

30 November
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, READING**

**Application No. 200328
Appeal Ref. APP/E0345/W/21/3289748**

Between

**(1) READING BOROUGH COUNCIL
and
(2) AVIVA LIFE & PENSIONS UK LIMITED**

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THIS AGREEMENT is made on

30th November

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, Wellington Row, York, North Yorkshire, YO90 1WR (the “**Owner**”).

RECITALS:

- (A) 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 of the Council.
- (B) The Council is also the local highway authority for the area within which the Land is situated.
- (C) The Owner is the freehold owner of the Land.
- (D) There are Leasehold Interests in the Land that are not parties to this Agreement but only on the basis of the covenants entered into by the Owner in Schedule 1 to this Agreement.
- (E) The Owner submitted the Application to the Council on 27 February 2020.
- (F) On 23 December 2021 the Owner submitted the Appeal.
- (G) Without prejudice to its opposition to the Appeal, 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:
 - (a) necessary to make the Development acceptable in planning terms;
 - (b) directly related to the Development; and
 - (c) fairly and reasonably related in scale and kind to the Development.
- (H) The Owner 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 the Permission is granted.

IT IS AGREED:

1. INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

“**55 Vastern Road Development**” means the development pursuant to planning permission with application number 200188 granted on appeal with reference APP/E0345/W/21/3276463 at 55 Vastern Road, Reading RG1 8BU;

“**1990 Act**” means the Town and Country Planning Act 1990;

“**Additional Affordable Housing**” means additional Affordable Housing which will be provided as Affordable Private Rented Housing or Affordable Rented Housing or Intermediate Housing in accordance with the Affordable Housing Mix as part of the Development as a consequence of a Viability Reassessment;

“Additional Affordable Housing Units” means those Residential Units that comprise Additional Affordable Housing;

“Adoptable Standard” means a standard of layout and construction which is sufficient to enable adoption as highway maintainable at public expense by the Council in its capacity as highway authority;

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

“Affordable Housing Mix” means a tenure mix providing:

- (a) a minimum of sixty two per cent (62%) of the Affordable Housing Units as Affordable Rented Housing or Affordable Private Rented Housing; and
- (b) the remainder of the Affordable Housing Units (being a maximum of thirty eight per cent (38%)) as Intermediate Housing Units,

or such other tenure mix as may be agreed in writing by the Council;

“Affordable Housing Notice” means a notice to be served by the Owner on the Council that shall include the following information:

- (a) details of the quantum, size, tenure and proposed location of the Additional Affordable Housing Units;
- (b) a programme for the Practical Completion of the Additional Affordable Housing Units;
- (c) proposals for the Transfer of the Additional Affordable Housing Units to a Housing Association or a Registered Provider (if applicable);
- (d) the quantum of any Deferred Contribution that is proposed PROVIDED THAT the Deferred Contribution shall be no more than fifty percent (50%) of the Surplus (unless otherwise agreed in writing by the Council); and
- (e) an estimate of the total number of Residential Units that are reasonably projected to be Practically Completed across the Development as a whole;

“Affordable Housing Unit” means a unit of the Development constituting Affordable Housing and **“Affordable Housing Units”** shall be construed accordingly;

“Affordable Private Rent” means rental levels which are no more than eighty percent (80%) of the Market Rent for the relevant Residential Unit but only where such levels are at or lower than LHA levels (inclusive of any service charge) provided that should LHA be replaced in the future, the applicable rent will be the lower of (a) eighty percent (80%) of the Market Rent (inclusive of service charge) or (b) the last published LHA rate as increased by an amount equivalent to any increase in the Market Rents from the date on which the LHA rate was last published to the date the affordable private rent is calculated deducting services charges;

“Affordable Private Rented Housing” means an Affordable Housing product specific to Build to Rent schemes, offered for rent to persons who satisfy the Qualifying Criteria by the private landlord of the relevant Build to Rent Unit at an Affordable Private Rent and **“Affordable Private Rented Housing Unit”** shall be construed accordingly;

“Affordable Rented Housing” means an Affordable Housing Unit let to Eligible Households to be provided pursuant to the terms of this Agreement to be made available by a Registered Provider at the Reading Affordable Rent and **“Affordable Rented Housing Unit”** shall be construed accordingly;

“Appeal” means the appeal (ref: APP/E0345/W/21/3289748) submitted by the Owner pursuant to section 78 of the 1990 Act against the Council’s non-determination of the Application;

“Application” means the application for the Development submitted by or on behalf of the Owner to the Council to which the Council has allocated reference number 200328;

“Benchmark Land Value” means twenty four million one hundred and seventy two thousand eight hundred pounds (£24,172,800);

“Blocks” means Blocks A, Blocks B, Blocks C and/or Blocks D as the context so admits and **“Block”** shall be construed accordingly;

“Blocks A” means each and every block(s) to be constructed on plot A as shown on plan PP102 P2 appended to this Agreement as Annex 6;

“Blocks B” means each and every block(s) to be constructed on plot B as shown on plan PP102 P2 appended to this Agreement as Annex 6;

