

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

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	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 six million, five hundred thousand pounds (£6,500,000)
"Biodiversity Metric"	means Biodiversity Metric 3.0 (JP039) first published by Natural England on 7 July 2021 as amended or replaced from time to time
"Build Costs"	means the actual build costs for the Development in accordance with the Viability Reassessment prepared by a person or body accredited by the Royal Institution of Chartered Surveyors
"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 the location of which shall be approved or deemed to be approved in accordance with Part 5 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 the Development must achieve a minimum of thirty-five per cent (35%) improvement in regulated emissions over the Target Emission Rate plus a financial contribution of one thousand eight hundred pounds (£1,800) per remaining tonne towards carbon offsetting within the Borough (calculated as sixty pounds (£60) per tonne over a thirty (30) year period)
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010
"Commercial Unit"	means unit within the Development shown edged red on Plan 6
"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
"Default Interest Rate"	means four per cent (4%) per annum above the base rate from time to time of Barclays Bank Plc
"Deferred Contribution"	means the amount (if any) calculated in the Viability Reassessment as the excess profit over the Owner Margin Percentage amount, multiplied by Zero Point Five (0.5), which has been either :

- (a) Approved by the Council; or
- (b) Determined by the Expert,

PROVIDED ALWAYS THAT the amount shall not exceed the Deferred Contribution Cap

"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 compensation and its subsequent maintenance in perpetuity in accordance with the Ecological Works Scheme such ecological compensation shall comprise either:

- (a) the replacement of eight (8) metres of the existing coir roll at the eastern end of the marginal vegetation strip next to the Land, providing a fifty-three (53) metre length of new coir roll and a fifty-three (53) metre length of brushwood roll which together comprises thirty-four point two (34.2) square metres of new marginal planting; or
- (b) in the event that a further Ecological Works Scheme is submitted to the Council proposing that the ecological compensation is provided in an alternative location in accordance with paragraph 5.1 of Part 2 of Schedule 4 then the ecological compensation to be provided shall be calculated by applying the Biodiversity Metric

"Ecological Works Contingency Sum"

Means the sum of £40,000.00 (forty thousand pounds only) in relation to the cost of reinstating the Ecological Works in the event that the mitigation measures associated with the Ecological Works fail

"Ecological Works Contribution"

means a financial contribution equal to the cost of carrying out the Ecological Works and maintaining those works in perpetuity as specified in the appraisal submitted to and approved by the Council in accordance with paragraph 5.2 of Part 2 of Schedule 4 PROVIDED THAT such contribution shall not exceed the financial cap specified in sub-paragraph 5.2(a) of Part 2 of Schedule 4

"Ecological Works Scheme"

means a scheme for the provision of the Ecological Works (including timescales for their provision) in the location shown by a solid green line on Plan 4 or in an alternative location or additional locations within Reading Borough along the River Thames as may be approved by the Council in accordance with Part 2 of Schedule 4 and which scheme 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 18.1 or 18.2

"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 1980 Act, together with such other agreements and/or licences as may be 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 applicable) securing their adoption as highway maintainable at public expense)

"Highway Works" means the Junction Works and footway improvements which are shown on Plan 2 together with such works as may be required in connection with the construction North-South Link

"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:

- (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
"Junction Works"	means highway improvements at the entrance to the Development from Lynmouth Road
"the Land"	means the land described in Schedule 1
"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 and to the tow path along the River Thames to be provided in accordance with Part 1 of Schedule 3 and which is shown edged blue 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"	<p>means a financial contribution of one hundred thousand pounds (£100,000) towards the investment in new facilities or improvements to existing facilities at:</p> <ul style="list-style-type: none"> (a) Christchurch Meadows; (b) Hills Meadow; and/or (c) Christchurch Meadows Island <p>marked respectively as '27', '55' and '28 on Plan 5</p>
"Owner Margin Percentage"	means an allowance to the Owner of seventeen point five per cent (17.5%) 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.S106.001 attached to this Deed as Annexure 1
"Plan 2"	means the plan with drawing reference 47500/5500/001_A 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 448.S106.003 attached to this Deed as Annexure 3 which plan may be amended from time to time with the written agreement of the Council
"Plan 4"	means the plan with drawing reference 448.S106.004 attached to this Deed as Annexure 4 which plan may be amended from time to time with the written agreement of the Council
"Plan 5"	means the plan with titled 'Borough Amenity Areas and Parks',

