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| DATE: 2022 |
| AGREEMENT RELATING TO (INTER ALIA) SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 IN RELATION TO THE REDEVELOPMENT OF VASTERN COURT, CAVERSHAM ROAD, READINGApplication No. 200328Appeal Ref. [               ] |
|  |
| Between1. READING BOROUGH COUNCIL

and1. Aviva life & pensions uk limited
 |
| CMS Cameron McKenna Nabarro Olswang LLPCannon Place78 Cannon StreetLondon EC4N 6AFT +44 20 7367 3000F +44 20 7367 2000cms.law |

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**THIS AGREEMENT** is made on 2022

Parties:

1. **READING BOROUGH COUNCIL**, of Civic Offices Bridge Street Reading RG1 2LU (the **“Council”**); and
2. **AVIVA LIFE & PENSIONS UK LIMITED**, a company incorporated and registered in England and Wales with number 03253947 which has its registered office at Aviva, Wellingon Row, York, North Yorkshire, YO90 1WR (the **“Developer”**).

Recitals:

1. For the purposes of section 106 of the 1990 Act the Council is the local planning authority for the area within which the Land is situated and the party who is entitled to enforce the obligations contained in this Agreement for the benefit for the Council.
2. The Council is also the local highway and transport authority for the area within which the Land is situated.
3. The Developer is the freehold owner of the Land.
4. The Developer submitted the Application to the Council on 27 February 2020.
5. On [ ] 2021 the Developer submitted the Appeal in respect of the Council’s non-determination of the Application.
6. The Council is satisfied that the Development and the planning obligations set out herein would satisfy the tests in Regulation 122 of the CIL Regulations and the advice set out at paragraph 57 of the National Planning Policy Framework (July 2021) and considers that the planning obligations contained in this Agreement are:
	1. necessary to make the Development acceptable in planning terms;
	2. directly related to the Development; and
	3. fairly and reasonably related in scale and kind to the Development.
7. The Developer has agreed that the Development shall be carried out only in accordance with the rights and obligations set out in this Agreement in the event Permission is granted.

