of the Viability Reassessment (the "Non-Acceptance Notice") and if so it shall provide to the Owner:
 - (a) its own assessment of the conclusions of the Viability Reassessment (as submitted); and
 - (b) the level of Deferred Contribution in respect of the final Viability Reassessment it considers should be paid;
- 4 In the event the Council issues a Non Acceptance Notice in accordance with paragraph 3.2 this Part 1 of Schedule 2 the Council and the Owner shall will seek to negotiate:
 - 4.1 an agreed form of Viability Reassessment; and
 - 4.2 an agreed Deferred Contribution in respect of the Viability Reassessment.
- 5 In the event that the Council and the Owner are not able to agree the Viability Reassessment within a period of eight (8) weeks from the date the Owner submits the Viability Reassessment to the Council then either party may refer the matter to the Expert for determination in accordance with clause 17, and, in the event that this matter is referred to an Expert, then paragraph 2 this Part 1 of Schedule 2 shall determine and cease to apply and the Owner shall be permitted to Occupy or permit the Occupation of all of the New Dwellings.

**Schedule 3
Highways, Access and Transport**

Part 1 - North-South Link

- 1 The Owner covenants with the Council as follows:
- 1.1 The North-South Link will be completed in accordance with the approved plans and, subject to the provisions set out in paragraph 2 of this Part 1 of Schedule 3 shall be made available for use by the public prior to completion of the Development
- 2 The use by the public of the North-South Link shall be subject to the following provisions:
- 2.1 without prejudice to the permissive rights granted herein nothing in this Deed creates or is intended to create any public rights over the North-South Link and the Owner may take such steps as are necessary including the erection of signs to ensure that such rights are not acquired;
- 2.2 the Owner may from time to time temporarily prevent, limit or otherwise restrict access to all or such parts of the North-South Link for such period as may be reasonably necessary for the following purposes provided that any such prevention, limitation or restriction of access for a continuous period longer than five (5) Working Days shall first be agreed with the Council and signs shall be in place to notify the public in advance of and during such closure and shall be removed promptly once the reason for such closure no longer applies:
- (a) the maintenance of the North-South Link;
 - (b) the laying, construction, inspection, maintenance, repair or renewal of any building or buildings or any services or service media serving such building or buildings (including the erection of scaffolding) on the land adjoining the North-South Link or any part of such land;
 - (c) the rebuilding or redevelopment of any part or parts of the Development;
 - (d) in cases of emergency or danger to the public;
 - (e) minimising anti-social behaviour;
 - (f) for any other sufficient cause approved in writing by the Council;
 - (g) for such minimum periods as may be necessary to prevent the creation of any public rights of way over the North-South Link;
 - (h) closure to allow the Owner and/or their contractors or occupiers of the Development to carry out maintenance cleaning remedial and/or other necessary works to the relevant areas and/or parts of the Development abutting the North-South Link including works of fitting out or other structural or non-structural works and/or alterations; and
 - (i) servicing of the Development at any time.

Part 2 - Highway Improvements Contribution

- 1 The Owner covenants with the Council not to Occupy or permit Occupation of any New Dwelling until the Owner has paid the Highway Improvements Contribution to the Council.