“Blocks C” means each and every block(s) to be constructed on plot C as shown on plan PP102 P2 appended to this Agreement as Annex 6;

“Blocks D” means each and every block(s) to be constructed on plot D as shown on plan PP102 P2 appended to this Agreement as Annex 6;

“Build Costs” means the costs, expenses and other sums reasonably and properly incurred by the Owner in connection with the acquisition, disposal, construction, marketing and management of the Development including without limitation the following:

- (1) all reasonable and relevant construction costs (to include any site remediation, demolition, stripping out and site clearance works);
- (2) stamp duty land tax and land registry fees;
- (3) the cost of obtaining any statutory approvals, consents or licences or permissions required from any local or competent authority to enable the Owner to carry out and complete the Development;
- (4) any Community Infrastructure Levy (excluding, for the avoidance of any doubt, any surcharges and/or late payment interest) that is payable;
- (5) the sums paid to the Council pursuant to this Agreement (including legal fees incurred in connection with this Agreement) other than the Deferred Contribution;
- (6) Finance Costs;
- (7) any reasonable costs (commensurate with prevailing rates) relating to the sale, lease or other disposal of the Development (including structural warranties) and all legal, surveyors and other professional fees, agency fees, advertising, marketing, promotional expenses and other costs in connection with any of the items referred to in this definition; and
- (8) the fees of all professional consultants appointed in relation to the Development;

as at the Relevant Date PROVIDED THAT:

- (i) where contracts have been let and/or expenditure committed or incurred with unconnected third parties on an arm's length basis such costs shall represent actual agreed tender prices or expenditure committed or incurred but where the final costs under any such contracts are not known then such final costs shall represent a reasonable estimate of such final costs;
- (ii) where contracts have been let and/or expenditure committed or incurred with connected third parties or otherwise than on an arm's length basis then such costs shall represent reasonable estimates on the assumption that they are procured from unconnected third parties and on an arm's length basis;
- (iii) where contracts have not been let and/or other items of expenditure have not yet been committed or incurred then such costs shall represent reasonable estimates on the assumption that they are procured from unconnected third parties on an arm's length basis; and
- (iv) no items shall be counted more than once;

"Build to Rent" has the meaning given to it in Annex 2 of the National Planning Policy Framework (July 2021);

"Build to Rent Clawback Disposal" means the sale of a freehold interest or the grant or assignment of a lease but excluding: (i) the grant of an assured shorthold tenancy agreement or a short term let; and (ii) Sham Transactions during the Covenant Period in respect of one or more Build to Rent Units that is not in accordance with the approved Build to Rent Management Scheme;

"Build to Rent Clawback Valuation" means an independent valuation provided to the Council (procured by the Owner at its own expense) detailing the valuation of each Build to Rent Unit(s) that is subject to a Build to Rent Clawback Disposal and on the basis of the restrictions set out in this Agreement;

"Build to Rent Housing" means Build to Rent housing that is made available for private rent in accordance with the Build to Rent Management Scheme as approved by the Council and in accordance with the provisions of Schedule 7;

"Build to Rent Management Scheme" means a scheme setting out management, maintenance and letting principles for the Build to Rent Units which shall incorporate the following requirements as a minimum:

- (a) each Build to Rent Unit shall be self-contained and let separately for private residential use;
- (b) each lease of each Build to Rent Unit shall be offered at a minimum term of three years PROVIDED THAT prospective tenants shall not be compelled to take up a three year tenancy and may occupy under shorter terms;
- (c) each lease of each Build to Rent Unit shall contain a break clause allowing the tenant to end the lease with a month's notice any time after the first six (6) months of the tenancy without requiring payment of a fee;
- (d) all rent increases within the term of a lease shall be calculated by reference to an index which shall be made clear to the tenant before the start of each tenancy;

- (e) the Build to Rent Units in any Block shall be in unified ownership and managed as a whole by a single professional property manager which is a member of a recognised ombudsman scheme and has a complaints procedure in place for residents and a prompt issue resolution system;
- (f) the quality of housing management shall be consistent and high quality and shall include on-site management with some daily on-site presence as a minimum;
- (g) the maintenance and repair of the Build to Rent Units and associated communal areas shall be consistent and high quality;
- (h) provide a commitment to high-quality rental arrangements, through meeting the Council's voluntary Rent with Confidence Standards or other equivalent measures; and
- (i) details of the proposed use(s) and/or purpose(s) of the communal facilities/areas associated with the relevant Build to Rent Units following either expiration of the Covenant Period or (if earlier) the permanent cessation of the use of those Build to Rent Units for Build to Rent in accordance with this Agreement;

“Build to Rent Units” means the Private Residential Units to be provided as Build to Rent Housing pursuant to the terms of Schedule 7 and as confirmed by the Owner to the Council in writing pursuant to paragraph 1.1 of Schedule 7 and **“Build to Rent Unit”** shall be construed accordingly PROVIDED THAT an individual Private Residential Unit let by the freehold or long leasehold owner in a private capacity not operating as part of the approved Build to Rent Management Scheme shall not constitute a Build to Rent Unit;