****IT IS AGREED:****

* 1. Interpretation
		1. In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:
1. “**1990 Act**” means the Town and Country Planning Act 1990 (as amended);
2. “**Appeal**” means the appeal (ref: APP/[ ]) submitted by the Developer to the Planning Inspectorate pursuant to section 78 of the 1990 Act against the Council’s non-determination of the Application;
3. “**Application**” means the application for the Development submitted by or on behalf of the Developer to the Council to which the Council has allocated reference number 200328;
4. “**Block A**” means the development comprised within the footprint labelled “Block A” shown for indicative purposes only on the Phasing Plan;
5. “**Block B**” means the development comprised within the footprint labelled “Block B” shown for indicative purposes only on the Phasing Plan;
6. “**Block C**” means the development comprised within the footprint labelled “Block C” shown for indicative purposes only on the Phasing Plan;
7. “**Block D**” means the development comprised within the footprint labelled “Block D” shown for indicative purposes only on the Phasing Plan;
8. “**CIL Regulations**” means the Community Infrastructure Levy Regulations 2010 (as amended);
9. “**Commencement**” means commencement of development pursuant to the Permission by the carrying out of a “material operation” (as defined in s 56(4)(a) of the 1990 Act) save that for the purposes of this Agreement the term shall not include works of demolition, surveys, site clearance, works of archaeological or ground investigation or remediation, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Development, the laying, removal or diversion of services, the provision of construction compounds, the temporary display of site notices or advertisements or piling works (and “**Commence**” and “**Commenced**” shall be construed accordingly);
10. “**Contributions**” means individually and collectively the [ ] and “Contribution” shall be construed accordingly;
11. **“Council’s Area”** means the administrative area of Reading Borough Council;
12. “**Decision Notice**” means a notice issued by either the Secretary of State or an Inspector determining the Appeal;
13. “**Development**” means the demolition phase and phased redevelopment (each phase being an independent act of development) comprising a flexible mix of the following uses: Residential (Class C3 and including PRS); Offices (Use Class B1(a); development in Use Classes A1, A2, A3 (retail), A4 (public house), A5 (take away), D1 and D2 (community and leisure); car parking; provision of new plant and renewable energy equipment; creation of servicing areas and provision of associated services, including waste, refuse, cycle storage, and lighting; and for the laying out of the buildings; routes and open spaces within the development; and all associated works and operations including but not limited to: demolition; earthworks; provision of attenuation infrastructure; engineering operations;
14. “**Expert**” means an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications;
15. “**Index**”means the “Consumer Price Index including owner occupiers’ housing costs (CPIH)”, published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as may be agreed in writing by the Developer and the Council;
16. “**Index Linked**” or “**Indexed**” or “Index Linking” means adjusted from the date of this Agreement in accordance with the Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Index monthly figure published before the date of this Agreement and whose numerator shall be the last published Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure;
17. “**Inspector**” means the Inspector from the Planning Inspectorate appointed by the Secretary of State to determine the Appeal;
18. “**Interest**” means annual interest at 2% above the base rate of the Bank of England from time to time;
19. “**Land**” means the land at Vastern Court, Caversham Road, Reading for identification edged red on the Location Plan;
20. “**Legal Challenge**”: means all or any application for judicial review under Part 54 of the Civil Procedure Rules 1998 (as amended) including any appeals to a higher court following a judgment of a lower court;
21. “**Location Plan**” means the plan attached to this Agreement at Annex 1 and labelled “Site Location Plan”;
22. “**Monitoring Fee**” means the sum of £[ ] to be paid by the Developer to the Council in accordance with clause 14 of this Agreement for the purpose of monitoring compliance with the obligations contained in this Agreement;
23. “**Occupation**” means occupation for the purposes permitted by the Permission but does not include occupation for the purposes of fitting out, decoration, marketing, staff training or site security (and “**Occupy**”, “**Occupiers**” and “**Occupying**” shall be construed accordingly);
24. “**Permission**” means outline planning permission granted for the Development pursuant to the Appeal;
25. “**Phase**” means a phase of the Development shown on a phasing plan or plans approved by the Permission or from time to time approved pursuant to a condition of the Permission;
26. “**Phasing Plan**” means the plan referenced [ ] appended to this Agreement;
27. “**Practical Completion**” means completion save in minor respects so that the Development or Phase of the Development (as the case may be) can be used and can operate in the manner permitted by the Permission and “Practically Complete” shall be construed accordingly;
28. “**Specified Date**” means the date upon which a Contribution or Monitoring Fee is due to be paid to the Council in accordance with this Agreement**;**
29. “**Working Day(s)**” means a day other than a Saturday or Sunday or public holiday in England.
	* 1. In this Agreement
			1. references in this Agreement to the “Developer” shall include its respective successors in title to the Land and their assigns;
			2. references in this Agreement to the “Council” shall include any successor to its functions as local planning authority and or local highway authority ;
			3. references in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it;
			4. the clause headings in this Agreement are for convenience only and do not form part of the Agreement;
			5. references to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement;
			6. references to the singular shall include the plural and vice versa;
			7. references to the Land include any part of the Land;
			8. any covenant by the parties to this Agreement not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and
			9. if any provision is held to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.
			10. The word “including” shall be construed without prejudice to the generality of the words preceding it.
	1. Statutory Powers

This Agreement entered into by Deed is a planning obligation for the purposes of section 106 of the 1990 Act and is entered into pursuant also to section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and it is acknowledged by the parties that the obligations contained within it are binding on the Land and are enforceable by the Council as local planning authority and highway authority against the Developer as owner of the Land and against its successors in title and assigns in respect of its interests in each and every part of the Land.

* 1. Land Bound / Liability
		1. The Land is bound by the obligations in this Agreement.
		2. The obligations under this Agreement shall not be binding on nor enforceable against:
			1. any statutory undertaker which owns or acquires any part of the Land or an interest or right in it for the purposes of its statutory undertaking; or
			2. owners or occupiers of any commercial floor space within the Development and their successors in title and any mortgagees or chargees of such persons; or
			3. owners or occupiers of any Residential Units within the Development and their successors in title and any mortgagees or chargees of such persons.
	2. Conditionality
		1. The obligations in this Agreement (save for the covenants in clause 11 (Legal Costs)) are unless otherwise specified conditional upon:
			1. the grant of the Permission; and
			2. save for clauses 13 (Monitoring Fee), 14 (Notices), 15 (Payments), 19(Dispute Resolution) and [paragraph 4.1.1 of Schedule 1 and 2.1.1 and 3.1.1 of Schedule 2,] Commencement.
	3. Developer Covenants
		1. The Developer covenants with the Council to observe and perform the covenants on its part contained in Schedule [1 and Schedule 2].
	4. Council’s Covenants

The Council covenants with the Developer that it will observe and perform the covenants on its part contained in Schedule 2 and Schedule 3.