dated 31 October 2008 and this Deed as Annexure 7

"Plan 6"	means the plan with drawing reference 448.S106.005 attached to this Deed as Annexure 8 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
"Revenue"	the realised sales of New Dwellings that are evidenced through sales contracts / leases or expected revenues based on the achieved values in the case of New Dwellings where the units have not been sold
"Standard Assessment Procedure Review"	means a review using the Government's Standard Assessment Procedure for energy rating of dwellings using SAP 2012 as defined in the 2013 Building Regulations with use of the updated SAP 10 carbon factors
"Target Emission Rate"	means the "Target Co ₂ Emission Rate" as set out in the 2013 Building Regulations
"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 (unless otherwise agreed in writing by the Council) using the inputs as set out in the 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: <ul style="list-style-type: none"> (i) the Owner Margin Percentage; and (ii) the Benchmark Land Value; (d) Build Costs and Revenue figures that 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

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 PROVIDED THAT this sub-clause shall not apply to any references in this Deed to the 2013 Building Regulations
- (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 17) 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 17, 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

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 the Commercial Unit 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 the Council's Infrastructure and monitoring Officer (within the Council's Directorate of Economic Growth and Neighbourhood Services) as designated by the Council to monitor obligations set out in this Deed) 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 INTEREST ON LATE PAYMENT

13.1 If any sum or amount contained in Schedule 2, Schedule 3, Schedule 4, Schedule 5, and/or Schedule 6 has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

14 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 two thousand five hundred pounds (£2,500) such sum to be paid to the Council within ten (10) Working Days from the Effective Date

15 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 eight hundred pounds (£800) such sum to be paid to the Council within ten (10) Working Days from the Effective Date

16 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 14 and the monitoring fee under the provisions of Clause 15) 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:

017120/ 200188/ APP/E0345/W/21/3276463 (or such other reference as may be quoted in the relevant S106 Demand Notice issued in respect of the obligation)

17 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.

18 DISPUTES

- 18.1 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
- 18.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 18.1 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
- 18.3 Any person whether appointed pursuant to clause 18.1 or 18.2 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.
- 18.4 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.
- 18.5 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.
- 18.6 Any period of time specified in this clause 18 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.

19 NO FETTER OF DISCRETION

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

20 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.

21 FUTURE MORTGAGEES

21.1 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.

22 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

23 GOVERNING LAW

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**

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

Schedule 2
Affordable Housing

Part 1 - Viability Review

The Owner covenants with the Council as follows:

- 1 No earlier than Completion of sixty per cent (60%) of the New Dwellings the Owner shall 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 seventy-five per cent (75%) of the New Dwellings until the final Viability Reassessment has been agreed in accordance with 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 18, 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 subject to paragraph 2.3 of this Part 1 of Schedule 3, 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 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) for any other sufficient cause approved in writing by the Council;
 - (f) for such minimum periods as may be necessary to prevent the creation of any public rights of way over the North-South Link; and
 - (g) 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.
- 2.3 any prevention, limitation or restriction of access to all or any parts of the North-South Link in accordance with paragraph 2.2 of this Part 1 of Schedule 3 shall not without the Council's prior written approval:
- (a) be in place for a continuous period longer than five (5) Working Days; or
 - (b) exceed twenty (20) Working Days in any calendar year.

Part 2 - Highway Improvements Contribution

- 1 The Owner covenants with the Council not to Implement the Development or permit Implementation to take place until the Owner has paid the Highway Improvements Contribution to the Council.