Part 3- Travel Plan

1. The Owner covenants with the Council as follows:

- 1.1. The New Dwellings shall not be Occupied unless and until a Travel Plan Co-ordinator has been appointed and their details (name, address, email address and telephone number) have been notified to the Council.
- 1.2. Not to Occupy nor permit Occupation of any New Dwelling unless and until it has submitted the Travel Plan to the Council for approval.
- 1.3. For the avoidance of doubt the Travel Plan shall contain details of the specific measures proposed in order to achieve the aims objectives set out in the Framework Travel Plan such details to be based on the indicative measures of the Framework Travel Plan.
- 1.4. If the Council has not confirmed in writing within four (4) weeks of receipt of the Travel Plan whether:
 - (a) the proposed Travel Plan is acceptable; or
 - (b) where it considers that the Travel Plan is not acceptable what amendments are required to make the Travel Plan acceptablethen the Travel Plan submitted in accordance with paragraph 1.2 shall be deemed to be approved.
- 1.5. In the event the Council confirms the that the Travel Plan submitted in accordance with paragraph 1.2 is not acceptable or requires specified amendments in order to be acceptable then a revised Travel Plan shall be submitted and the provisions of paragraph 1.4 of this Part 4 shall apply to the revised Travel Plan and shall continue to apply until such time as the Travel Plan is approved (or deemed to be approved).
2. The Owner shall not Occupy or permit to be Occupied more than fifty per cent (50%) of the New Dwellings within the Development until the Travel Plan has been approved or is deemed to be approved.
3. The Owner covenants to publicise the approved Travel Plan to Occupiers of the Development and on written request by an Occupier of the Development to provide a copy of the approved Travel Plan without charge.
4. In accordance with the requirements of the approved Travel Plan the Owner shall:
 - 4.1. monitor and review the Travel Plan for five (5) years from the date of first Occupation of the Development; and
 - 4.2. provide a written report to the Council at the end of the said five (5) year period and thereafter take into account any reasonable comments provided thereon by the Council.
5. Following the expiry of the five (5) year period specified in paragraph 4 of this Part 3 the provisions contained in this Part 4 shall determine and shall cease to be enforceable by the Council.

Part 4 - Car Club

- 1 The Owner covenants with the Council as follows:
 - 1.1 not to Occupy or permit Occupation of any New Dwelling until the Owner has submitted and the Council has approved a strategy for the provision and operation of a Car Club (the "Car Club Scheme") which shall include the following details:

either:

 - (a) the location of the Car Club Spaces to be provided;

- (b) the proposed Car Club to whom the Car Club Spaces shall be marketed for use; and
- (c) details of any benefits to be offered to members of the Car Club (having reasonable regard to the anticipated requirements of the proposed Car Club)

or:

- (d) the arrangements under which access to and use of the Kenavon Drive Car Club will be provided; and
- (e) details of any benefits to be offered to members of the Car Club (having reasonable regard to the anticipated requirements of the proposed Car Club).

1.2 If the Council has not confirmed in writing within four (4) weeks of receipt of the Car Club Scheme whether:

- (a) the proposed Car Club Scheme is acceptable; or
- (b) where it considers that the Car Club Scheme is not acceptable what amendments are required to make the Car Club Scheme acceptable

then the Car Club Scheme submitted in accordance with paragraph 1.1 shall be deemed to be approved.

1.3 In the event the Council confirms that the Car Club Scheme submitted in accordance with paragraph 1.1 is not acceptable or requires specified amendments in order to be acceptable then a revised Car Club Scheme shall be submitted and the provisions of paragraph 1.2 of this Part 4 shall apply to the revised Car Club Scheme and shall continue to apply until such time as the Car Club Scheme is approved (or deemed to be approved).

1.4 Subject to paragraph 1.7 of this Part 4 of Schedule 3, the Owner shall provide and maintain at its own expense the Car Club Spaces approved to be used solely for the purposes of the Car Club and which shall be made available and ready for use for a minimum of ten years from first establishment of the Car Club (or such other shorter period as may be approved in writing by the Council with reasonable regard to the viability and feasibility of the Car Club Scheme)

1.5 Subject to paragraph 1.7 of this Part 4 of Schedule 3, the Owner shall publicise annually and provide details on how to join the Car Club within its marketing materials for the duration of the marketing period for the Development. .

1.6 Subject to paragraph 1.7 of this Part 4 of Schedule 3 the Car Club Spaces shall be used for the purposes of the Car Club for the period in which the Car Club is operational.

1.7 In the event that the Car Club Scheme approved or deemed to be approved in accordance with paragraph 1.3 of this Part 4 of Schedule 3 secures the provision of the Car Club through the use of the Kenavon Drive Car Club then paragraphs 1.4, 1.5 and 1.6 of this Part 4 of Schedule 3 shall determine and shall cease to be enforceable by the Council.

Schedule 4
Open Space and Ecological Works

Part 1 - Open Space Contribution

- 1 The Owner covenants with the Council as follows:
- 1.1 to pay the Open Space Contribution to the Council prior to Occupation of any New Dwelling; and
- 1.2 not to Occupy or permit the Occupation of any New Dwelling until the Open Space Contribution has been paid to the Council.