* 1. Release and Lapse
		1. The parties agree that the Developer shall not be liable for a breach of any of its obligations under this Agreement or obligations relating to any part of the Land, after it shall have parted with all of its interests in the Land or the part in respect of which the breach arises (as the case may be) other than in respect of any breach by it at the time when it held such an interest.
		2. It is further agreed that this Agreement shall lapse and be of no further effect if:
			1. the Permission shall expire without having been implemented; or
			2. the Permission shall be withdrawn, varied or revoked otherwise than with the consent of the Developer; or
			3. the Permission is quashed following a successful Legal Challenge; or
			4. the Inspector or Secretary of State dismisses the Appeal and (if applicable) such dismissal is later upheld following a statutory challenge or redetermination following a successful statutory challenge.
		3. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) before or after the date of this Agreement.
		4. Save where the context otherwise specifies nothing in this Agreement shall require the Developer to perform any obligation whatsoever in upon or under land outside the ownership of the Developer.
	2. Local Land Charge
		1. This Agreement is a local land charge and the Council shall register it as such as soon as practicable after the completion of this Agreement.
		2. Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall cancel all the entries made in the register of local land charges in respect of this Agreement as soon as possible.
	3. No Fetter on Discretion

Nothing in this Agreement shall fetter or prejudice the Council’s statutory rights, powers, discretions and responsibilities under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

* 1. Severability

It is agreed that if any part of this Agreement is declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provision(s) will be severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

* 1. Legal Costs
		1. The Developer will within (10) days of the completion of this Agreement pay the Council’s reasonable legal costs for preparation and completion of this Agreement in the sum of [    ] pounds (£[   ])
	2. Monitoring Fee

The Developer covenants with the Council to pay the Monitoring Fee prior to Commencement of the Development.

* 1. Contracts (Rights of Third Parties) Act 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and the terms of the Agreement may be varied by a deed agreed between the parties without the consent of any third party being required.

* 1. Notices
		1. The Developer covenants with the Council to notify the Council no less than 5 Working Days before the occurrence of each of the following:
			1. Commencement of Development; and
			2. Occupation of the Development.
		2. Any notices required to be served by one party on another under this Agreement shall be in writing and served by special or recorded delivery or by hand in the following manner (or such other manner as notified by the relevant party to the other parties to this Agreement from time to time):
			1. on the Council at the address shown above marked “For the attention of [ ]”;
			2. on the Developer at Aviva Legal Services, Floor 6 Carrara, PO Box 432, Surrey Street, Norwich, NR1 3PW marked “For the attention of Aviva Investors Real Estate Team” and bearing reference “Vastern Court, Reading”,

or such other address as may be notified to the other party from time to time.

* 1. Payments
		1. The Contributions payable under this Agreement shall be Index Linked.
		2. The Contributions payable under this Agreement shall be taken to include the actual Contribution payable including any amount for Index Linking and also if due any Interest.
		3. In the event that any Contribution or part thereof is not paid by the Specified Date then Interest shall be due on the sum outstanding and shall be apportioned on a daily basis from the Specified Date to date of actual payment.
		4. Notwithstanding that the Developer shall pay Interest on the Index Linked sum as calculated pursuant to 15.3 above, the Developer shall also be responsible for the amount of Index Linking between the Specified Date to the date of actual payment even though that additional Index Linking attracts no Interest.
		5. Any Interest paid will not form part of the Contribution due and will belong to the Council.
	2. VAT

All consideration set out in this Agreement is exclusive of VAT (unless the contrary is expressly stated).