“Car Club” means a car sharing scheme operated by a company community group or not-for-profit organisation that is accredited by CoMoUK (or an equivalent accredited body as may be agreed in writing with the Council) which Occupiers and members of the public shall be entitled to join and which makes cars available to hire for members;

“Car Club Cars” means vehicles operated by the Car Club

“Car Club Non-Acceptance Notice” has the meaning set out in paragraph 1.2 of Schedule 4;

“Car Club Space” means a parking space within the Land for the exclusive use of a vehicle to be used for the operation of the Car Club;

“Car Club Strategy” means a strategy for the provision and operation of a Car Club in respect of the Development such strategy to include the following measures:

- (a) the provision of a minimum of two (2) Car Club Spaces;
- (b) the location of the Car Club Spaces;
- (c) confirmation that the Car Club Spaces will be provided and available for use before Occupation of the first Residential Phase;
- (d) the proposed Car Club by whom the Car Club Spaces shall be operated;
- (e) specifying that the Car Club Spaces shall be used for the purposes of parking Car Club Cars and no other purpose;
- (f) maintaining the Car Club Spaces in good and substantial repair;
- (g) marking the Car Club Space for ‘Car Club Use Only’;
- (h) details of any benefits to be offered to members of the Car Club (having reasonable regard to the anticipated requirements of the Car Club); and

- (i) confirmation that the strategy will be funded by the Owner for a minimum period of five (5) years from Occupation;

“**CIL Regulations**” means the Community Infrastructure Levy Regulations 2010 (as amended);

“**Clawback Amount**” means an amount of money payable (if any) in respect of any Build to Rent Units which shall be calculated as follows:

$X = \text{Clawback Amount}$

where

$X = (D - E) \times \text{thirty percent (30\%)}$

D = the Market Value of the relevant Build to Rent Unit(s) to be valued on the assumption that each such Build to Rent Unit is to be sold free of the restrictions in this Agreement

E = the Build to Rent Clawback Valuation for the relevant Build to Rent Unit(s) as approved in writing by the Council;

PROVIDED THAT:

- (i) each Clawback Amount combined with the value of any other Clawback Amount previously paid to the Council and any contribution paid or required to be paid pursuant to Paragraph 7 of Schedule 7 and any Additional Affordable Housing Units provided or required to be provided pursuant to Paragraph 7 of Schedule 7 shall not be payable unless a Surplus is identified in the most recent Updated Viability Appraisal as approved by the Council or an Expert in accordance with this Agreement; and
- (ii) the aggregate amount of each and every Clawback Amount, the Deferred Contribution and the provision of any Additional Affordable Housing Units shall not exceed the Deferred Contribution Cap;

“**Commencement**” means commencement of development pursuant to the Permission by the carrying out of a “material operation” (as defined in section 56(4)(a) of the 1990 Act) save that for the purposes of this Agreement the term shall not include works of 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);

“**Commencement Notice**” means a written notice to be served by the Owner upon the Council stating the proposed date of Commencement of a Phase;

“**Commercial Uses**” means non-residential uses forming part of the Development;

“**Confirmatory Deed**” means a deed entered into by the holder of a Leasehold Interest and the Council pursuant to section 106 of the 1990 Act, which confirms that that Leasehold Interest is bound by the obligations within this Agreement;

“**Construction Employment and Skills Contribution**” means the sum calculated on the basis of two thousand five hundred pounds (£2,500) x Gross Internal Area of the relevant Phase (measured in m²) / 1000m² to be used towards the provision of construction training in the Council’s Area in accordance with the ES&T SPD Section 6;

“Construction Employment and Skills Monitoring Fee” means a fee of twenty-five pounds (£25) per agreed training output under the relevant approved Construction Employment and Skills Plan to be used by the Partner Organisation to monitor compliance with that Construction Employment and Skills Plan in accordance with the ES&T SPD Section 6;

“Construction Employment and Skills Plan” means, in respect of each Phase, the Owner’s written plan to provide the apprenticeship scheme and local employment opportunities during the Construction Period of that Phase and to be submitted to the Council for approval in writing (in consultation with their Partner Organisation) in accordance with paragraph 1.1.1(a) of Schedule 2 of this Agreement which shall be in accordance with the ES&T SPD Appendix 1;

“Construction Period” means the period of construction of a Phase from Commencement of that Phase until Practical Completion of that Phase;

“Contributions” means each and every financial contribution that is payable by the Owner to the Council in accordance with this Agreement but for the avoidance of doubt excluding payments pursuant to Schedule 7 of this Agreement (but including each Additional Affordable Housing Payment), the legal costs payable pursuant to Clause 11 and the Monitoring Fee and **“Contribution”** shall be construed accordingly;

“Co-operation Agreement” means an agreement entered into between the Owner and the owner of the Hermes Land in relation to the delivery of Shared Access Road B on the Hermes Land setting out the commercial terms relating to delivery and the ongoing maintenance and use of Shared Access Road B in accordance with the Shared Access Road B Principles;