Part 3 – Highway Works

- 1 The Owner covenants with the Council not to Occupy or permit Occupation of any New Dwelling until:
 - 1.1 the Highway Agreement has been completed; and
 - 1.2 the Junction Works have been completed to base course level.
- 2 The restriction on Occupation set out in paragraph 1 of this Part 3 of Schedule 3 may be varied by agreement in writing between the Owner and the Council (acting reasonably) if the Owner demonstrates that despite using its reasonable endeavours it has been unable to enter into the Highway Agreement.

Part 4- 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 more than one hundred and fifty (150) New Dwellings 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 eight (8) 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 one hundred and ninety (190) New Dwellings 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 5 - 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:
- (a) the location of the Car Club Spaces to be provided;
 - (b) confirmation that the Car Club Spaces will be provided prior to Occupation of any New Dwelling;
 - (c) the proposed Car Club to whom the Car Club Spaces shall be marketed for use; and
 - (d) 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 The Council shall confirm within eight (8) weeks of receipt of the Car Club Scheme whether the proposed Car Club Scheme is acceptable and if it considers that the Car Club Scheme is not acceptable the Council will confirm in writing within that eight (8) week period what measures are required to make the Car Club Scheme acceptable (the "CC Non-Acceptance Notice").
- 1.3 If the Council has not confirmed in writing within eight (8) 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.
- 1.4 Upon the approval of the Car Club Scheme pursuant to a paragraph 1.2 of this Part 5 of Schedule 3 (or deemed approved pursuant to paragraph 1.3 of this Part 5 of Schedule 3) the Owner shall implement the Car Club Scheme and shall provide the Car Club Spaces in such locations and timescales as are approved therein and shall offer them for use by the Car Club referenced therein.
- 1.5 In the event the Council confirms the 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 5 of Schedule 3 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).
- 1.6 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 (10) 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)
- 1.7 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.

- 1.8 For the avoidance of doubt, the Car Club Spaces shall be used for the purposes of the Car Club for the period in which the Car Club is operational.

**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 in full 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 in full 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; and
- 1.2 the Council shall confirm within eight (8) weeks of receipt of the Ecological Works Scheme whether the proposed Ecological Works Scheme is acceptable and if it considers that the Ecological Works Scheme is not acceptable the Council will confirm in writing within that eight (8) week period why it is not acceptable and make reasonable suggestions to make the Ecological Works Scheme acceptable (the "EW Non-Acceptance Notice");
- 2 In the event of the service of a EW Non-Acceptance Notice by the Council pursuant to paragraph 1.2 of this Part 2 of Schedule 4, the Owner and the Council will continue to negotiate an agreed form of Ecological Works Scheme and the Owner shall following such negotiations submit a revised Ecological Works Scheme to the Council for its written approval (the "Negotiated EWS").
- 3 If the Council has not confirmed in writing within eight (8) weeks of receipt of the Ecological Works Scheme (or Negotiated EWS (as the case may be)) whether:
- 3.1 the proposed Ecological Works Scheme or Negotiated EWS is acceptable; or
- 3.2 where it considers that the Ecological Works Scheme or Negotiated EWS (as the case may be) is not acceptable the Council shall provide reasonable suggestions to make the Ecological Works Scheme or Negotiated EWS (as the case may be) acceptable
- then the Ecological Works Scheme submitted in accordance with paragraph 1.1 or Negotiated EWS submitted in accordance with paragraph 2 (as the case may be) of this Part 2 of Schedule 4 shall be deemed to be approved.
- 4 Upon the approval of the Ecological Works Scheme pursuant to paragraph 1.2 or Negotiated EWS submitted in accordance with paragraph 2 (as the case may be) of this Part 2 of Schedule 4 (or deemed approval pursuant to paragraph 3 of this Part 2 of Schedule 4) (the "Relevant Date") the Owner shall subject to paragraph 5 of this Part 2 of Schedule 4 use reasonable endeavours to implement the Ecological Works Scheme (or Negotiated EWS (as the case may be)) and shall provide the Ecological Works in such locations and timescales as are approved therein and shall offer them for use referenced therein
- 5 Where the Ecological Works Scheme or Negotiated EWS (as the case may be) approved or deemed to be approved under this Part 2 of Schedule 4 requires an appropriate licence/s and/or other consents to be obtained in order to undertake the approved works and the Owner despite using its reasonable endeavours as evidenced to the Council in writing has been unable to obtain such licence/s and/or obtain such consents (as the case may be) within six (6) months from the Relevant Date then the Owner may with the Council's prior written agreement:

5.1 submit to the Council a further Ecological Works Scheme proposing the Ecological Works are undertaken in an alternative location and which scheme shall be approved (or deemed to be approved) in accordance with the provisions of this Part 2 of Schedule 4; or

5.2 submit to the Council an appraisal of the financial cost of undertaking the proposed Ecological Works for the Council's approval and the Owner shall pay the Ecological Works Contribution together with the Ecological Works Contingency Sum to the Council within twenty (20) Working Days from the date the Council approves the appraisal PROVIDED THAT:

(a) the Ecological Works Contribution shall not exceed one hundred and eight thousand pounds (£~~108~~68,000) ("the EWC Cap"); and

(b) the Owner may discharge its obligations under this paragraph 5.2 by paying a financial contribution to the Council equal to the value of the EWC Cap together with the Ecological Works Contingency Sum.

6 For the avoidance of doubt, upon:

6.1 the completion of the works as set out in the Ecological Works Scheme or Negotiated EWS (as the case may be) approved or deemed to be approved in accordance with the provisions of this Part 2 of Schedule 4; or

6.2 the payment to the Council of the Ecological Works Contribution in accordance with paragraph 5.2 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.

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**Schedule 5
Carbon Off-Setting**

- 1 The Owner covenants with the Council as follows:
 - 1.1 following Completion of each New Dwelling to carry out a Standard Assessment Procedure Review, which shall be paid for by the Owner and carried out by an independent assessor accredited to carry out Standard Assessment Procedure Reviews;
 - 1.2 following Completion of the final New Dwelling to submit to the Council for approval all of the Standard Assessment Procedure Reviews carried out under in accordance with paragraph 1.1 of this Schedule 5 together with a schedule of air permeability tests for each New Dwelling to demonstrate that the Development achieves a minimum of thirty-five per cent (35%) improvement in regulated emissions over the Target Emission Rate (the "As-Built Assessment");
 - 1.3 prior to Completion of any New Dwelling to pay to the Council one hundred and twenty thousand seven hundred and eighty pounds (£120,780) being a payment on account of the Carbon Off-Setting Contribution payable in accordance with paragraph 1.4 of this Schedule 5 (the "Interim Carbon-Offsetting Contribution"); and
 - 1.4 to pay the Carbon Off-Setting Contribution (less the Interim Carbon Off-Setting Contribution paid in accordance with paragraph 1.3 of this Schedule 5) to the Council within twenty (20) Working Days of being notified by the Council in writing of its approval of the As-Built Assessment.
- 2 The following calculation shall be used to determine the Carbon Off-Setting Contribution:

$$\text{Target Emission Rate} - (35\% \text{ CO}_2/\text{m}^2/\text{yr}) = (65\% \text{ CO}_2/\text{m}^2/\text{yr})$$

As detailed in the 2013 Building Regulations	Required on-site improvement over 2013 Building Regulations	any residual regulated carbon emissions following on site reduction measures will be offset through a Section 106 contribution
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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 withinat the expiration of ten (10) years of receipt of the payment or the final instalment (as the case may be) the Council shall repay the contribution or the unallocated 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 zero per cent (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

Annexure 7
Plan 5

Annexure 8
Plan 6