* 1. FUTURE MORTGAGEES
		1. It is acknowledged and declared that this Agreement has been entered into by the Developer 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 Agreement 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 2 be responsible as successor in title to the Owner for:
			1. any obligation still to be performed; and
			2. 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.
	2. Dispute Resolution
		1. The parties agree that any differences and questions which arise between the parties in connection with this Agreement may be referred for determination by an independent person (an Expert) in accordance with the following provisions:
			1. where such dispute relates to the construction of this Agreement or any other document referred to herein it shall be referred to a lawyer agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Law Society;
			2. where such dispute relates to the acceptability or otherwise of a scheme submitted it shall be referred to a Chartered Town Planner agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Royal Town Planning Institute; or
			3. where such dispute relates to the valuation of property and/or the viability of the Development it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement within one month appointed (on the application of any party) by or at the direction of the President or appointed deputy for the time being of the Royal Institution of Chartered Surveyors.
		2. Notice in writing of the appointment of an Expert pursuant to this clause 18 shall be given by the Expert to the parties and he shall invite each to submit within a specified period (which will not exceed three weeks) any written representations each wishes to make to him and any submissions shall be provided to the parties with an invitation to respond within a specified period (not exceeding two weeks).
		3. The Expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
		4. The Expert shall give notice in writing of his decision with reasons to the parties within six weeks of his appointment or within such extended period as the parties may together allow.
		5. The decision of the Expert shall be final on all matters referred to him and in the absence of manifest error shall be binding on the parties.
		6. If for any reason the Expert fails to make a decision and give notice in accordance with clause 18.4 any party may apply to the President or appointed deputy for the time being of the Law Society of England and Wales, Royal Town Planning Institute or Royal Institution of Chartered Surveyors for a substitute to be appointed in his place.
		7. Each party shall bear its own costs save that the fees of the Expert shall be in the Expert’s award.
		8. Nothing in this clause shall be taken to fetter the parties’ ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Agreement.
		9. In the event of delays on the part of the Expert beyond the times specified above the parties may make representations to a solicitor appointed by the President for the time being of the Law Society of England and Wales and if in the opinion of the solicitor appointed there shall have been unreasonable delay the solicitor shall be entitled to dismiss the Expert and appoint a new Expert in his place and notwithstanding the foregoing the parties shall in any event have a right to require such replacement if the decision of the Expert is not made within three months of their appointment.
	3. FUTURE SECTION 73 PERMISSION(S)
		1. In the event that any new planning permission(s) in respect of the Development is or are granted by the Council pursuant to Section 73 of the 1990 Act (“Future S73 Permissions”) then if (but not otherwise) agreed between the parties hereto in writing prior to issue of any such Future S73 Permission(s):
			1. the obligations in this Agreement shall relate to and bind the Property in respect of development pursuant to such Future S73 Permission(s); and
			2. the definitions of Application, Development, and Permission shall be construed to include reference to any application for such Future S73 Permission(s), the Future S73 Permission(s) granted thereunder and the development permitted by such Future S73 Permission(s); and
			3. this Agreement shall be endorsed with the following words in respect of any such Future S73 Permission(s) (with the blank spaces completed with the reference number and date of issue of the relevant Future S73 Permission(s)):

*“The obligations in this Agreement relate to and bind the Property in respect of development pursuant to a new planning permission reference [ ] granted on [ ] 20[ ] pursuant to section 73 of the Town and Country Planning Act 1990 (as amended).”*

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and/or quantum of planning obligations insofar as these are materially different to those contained in this Agreement and required pursuant to a determination under section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to section 106 of the 1990 Act.

* 1. obligation to act reasonably and in good faith
		1. Where by this Agreement any agreement, approval, consent, determination or decision is required to be given by any party hereto then the party so obligated shall act reasonably and use reasonable endeavors to give any such agreement, approval, consent, determination or decision, and where any timescale is specified for issue, to give any such agreement, approval, consent determination within any timescale so specified and where no timescale is specified not to unreasonably withhold or delay issue of the decision.
	2. 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.

* 1. Governing Law and Jurisdiction

This Agreement will in all respects be governed and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

* 1. Appeal Decision Notice

If the Decision Notice concludes that any one of the planning obligations set out in this Agreement are:

1. incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to that particular obligation in determining the Appeal; or
2. otherwise unacceptable

then the relevant obligation(s) shall from the date of the Decision Notice cease to have effect as set out in the Decision Notice and the Developer shall be under no obligation to comply with it provided that this shall not prejudice the remaining obligations.