“Covenant Period” means in relation to each Block which comprises in whole or in part Build to Rent Units the period of twenty (20) years commencing on the later of:

- (a) the date of Occupation of any Build to Rent Unit in that Block; and
- (b) the date on which all the Build to Rent Units in that Block are available for Occupation;

“Council’s Area” means the administrative area of the Council;

“Decision Notice” means a notice issued by the Secretary of State determining the Appeal;

“Deemed Disposal” means a deemed transfer of the freehold interest or grant of a leasehold interest in a Residential Unit, the Commercial Uses and/or other revenue-generating interests within the Development (as the case may be) at Market Value where the Owner does not dispose of the unit or element in question but lets it out or otherwise permits Occupation of it at the Relevant Date;

“Default Notice” means a written notice from the owner of the Hermes Land or the Council to the Owner that includes the following information:

- (a) details of the default of the Owner of its covenants in sub-paragraphs 1.1.1 (a) or (b) of this Schedule 14 being:
 - (i) any failure to commence and/or continue (having commenced) to construct Shared Access Road A; and/or
 - (ii) any failure to Practically Complete Shared Access Road A such that it is available for use in accordance with this Agreement; and
- (b) the steps that are reasonably considered necessary in order to rectify the non-compliance; and

(c) a reasonable period for carrying out the steps identified at (b) above;

“Deferred Contribution” means:

- (a) in respect of an early stage review and a mid stage review pursuant to Paragraphs 7.1 to 7.4 of Schedule 7, that part of the Surplus to be paid by the Owner (in addition to the provision of Additional Affordable Housing by the Owner) and to be used by the Council (if received) towards the provision of Affordable Housing within the Borough; and
- (b) in respect of a late stage review pursuant to Paragraphs 7.5 and 7.6 of Schedule 7, the Surplus to be paid by the Owner and to be used by the Council (if received) towards the provision of Affordable Housing within the Borough;

“Deferred Contribution Cap” means the sum which shall form part of each Updated Viability Appraisal, as approved by the Council (or the Expert as the case may be), and equates to the cost of providing thirty percent (30%) Affordable Housing as part of the Development in accordance with the Affordable Housing Mix and policy H3 of the Reading Borough Local Plan as adopted by the Council in November 2019;

“Development” means, pursuant to an outline planning permission with the details of access, appearance, landscaping, layout and scale reserved for later determination, a 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;

“Disposal” means:

- (a) a sale of the freehold interest;
- (b) the grant or assignment of a lease; or
- (c) the grant of an assured shorthold tenancy agreement or a short term let,

always excluding Sham Transactions and **“Dispose”**, **“Disposals”** and **“Disposed”** shall be construed accordingly.

Disposal Schedule means a schedule setting out:

- (a) the actual capital or expected capitalised receipts achieved in respect of the Residential Units, the Commercial Uses and other revenue-generating elements of the Development that have been sold or let as at the Relevant Date; or
- (b) the independently estimated Market Value of any Residential Unit, Commercial Uses and other revenue-generating elements of the Development that are yet to be sold or let,

in each case clearly identifying the value of discounts, incentives or allowances allowed by the Owner in respect of each such Residential Unit, Commercial Uses and other revenue-generating elements of the Development (as the case may be) together with a schedule setting out all rental income generated from the Development either as interim total amounts prior to lettings or actual

commercial rents receivable or estimated rents receivable capitalised using an appropriate commercial all-risks yield rate;

“District Heating Network” means any future potential network of insulated heating pipes, connectors and associated plant and equipment that is designed to distribute heating energy to a geographic area from central sources of production, with the capability of supplying some or all of the heat demand from the Development;

“Eligible Households” means a person or persons who are in Housing Need and who are nominated by the Council from its housing needs register in accordance with the Council’s allocation policy except that for Affordable Private Rented Housing this requirement shall be replaced by the Qualifying Criteria and the requirements of paragraphs 13 and 14 of Schedule 7;

“End Use Employment and Skills Contribution” means the sum calculated on the basis of Gross Internal Area of the relevant Phase (measured in m²) / average employee density for development type (using the Homes England Employment Density figure as at the date of this Deed) x fifty percent (50%) (target percentage of jobs filled by residents from the Council’s area) x thirty percent (30%) (percentage of residents without level 2 skills) x one thousand five hundred pounds (£1,500) to be used towards the provision of employment and skills training in the Council’s Area in accordance with the ES&T SPD Section 6 and Appendix 3;

“End Use Employment and Skills Monitoring Fee” means a fee of fifteen pounds (£15) per agreed training output under the relevant approved End Use Employment and Skills Plan to be used by the Partner Organisation to monitor compliance with that End Use Employment and Skills Plan in accordance with the ES&T SPD Section 6;

“End Use Employment and Skills Plan” means, in respect of each Phase, the Owner’s written plan to provide the apprenticeship scheme and local employment opportunities during the End Use Occupation Period of that Phase and to be submitted to the Council for approval in writing in accordance with paragraph 1.1.4 (a) of Schedule 2 of this Agreement which shall be in accordance with the ES&T SPD Appendix 2;