Part 2 – Ecological Works

- 1 The Owner covenants with the Council as follows:
- 1.1 prior to Occupation of any New Dwelling the Owner shall submit to the Council for its written approval the Ecological Works Scheme
- 2 If the Council has not confirmed in writing within four (4) weeks of receipt of the Ecological Works Scheme whether:
- 2.1 the proposed Ecological Works Scheme is acceptable; or
- 2.2 where it considers that the Ecological Works Scheme is not acceptable what amendments are required to make the Ecological Works Scheme acceptable
- then the Ecological Works Scheme submitted in accordance with paragraph 1.1 of this Part 2 of Schedule 4 shall be deemed to be approved.
- 3 Upon the approval of the Ecological Works Scheme pursuant to paragraph 2 of this Part 2 of Schedule 4 the Owner shall use reasonable endeavours to implement the Ecological Works Scheme and shall provide the Ecological Works in the locations and within the timescales as are approved therein PROVIDED THAT where the approved Ecological Works Scheme requires the completion of an appropriate licence and/or other consents to be obtained in order to undertake the approved works and the Owner despite using its reasonable yet commercially prudent endeavours has been unable to complete such Licence and/or obtain such consents (as the case may be) within three (3) months from the date the Ecological Works Scheme is submitted to the Council then the Owner may at its discretion:
- 3.1 submit a revised Ecological Works Scheme for an alternative option specified in paragraph 1.1 to the Council for approval in accordance with paragraph 2 of this Part 2; or
- 3.2 pay to the Council a financial contribution of fifteen thousand pounds (£15,000) for the purposes of providing for similar ecological improvements within the Borough of Reading.
- 4 For the avoidance of doubt, upon:
- 4.1 the expenditure by the Owner of fifteen thousand pounds (£15,000) only for the provision of one of the options contained to this Part 2 of Schedule 4 for the purposes of the Ecological Works Scheme; or
- 4.2 the payment to the Council of the financial contribution specified in paragraph 3.2 of this Part 2 of Schedule 4
- then the Owner's obligations under this Part 2 of Schedule 4 shall be deemed to have been discharged and shall cease to apply.

Schedule 5
Carbon Off-Setting

- 1 The Owner covenants with the Council as follows:
 - 1.1 to pay the Carbon Off-Setting Contribution to the Council in the following instalments:
 - (a) fifty per cent (50%) prior to Occupation of any New Dwelling; and
 - (b) fifty per cent (50%) prior to Occupation of the one hundredth (100th) New Dwelling.
 - 1.2 not to Occupy or permit the Occupation of:
 - (a) any New Dwelling until the instalment referred to in paragraph 1.1(a) of this Schedule 5 has been paid to the Council; and
 - (b) more than one hundred (100) New Dwellings until the instalment referred to in paragraph 1.1(b) of this Schedule 5 has been paid to the Council.

Schedule 6
Employment Skills and Training

- 1 The Owner covenants with the Council as follows:
 - 1.1 to pay the Employment Skills and Training Contribution to the Council prior to Implementation of the Development; and
 - 1.2 not to Implement the Development or permit the Implementation of the Development until the Employment Skills and Training Contribution has been paid to the Council.

**Schedule 7
Council's Covenants**

- 1 The Council shall use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
- 2 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.
- 3 In the event that any of the monetary contributions payable to the Council under the terms of this Deed or any part thereof has not been spent or committed to be spent by the Council within five (5) years of receipt of the payment or the final instalment (as the case may be) the Council shall repay the contribution or the unspent or uncommitted part thereof to the original paying party together with interest from the date of original payment to the date of repayment at the rate of the higher of either 0% or one per cent (1%) below Barclays Bank PLC base rate for the time being in force.
- 4 At the written request of the Owner the Council shall provide written confirmation of the discharge of any of the obligations contained in Schedule 2, Schedule 3, Schedule 4, Schedule 5, and Schedule 6 when satisfied that such obligations have been performed.
- 5 Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

Executed as a deed by
**BERKELEY HOMES (WESTERN)
LIMITED** acting by two directors

Director

Director

Executed as a deed (but not delivered
until the date hereof) by
affixing the common seal of
READING BOROUGH COUNCIL
in the presence of:

Authorised Signatory

Annexure 1
Plan 1

Annexure 2
Plan 2

Annexure 3
Plan 3

Annexure 4
Plan 4

**Annexure 5
Framework Travel Plan**

Annexure 6
Viability Assessment