1. Developer Covenants to the Council
	* + 1. Interpretation
				1. In this Schedule 1 to the Agreement, unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:
2. **“Carbon Off-Setting Contribution”** means [ ].
3. **“Car Club”** means a local club operated and managed by an accredited provider in which members can book cars owned by the provider and park in specifically reserved car club spaces and use them for the period of the booking.
4. **“Car Club Space”** means a parking space within or within the vicinity of the Development to be used to park a vehicle to be used for the operation of the Car Club;
5. **“Car Club Strategy”** means a strategy for the provision and operation of a Car Club in respect of the Development such strategy to include measures such as:
	1. confirmation of the number of Car Club Spaces to be provided and such number of Car Club Spaces shall have regard to the number of Residential Units to be constructed as part of the Development;
	2. the location of the Car Club Spaces;
	3. timetable for the delivery of the Car Club Spaces;
	4. the proposed Car Club to whom the Car Club Spaces shall be marketed for use; and
	5. details of the Car Club Review;
6. “**Car Club Review**” means a review of the Car Club Strategy once every two years as further detailed within the Car Club Strategy;
7. “**Commercial Uses”** means non-residential uses forming part of the Development;
8. “**Construction Employment and Skills Contribution**” means the sum calculated on the basis of £2,500 x Gross internal floor area of the relevant Phase (measured in m2) / 1000m2 to be used towards the provision of construction training in the Council’s Area;
9. **“Construction Employment and Skills Monitoring Fee”** means a fee of £25 per agreed training output under the Construction Employment and Skills Plan to be used by the Council to monitor compliance with the Construction Employment and Skills Plan;
10. “**Construction** **Employment and Skills Plan**” means the Developer’s written plan to provide the apprenticeship scheme and local employment opportunities during the Construction Period of a Phase and submitted to the Council for approval in accordance with paragraph 2.1.1(a) of Schedule 1 of this Agreement which shall be in accordance with the Employment Skills and Training SPD;
11. “**Construction Period**” means the period of construction of a Phase from Commencement of that Phase until Practical Completion of that Phase;
12. **“Employment Skills and Training SPD”** means the adopted Employment Skills and Training Supplementary Planning Document dated 15 April 2013;
13. **“End Use Employment and Skills Contribution**” means the sum calculated on the basis of Gross internal floor area of the relevant Phase (measured in m2) / average employee density for development type (using the HCA Employment Density figure) x 50% (target percentage of jobs filled by residents from the Council’s area) x 30% (percentage of residents without level 2 skills) x £1,500 to be used towards the provision of employment and skills training in the Council’s Area;
14. **“End Use Employment and Skills Monitoring Fee”** means a fee of £15 per agreed training output under the End Use Employment and Skills Plan to be used by the Council to monitor compliance with the End Use Employment and Skills Plan;
15. “**End Use** **Employment and Skills Plan**” means the Developer’s written plan to provide the apprenticeship scheme and local employment opportunities during the End Use Occupation Period of a Phase and submitted to the Council for approval in accordance with paragraph 2.1.1(a) of Schedule 1 of this Agreement which shall be in accordance with the Employment Skills and Training SPD;
16. “**End Use Occupation Period**” means the period during which a Phase is available for occupation by the end users of the Phase;
17. **“Framework Travel Plan”** means the Framework Travel Plan submitted as part of the Application as attached at Appendix [ ];
18. **“Residential Unit”** means a residential unit within Use Class C3 of Part A of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 forming part of the Development the total number of which shall be determined by reference to the approval(s) of reserved matters pursuant to the Permission which are implemented in respect of each Phase (and “**Residential Units**” shall be construed accordingly);
19. **“Public Realm”** means the publicly accessible routes and open spaces forming part of the Development within the Land (shown for illustrative purposes only on the “Illustrative Public Realm Plan” at Annex 2) the detailed extent of which will be submitted for approval at the reserved matters stage.
20. **“Travel Plan”** means the full form travel plan to be submitted by the Developer pursuant to paragraph 4 of this Schedule 1 in accordance with the Framework Travel Plan;
21. **“Travel Plan Co-ordinator”** means the person appointed by the Developer and who is responsible for setting up and managing the implementation of the Travel Plan in accordance with the terms of the Travel Plan;
	* + - 1. The definitions set out in clause 1.1 to this Agreement are also adopted in this Schedule 1.
			1. Employment and Skills Plans
				1. The Developer covenants with the Council as follows:

on or prior to the Commencement of Development of each Phase at the Developer’s absolute discretion to either:

submit to the Council for its approval a Construction Employment and Skills Plan for the relevant Phase such approval not to be unreasonably withheld or delayed and to use reasonable endeavours to implement any such approved scheme (or such scheme as may be revised from time to time with the Council’s approval) in accordance with the timetable set out therein and such scheme shall be in accordance with the requirements of the Employment and Skills Training SPD; or

Notify the Council of the intention to pay the Construction Employment and Skills Contribution for that Phase to the Council.

In the event that paragraph 2.1.1(b) of this Schedule 1 applies, to pay the relevant Construction Employment and Skills Contribution to the Council prior to the Commencement of Development of the relevant Phase and not to Commence or permit Commencement of Development of that Phase unless and until the Construction Employment and Skills Contribution has been paid.

In the event that paragraph 2.1.1(a) of this Schedule 1 applies to pay to the Council the Construction Employment and Skills Monitoring Fee in connection with the relevant approved Construction Employment and Skills Plan.

On or prior to the Occupation of a Phase containing Commercial Uses at the Developer’s absolute discretion to either:

submit to the Council for its approval an End Use Employment and Skills Plan for the relevant Phase such approval not to be unreasonably withheld or delayed and to use reasonable endeavours to implement any such approved scheme (or such scheme as may be revised from time to time with the Council’s approval) in accordance with the timetable set out therein and such scheme shall be in accordance with the requirements of the Employment and Skills Training SPD; or

Notify the Council of the intention to pay the End Use Employment and Skills Contribution for that Phase to the Council.