“End Use Occupation Period” means the period during which each Phase is available for Occupation by the end users of that Phase;

“ES&T SPD” means the Employment Skills and Training Supplementary Planning Document adopted by the Council on 15 April 2013;

“Excepted Disposal” means a disposal of all the Build to Rent Units comprised in a Block to a single purchaser where the Build to Rent Units disposed of will remain subject to the restrictions, covenants and obligations set out in Schedule 7;

“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 between the parties) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications;

“Finance Costs” means reasonable, competitive, market-based finance costs and interest paid on loans or other monies to finance or fund the Development;

“First Trigger Date” means the date(s) when the first Reserved Matters Application which includes one (1) or more Residential Units is received by the Council;

“Gross Development Value” means the aggregate of the following:

- (a) the consideration received on the Transfer of each of the Residential Units (if any);

- (b) in the case of any Residential Unit that has not been Transferred at the Relevant Date, the estimated Market Value of each such Residential Unit;
- (c) in the case of any commercial elements that have not been Transferred or that have been retained by the Owner the Market Value of those Commercial Uses;
- (d) the aggregate value of the estimated, net rental income stream and other sums receivable from the Build to Rent Units assessed over a period of no less than twenty (20) years in accordance with the Covenant Period;
- (e) the consideration received on each Transfer or lease of the Commercial Uses and/or other revenue-generating elements of the Development (as the case may be);
- (f) in respect of the Transfer or letting of the Residential Units and Commercial Uses and other revenue-generating elements of the Development by way of a part exchange or by way of a swap, the full value of the unit Transferred or let without deduction for the property taken in part exchange;
- (g) in respect of the Transfer or letting of a Residential Unit by way of a shared equity scheme, the full amount of the premium payable together with the up to date Market Value of any residual interest of the Owner in such Residential Unit;
- (h) any other income received by the Owner from any uses (including temporary uses) within the Development PROVIDED THAT all associated costs including but not limited to operational expenditure, empty property rates and statutory compensation are taken into account;
- (i) all non-repayable sums received from or through third parties in relation to the Development including (without limitation) government relief, grants, incentives, public subsidy and/ or tax opportunities;
- (j) the value of any overage or other performance-related payment attributable to any Transfer or letting received by or, on behalf (or as agent) of, the Owner (or a third party on its behalf);
- (k) all other actual sale proceeds, capital payments and receipts paid to, or received by, the Owner (or by others on its behalf) after the date of this Agreement in respect of any Transfer, letting and/or Deemed Disposal;
- (l) the aggregate value of the estimated, net rental income stream receivable from the Affordable Private Rented Housing and Affordable Rented Housing (if any), assessed on a perpetual basis;
- (m) any rental income from the Site net of reasonable operational expenditure and incentive that is received by the Owner in respect of existing tenancy agreements after Commencement which is not directly related to the Development; and
- (n) any compensation, damages, interest or other payment or sum of whatever nature not otherwise provided for in this definition received by or, on behalf (or as agent) of, the Owner (or a third party on its behalf) for any purpose whatsoever in respect of the Development;

as at the Relevant Date PROVIDED THAT all such sale proceeds, capital payments receipts and other income shall only be taken into account once when calculating the Gross Development Value;

“Gross Internal Area” means in relation to any stipulated area of/within any building comprised in the Development that area's gross internal area measured in accordance with the definition of ‘gross internal area’ in the Code of Measuring Practice (Sixth Edition) published by the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers;

“Hermes Agreement” means a deed of agreement entered into between: (i) the owner of the Hermes Land (and any other parties with a relevant legal interest in the Hermes Land); and (ii) the Council pursuant to section 106 of the 1990 Act, which binds the Hermes Land and requires Practical Completion of Shared Access Road B in accordance with the Shared Access Road B Principles;

“Hermes Application” means the application submitted to the Council in respect of the Hermes Development and allocated reference number 182252;

“Hermes Development” means the development authorised by the Hermes Permission which grants planning permission for Shared Access Road B;

“Hermes Land” means 80 Caversham Road Reading RG1 1AA as shown outlined in red on drawing number A11113 C 2002 Rev P2, a copy of which is at Annex 9 to this Agreement;

“Hermes Permission” means a planning permission granted pursuant to the Hermes Application;

“Housing Need” means, in respect of a person or persons, a housing need because their income is insufficient to enable them to rent or buy housing available in the Council’s Area on the open market determined with regard to local incomes and local house prices;

“Implement” means the carrying out of a material operation pursuant to section 56 of the 1990 Act;

“Index” means the Retail Price Index issued by the Office for National Statistics (including any index that replaces it from time to time);

“Index Linked” means that

- (a) the amount of each Contribution payable under this Agreement (except for each Additional Affordable Housing Payment) shall be increased by an amount equivalent to the increase in the Index from the Index Start Date until the date on which that Contribution or sum is payable or triggered as set out in this Agreement; and
- (b) each Additional Affordable Housing Payment shall be increased by an amount equivalent to the increase in the Index from the date of the relevant Affordable Housing Notice being approved by the Council pursuant to Paragraph 7 of Schedule 7 until the date of payment of that Additional Affordable Housing Payment;