In the event that paragraph 2.1.4(b) of this Schedule 1 applies, to pay the End Use Employment and Skills Contribution to the Council prior to the Occupation of Development on the relevant Phase and not to Occupy or permit Occupation of that Phase unless and until the End Use Employment and Skills Contribution has been paid.

In the event that paragraph 2.1.4(a) of this Schedule 1 applies to pay to the Council the End Use Employment and Skills Monitoring Fee in connection with the relevant approved End Use Employment and Skills Plan.

* + - * 1. Following the submission of any Construction Employment and Skills Plan or End Use Employment and Skills Plan by the Developer in accordance with paragraph 2.1.1(a) or 2.1.4(a) of this Schedule 1 the Council agrees to respond to the Developer either approving, refusing or requesting changes to the Construction Employment and Skills Plan or End Use Employment and Skills Plan no later than 21 days from the date of submission of the relevant Construction Employment and Skills Plan or End Use Employment and Skills Plan.
				2. In the event that the Council does not respond to the Developer within the 21 day time period set out in paragraph 2.2 of this Schedule 1, the relevant Construction Employment and Skills Plan or End Use Employment and Skills Plan shall be deemed to have been approved by the Council.
			1. Affordable housing
				1. The Developer covenants with the Council to comply with the obligations contained in Schedule 2 (Affordable Housing).
			2. Travel Plan and monitoring
				1. The Developer covenants with the Council:

Prior to Occupation of a Phase to appoint a Travel Plan Co-ordinator in respect of that Phase and notify the details (name, address, email address and telephone number of the Travel Plan Co-ordinator) to the Council Provided That for the avoidance of doubt the same Travel Plan Co-ordinator can be appointed in respect of multiple Phases;

Prior to Occupation of a Phase to submit a Travel Plan in respect of that Phase to the Council for approval and not to Occupy any part of Development unless and until such Travel Plan has been approved Provided That a Travel Plan can relate to multiple Phases;

* + - * 1. Following the submission of a Travel Plan by the Developer in accordance with paragraph 4.1.2 of this Schedule 1 the Council agrees to respond to the Developer either approving, refusing or requesting changes to the Travel Plan no later than 21 days from the date of submission of the Travel Plan.
				2. In the event that the Council does not respond to the Developer within the 21 day time period set out in paragraph 4.2 of this Schedule 1, the Travel Plan shall be deemed to have been approved by the Council.
				3. In accordance with the requirements of the approved Travel Plan the Developer shall:

Monitor and review each Travel Plan for five years from the date of first Occupation of the relevant Phase(s) to which the Travel Plan relates; and

Provide a written report to the Council at the end of the five year period and thereafter take into account any reasonable comments provided thereon by the Council.

* + - * 1. Following the expiry of the five year period specified in paragraph 4.4 of this Schedule the provisions contained in this paragraph 4 of this Schedule shall determine and cease to be enforceable by the Council.
			1. Car Club
				1. The Developer covenants with the Council:

prior to the Occupation of the first Residential Unit to submit and obtain the approval of the Council of the Car Club Strategy;

upon approval of the Car Club Strategy submitted pursuant to paragraph 5.1.1 or its deemed approval pursuant to paragraph 5.3 to implement the terms of the approved Car Club Strategy and provide the Car Club Spaces in such locations and timescales approved therein and offer the Car Club Spaces for use by the Car Club in accordance with the approved Car Club Strategy;

maintain at its own expense the Car Club Spaces and make the Car Club Spaces available and ready for use for a minimum of ten (10) years from first establishment of the Car Club (or such shorter period as agreed in writing with the Council having reasonable regard to the viability and feasibility of the Car Club);

publicise the Car Club annually for the minimum period of 10 years from first establishment of the Car Club (or such shorter period as agreed in writing with the Council having reasonable regard to the viability and feasibility of the Car Club);

provide details of how to join the Car Club within its marketing materials for the duration of the marketing period for the Development.

5.2 The Council shall confirm within four (4) weeks of receipt of the Car Club Strategy whether the proposed Car Club Strategy is acceptable and if it considers that the Car Club Strategy is not acceptable the Council will confirm in writing within that four (4) week period what measures are required to make the Car Club Strategy acceptable (the “CC Non-Acceptance Notice”).

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

5.3.1 the proposed Car Club Strategy is acceptable; or

5.3.2 where it considers that the Car Club Strategy is not acceptable what amendments are required to make the Car Club Strategy acceptable

then the Car Club Strategy submitted in accordance with paragraph 5.1.1 shall be deemed to be approved.

5.4 In the event the Council confirms the that the Car Club Strategy submitted in accordance with paragraph 5.1.1 is not acceptable or requires specified amendments in order to be acceptable then a revised Car Club Strategy shall be submitted and the provisions of paragraphs 5.2 and 5.3 shall apply to the revised Car Club Strategy and shall continue to apply until such time as the Car Club Scheme is approved (or deemed to be approved

* + - 1. Public realm
				1. The Developer covenants with the Council that no Phase in the Development shall be Occupied unless and until the Public Realm located within that Phase within the Land has been provided and Practically Completed to the reasonable satisfaction of the Council in accordance with the plans approved pursuant to the relevant reserved matters approval.
				2. Subject to paragraph 6.3 of this Schedule 1, the Developer will from the date of first Occupation of a Phase allow (on a permissive basis without any dedication as public highway or as public open space nor any implication of adoption as highway maintainable at public expense) public access on foot (and where appropriate by cycle) to the Public Realm within the relevant Phase.
				3. The Owner may suspend public access to the relevant area of Public Realm (and only to the extent as is necessary):

if reasonably required in the interest of security or management or for maintenance or cleansing or other works in respect of the Public Realm and/or any parts of the development abutting the Public Realm;

in case of emergency;

for temporary closure during the carrying out of works of construction (including development or redevelopment of adjoining buildings and structures or land or for the placing or replacing of underground services); or

for occasional temporary closure of not more than one (1) day per year to assert rights of proprietorship preventing public or private rights from coming into being by means of prescription or other process of law; or

for any other reason approved in writing by the Council.

* + - * 1. The Developer will maintain the Public Realm in good repair, lit and tidy for the lifetime of the Development to the extent that the Public Realm does not form part of the highway maintainable at the public expense.
				2. The Developer may make and enforce such reasonable rules and regulations governing access to the Public Realm as it may from time to time consider necessary and appropriate to control the use of the Public Realm and shall send a copy of the proposed rules and regulations to the Council for its approval before they are brought into force a copy of any such rules and regulations.
				3. It is agreed between the developer and the Council that if the carrying out of development on the Land pursuant to any planning permission granted either before or after the date of this Agreement requires the temporary or permanent closure of any part or parts of the Public Realm then upon implementation of such development the obligations in this paragraph 6 shall automatically and without further act on the part of the Developer be suspended or cease to have effect as the case may be in respect of any such part or parts of the Public Realm.
			1. FOOTPATH/ CYCLEWAY ENHANCEMENTS ON VASTERN ROAD
				1. The Developer will safeguard from development or other encroachment the land shown shaded in [ ] on Plan [ ] (to the extent that such land is within the ownership of the Developer) for a period of no less than 10 years from the date of this Agreement and will offer to dedicate such land to the Council for use and adoption as publicly maintainable highway at no cost the Council in the event that the Council confirms in writing to the Developer that the Council requires it for the purpose of providing footway and/or cycleway enhancements along Vastern Road and the Council provides the Developer with detailed plans showing the works to be carried out in constructing the footway and/or cycleway and evidence of a contract having been entered into between the Council and its contractor for the construction of such works.
				2. If the Council has not served such written notice and provided such detailed plans referred to in Paragraph 7.1 of this Schedule 1 within 10 years of the date of this Agreement or if the Council confirms in writing at any time prior to this date that the land shaded [ ] on Plan [ ] is no longer required the Developer will be released from the obligation in this Paragraph 8 of Schedule 1.
			2. Carbon offsetting Contribution
				1. *[****Note: requirements for contribution to be agreed****]*
1. Affordable Housing
	* + 1. Interpretation
				1. In this Schedule 2 to the Agreement, unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

**“Affordable Housing”** has the same meaning as defined in Annex 2 of the National Planning Policy Framework first published on 27 March 2021 and last updated on 20 July 2021 (or any subsequent definition in any revision amendment or re-enactment thereof) published by the UK Government

“**Benchmark Land Value”** means £35,700,000.00 (subject to upwards-only indexation in accordance with [ ])

**“Block D Use”** means either the residential or commercial primary use of Block D as authorised by a reserved matters approval pursuant to which Block D has been Practically Completed

**“Build Costs”** means [*to be agreed*]

“**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 Dwellings is complete (save for minor snagging items) and the relevant Dwellings is capable of beneficial occupation

“**Deferred Contribution**” means the amount calculated in accordance with the Viability Assessment as the excess profit over the Owner Margin Percentage amount, multiplied by zero point five (0.5) which has been either:

approved by the Council; or

determined by an Expert

provided always that the amount shall not exceed the Deferred Contribution Cap

“**Deferred Contribution Cap**” means £[ ] being 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 H3 in the Local Plan adopted November 2019

“**New Dwellings**” means any one of the new dwellings comprised in the Development