“Index Start Date” means the date of the grant of the Permission;

“Interest” means annual interest at four percent (4%) above the base rate of the Bank of England from time to time;

“Intermediate Housing” means

- (a) a Shared Ownership Unit; or

- (b) a Residential Unit to be provided as such other form of intermediate housing provided for sale or rent at levels above social rent but below market levels as may be agreed between the Owner and the Council;

“Land” means the land at Vastern Court, Caversham Road, Reading, RG1 8AL for identification edged red on the Location Plan;

“Leasehold Interest” means the leasehold interests over part of the Land at the date of this Agreement, being the leasehold interests registered at the Land Registry with title numbers BK458445, BK424747, BK460892, BK281839 and BK451294 and which for the avoidance of doubt excludes 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;

“Legal Challenge” means all or any of (i) application for judicial review under part 54 of the Civil Procedure Rules 1998 (as amended) and/or (ii) an application pursuant to section 288 of the 1990 Act in both cases including any appeals to a higher court following a judgement of a lower court;

“Local Housing Allowance” or “LHA” means the rates used by the Valuation Office Agency (VOA) to calculate housing benefit for those who are private renting provided that these rates vary according to area and dwelling size, and can be calculated on the VOA website;

“Local Plan” means the Reading Borough Local Plan as adopted by the Council in November 2019;

“Location Plan” means the plan attached to this Agreement with reference 17043 P0-000 P1 attached at Annex 1 and labelled “Site Location Plan”;

“Market Rent” has the meaning given in the Red Book;

“Marketing Period” means the marketing period for the Affordable Private Rented Housing Units which shall be no less than six (6) months in duration;

“Market Value” has the meaning given in the Red Book;

“Mid-Stage Review” means the Viability Reassessment which takes place on each Mid-Stage Review Date;

“Monitoring Fee” means the sum of two thousand six hundred pounds (£2,600) to be paid by the Owner to the Council in accordance with clause 12 of this Agreement for the purpose of monitoring compliance with the obligations contained in this Agreement;

“New Crossing” means a new toucan pedestrian crossing on Vastern Road to improve connectivity across Vastern Road to the 55 Vastern Road Development Site;

“New Crossing Contribution” means a financial contribution of up to seventy five thousand (£75,000), the specific amount of which shall be the difference between two hundred thousand pounds (£200,000) and the estimated cost of the New Crossing as determined by the New Crossing Investigation Report and which shall be used towards the costs of the New Crossing;

“New Crossing Investigation” means an investigation by the Council into the cost of providing the New Crossing which shall include (a) a detailed design of the New Crossing; (b) an assessment of the utility changes and costs; and (c) a breakdown of costs;

“New Crossing Investigation Report” means the report produced by the Council setting out the findings of the New Crossing Investigation;

“Occupation” means first beneficial occupation (as the context permits) of any building (or part of a building) constructed on any Phase PROVIDED THAT, for the avoidance of any doubt, occupation for the purposes of construction, fitting out, marketing or site security shall not constitute Occupation (and **“Occupy”**, **“Occupied”** and **“Occupier”** shall be construed accordingly);

“Office Travel Plan” means a Travel Plan for a Phase containing office use within use class E(c) and/or E(g)(i);

“Open Space Assessment” means an assessment that is carried out in respect of each Residential Phase and includes the following details:

- (i) the nature, quantum and extent of the open space requirements for that Residential Phase; and
- (ii) full details of the open space measures that are proposed to be delivered on-site as part of that Residential Phase; and
- (iii) a programme for implementing the open space measures identified at (ii) above; and
- (iv) the cost of providing the on-site open space measures identified at (ii) above; and
- (v) if applicable, proposals for seeking a reduction in the quantum of the Open Space Contribution for that Residential Phase as a consequence of delivering the on-site open space measures identified at (ii) above PROVIDED THAT any such proposals must provide clear and full details as to how the proposed on-site open space measures would meet the Council’s policy requirements for open space (both in terms of the Local Plan and any other relevant policy) and how the proposed on-site open space measures would meet a specific need arising out of the relevant Residential Phase (which is capable of being quantified in financial terms);

“Open Space Contribution” means, in respect of each Residential Phase, the product of the following formula:

$$X = Y \times Z$$

where

X = Open Space Contribution

Y = the total number of Residential Units to be constructed in that Residential Phase in accordance with all relevant Reserved Matters Approvals

Z = one thousand pounds (£1,000)

PROVIDED THAT:

- (i) the Open Space Contribution may be reduced by the equivalent cost of providing any on-site open space measures that are identified in an Open Space Assessment that has been approved in writing by the Council in respect of that Residential Phase pursuant to this Agreement; and

- (ii) the Open Space Contribution shall be used by the Council towards the following measures at Christchurch Meadows and Rivermead each of which is within the reasonable locality of the Development:

in respect of Christchurch Meadows:

- (a) resiting and upgrading the existing play area(s);
- (b) measures that are designed to upgrade water-based play;
- (c) provision of additional sports/tennis courts;
- (d) improvements to the existing pavilion;
- (e) enhancements to existing paths; and
- (f) such other measures that are designed to enhance or improve the attraction of and/or facilities at Christchurch Meadows for use by residents of the Development as are agreed in writing between the Owner and the Council;

in respect of Rivermead:

- (a) upgrading the existing artificial pitch; and
- (b) such other measures that are designed to enhance or improve the attraction of and/or facilities at Rivermead for use by residents of the Development as are agreed in writing between the Owner and the Council;

“Owner’s Profit” means a sum of money equal to:

- (a) twenty percent (20%) of the estimated Gross Development Value of the Residential Units (excluding Build to Rent Units); and
- (b) twelve and a half percent (12.5%) of the estimated Gross Development Value of the Build to Rent Units; and
- (c) fifteen percent (15%) of the estimated Gross Development Value of the Commercial Units; and
- (d) six percent (6%) of the estimated Gross Development Value of the Affordable Housing Units (and any Additional Affordable Housing Units);

“Partner Organisation” means the economic development company Reading UK CIC (Co. Registration No. 5671172) mandated by the Council and the Reading 2021 Local Strategic Partnership to lead on economic development (Memorandum of Understanding dated 15th February 2008) whose registered office is 5th Floor, Thames Tower, Station Road, Reading, Berkshire, England, RG1 1LX or any successor or similar organisation or organisations having similar objectives to Reading UK CIC and nominated by the Council in writing to the Owner (or nominated in writing by the Owner to the Council and approved in writing by the Council) from time to time as the partner organisation for the purposes of a Construction Employment and Skills Plan (if relevant);

“Permission” means outline planning permission granted for the Development pursuant to the Appeal;

“Phase” means a phase of the Development shown on the Phasing Plans to be approved by the Permission or from time to time approved pursuant to a condition of the Permission and **“Phases”** shall be construed accordingly;

“Phasing Plans” means the plans PP-105 P1, PP-110_P1, PP-111_P1, PP-112_P1, PP-113_P1 and PP-114_P1 attached to this Agreement at Annex 4;

“Practical Completion” means completion save in minor respects so that the Development (or the relevant part of it) or Phase (as the case may be) can be used and can operate in the manner permitted by the Permission and **“Practically Complete”** and **“Practically Completed”** shall be construed accordingly;

“Private Residential Units” means Residential Units which are not Affordable Housing Units;

“Public Art Contribution” means the sum of one hundred thousand pounds (£100,000);

“Public Art Scheme” means a scheme to secure the provision of public art and/or cultural benefits as part of the Development on the Land which may include any of the following initiatives:

- (a) the holding of arts and/or cultural events; and/or
- (b) commissioning and/or collaborating with local artists to produce works of public art; and/or
- (c) a wayfinding strategy as part of the Development; and/or
- (d) free use of the Public Realm (or a part of it) for community-led initiatives,

PROVIDED THAT:

- (i) the Owner shall not be required to spend more than one hundred thousand pounds (£100,000) on preparing, submitting and implementing the scheme once approved by the Council; and
- (ii) the scheme shall demonstrate that it has been informed by and/or created through community engagement; and
- (iii) the scheme shall include a programme for its implementation;

“Public Realm” means the publicly accessible routes and open spaces (including where relevant hard and soft landscaping; provision of amenity spaces; and children’s play space provision) forming part of the Development within the Land (shown for illustrative purposes only on the “Illustrative Landscape Masterplan” attached to this Agreement at Annex 2) the detailed extent of which will be submitted for approval pursuant to the Permission;

“Qualifying Criteria” means that tenants of the Affordable Private Rented Housing Units:

- (a) can afford the rents proposed (affordability to include money provided through the benefits system);
- (b) have an appropriate household size for the available property;
- (c) have provided suitable references and suitable credit checks have been obtained in respect of the potential tenant by the Owner’s representative;
- (d) have no rent arrears or history of rent arrears;
- (e) have no history of having been convicted of an offence under the Anti-social Behaviour, Crime and Policing Act 2014 within the period of 5 years preceding the date of tenancy;
- (f) undertake a satisfactory interview with the Owner’s representative in which they demonstrate an understanding of their responsibilities under the terms of their tenancy agreement and all subsequent contractual obligations;

“Reading Affordable Rent” means no more than seventy per cent (70%) of the local Market Rent (including service charges);

“Reading Station Underpass” means the underpass located beneath Reading Station in Reading town centre as shown edged red on the plan annexed at Annex 5;

“Red Book” means the RICS Valuation – Global Standards (incorporating the IVSC International Valuation Standards) effective from 31 January 2022 together, where applicable, with the UK National Supplement effective 14 January 2019;

“Registered Provider” means a registered provider of social housing within the meaning of Section 80 of the Housing and Regeneration Act 2008 (or any statutory modification) and registered with the regulator of social housing pursuant to Section 81 of the said Act or any other provider of Affordable Housing as agreed in writing with the Council;

“Relevant Date” means the date when the relevant Updated Viability Appraisal is submitted to the Council in accordance with this Agreement;