“**Owner Margin Percentage**” means an allowance to the Owner of:

(a) twenty percent (20%) in relation to [Residential Units]; and

(b) fifteen percent (15%) in relation to [commercial units]

in the Viability Reassessment undertaken in accordance with this Schedule 2 in respect of the Owner’s profit return on Gross Development Value

“**Viability Assessment”** means the aggregate assessment of viability undertaken by the Owner in respect of Blocks A, B, C and D [as submitted with the Application] accounting for the Block D Use and carried out in accordance with the same viability mechanism used by Savills plc on behalf of the Developer

“**Viability Reassessment**” means an updated Viability Assessment which demonstrates:

whether or not the Development achieves the Owner Margin Percentage; and

the amount (if any) which is available for calculation of the Deferred Contribution

provided always that:

the agreed percentage return to the Owner shall calculated in accordance with the mechanism contained in the Viability Assessment and shall takes account of:

the Owner Margin Percentage; and

the Benchmark Land Value.

**“Revenue”** means:

the realised sales values 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 and including allowances for any sale incentives granted; and/or

in the event the New Dwellings or part thereof are to be delivered as build to rent the expected net capitalised value [on a rent and yield basis] of the relevant dwellings; and/or

in the event that reserved matters approvals submitted in respect of the Planning Permission include office and/or other commercial uses expected net capitalised values [on a rent and yield basis] in respect of these uses.

* + - 1. Viability Reassessment
				1. The Owner and Council covenant with each other as follows:

No earlier than Practical Completion of [60%] of the Residential Units within the Development the Owner shall submit to the Council a Viability Reassessment for the Council’s review and approval.

Subject to the provisions of paragraph 2.1.5 of this Schedule 2, the Owner shall not Occupy or permit to be Occupied more than [95%] of the Residential Units within the Development until the final Viability Reassessment has been agreed in accordance with this Schedule 2 and the resulting Deferred Contribution (if any) has been paid.

The Council will consider the Viability Reassessment and it shall within three (3) weeks of receipt give written notice to the Owner confirming either:

that it accepts the conclusions of the Viability Reassessment and the level of the Deferred Contribution (if any) (the “Acceptance Notice”); or

that it rejects (with reasons) the conclusions of the Viability Reassessment (the “Non-Acceptance Notice”) and if so it shall provide to the Owner:

its own assessment of the conclusions of the Viability Reassessment (as submitted); and

the level of Deferred Contribution in respect of the final Viability Reassessment it considers should be paid;

In the event that the Council issues a Non-Acceptance Notice in accordance with paragraph 1.3.2 of this Schedule 2 the Council and the Owner shall seek to negotiate:

An agreed form of Viability Reassessment; and

An agreed Deferred Contribution in respect of the Viability Reassessment.

Payment of an agreed Deferred Contribution in respect of the Viability Reassessment is to be made by the Owner to the Council within 28 days of the Council issuing a notice in writing to the Owner confirming the amount of the agreed Deferred Contribution and the relevant bank details to which the sum should be paid.

In the event that the Council and the Owner are not able to agree the Viability Reassessment and/or the level of the Deferred Contribution 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 19 and the Owner shall pay to the Council such Deferred Contribution as is determined by the Expert in accordance with Clause 18.

1. Council’s Covenants
	* + 1. Contributions

The Council covenant with the Developer:

* + - * 1. Where any Contribution referred to this Agreement is stated to be payable for a particular purpose it will not be used otherwise than towards that purpose.
				2. Where any Contribution paid by the Developer in accordance with this Agreement has not been used by the Council or is not the subject of a binding contract within ten years after the date of receipt of the final instalment of the relevant Contribution it will be repaid to the paying party within 30 Working Days of a written demand (and for the purposes of this paragraph the repayment will be to the original paying party and not to that party’s successor in title).

This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement.

IN WITNESS whereof the parties hereunto have executed this Deed the day and year first before written:

**EXECUTION PAGE**

|  |  |  |
| --- | --- | --- |
| **EXECUTED AS A DEED by Affixing THE COMMON SEAL of READING BOROUGH COUNCIL in the presence of =:-**Authorised Signatory | ))))) | ................................................................ |

|  |  |  |
| --- | --- | --- |
| **EXECUTED as a DEED by**  **AVIVA LIFE & PENSIONS UK LIMITED**Acting by a director: | )))) | ................................................................ |
| In the presence of: | ) |  |
| Signature of witness | ) | ................................................................ |
| Name (in BLOCK CAPITALS)Address |  |  |

1. Annex 1
Location Plan

**Annex 2**

**Illustrative Public realm plan**