“Reserved Matters Application” means an application for approval of any matters (being appearance, means of access, landscaping, layout and scale) confirmed in the Permission as being reserved for subsequent approval;

“Reserved Matters Approval” means the approval of a Reserved Matters Application by the Council;

“Residential Carbon Off-Set Contribution” means the sum calculated in respect of each and every Residential Unit pursuant to the below formula:-

$$Y = A \times B$$

Y = Residential Carbon off-Set Contribution

A = Carbon gap (being any residual shortfall in regulated carbon emissions when measured against the target emissions rate as detailed in the Building Regulations 2013 following on site reduction measures)

B = one thousand eight hundred pounds (£1,800) per tonne of residual carbon (calculated as sixty pounds (£60) per tonne over a thirty (30) year period)

in accordance with paragraph 3.11 of the Sustainable Design and Construction SPD as adopted by the Council in December 2019;

“Residential Phase” means a Phase containing one (1) or more Residential Units;

“Residential Framework Travel Plan” means the interim travel plan dated October 2021 submitted as part of the Application as attached at Annex 3;

“Residential Travel Plan” means a Travel Plan in respect of a Residential Phase;

“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 Reserved Matters Approval(s) that are granted pursuant to the Permission and implemented in respect of each Phase (and **“Residential Units”** shall be construed accordingly);

“Second Trigger Date” means the date when twenty five percent (25%) of the Residential Units have been Practically Completed;

“Sham Transaction” means the following:

- (a) a transaction the effect of which is to reduce the sale proceeds, capital payments, receipts and any other income for the purposes of the viability reviews; and
- (b) a disposal of a Residential Unit that is not an arm's length third party bona fide transaction,

which may (amongst other things) include transactions between the Owner and subsidiary companies of the Owner or transactions between the Owner and their employees or transactions involving loans from the Owner or other forms of deferred consideration or transactions involving other property not comprised in the Development;

“Shared Access Road A (Part 1)” means a vehicular and pedestrian access road forming part of the Development to be provided to an Adoptable Standard and to be accessed from Caversham Road on the Land and up to the boundary of the Hermes Land as shown for illustrative purposes only shaded blue on drawing number 23061101-SDG-HGN-100-DR-D-02101 P4 (which is at Annex 7 to this Agreement) PROVIDED THAT the access road shall: (i) include spurs at specified points along the boundary of the Hermes Land and the Land; and (ii) provide satisfactory vehicular, cycle and pedestrian access to the Hermes Land;

“Shared Access Road A (Part 2)” means a vehicular and pedestrian access road forming part of the Hermes Development to be provided to an Adoptable Standard from the point at which Shared Access Road A meets the Hermes Land to Trooper Potts Way up to the boundary of the Land as shown for illustrative purposes only shaded yellow on drawing number 23061101-SDG-HGN-100-DR-D-02101 P4 (which is at Annex 7 to this Agreement) PROVIDED THAT the access road shall provide satisfactory vehicular, cycle and pedestrian access to the Land;

“Shared Access Road B” means a vehicular and pedestrian access road forming part of the Hermes Development to be provided to an Adoptable Standard and to be accessed from Caversham Road on the Hermes Land and up to the boundary of the Land as shown for illustrative purposes only shaded blue on drawing number 23061101-SDG-HGN-100-DR-D-02004 P2 (which is at Annex 8 to this Agreement) PROVIDED THAT the access road shall: (i) include spurs at specified points along the boundary of the Hermes Land and the Land; and (ii) provide satisfactory vehicular, cycle and pedestrian access to the Land;

“Shared Access Road B Principles” means the following principles:

- (a) That if a Hermes Permission is Implemented before the Permission is Implemented then the owner of the Hermes Land shall construct Shared Access Road B to a specification, programme and cost that is approved by the Council (with step in rights in favour of the Owner in the event of default) and grant the Owner such ongoing easements and other rights as are reasonably required and agreed between the Owner and the owner of the Hermes Land to allow access and egress to the Development along Shared Access Road B; and
- (b) That the costs of the construction of Shared Access Road B shall be shared equally between the Owner and the owner of the Hermes Land in the event that the Permission is Implemented (subject to any other costs sharing arrangements that may be agreed from time to time between the Owner and the owner of the Hermes Land).

“Shared Ownership Unit” means an Affordable Housing Unit which is to be made available to Eligible Households and who may initially buy a percentage of not more than seventy five percent (75%) of the equity in that Affordable Housing Unit and rent the remaining percentage from a Registered Provider (at an initial annual rent of no more than three percent (3%) of the unsold

equity) and who may also (for the avoidance of doubt) staircase to one hundred percent (100%) ownership;

“**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;

“**Standards**” means the core standards in relation to the internal environment, sustainability and external environment of the Additional Affordable Housing Units as set out in design standards that are published by Homes England (if applicable) and in force at the time when the relevant Phase is Commenced PROVIDED THAT in the event of any conflict between the Standards and the plans approved pursuant to the Permission the approved plans shall take priority;

“**Supporting Evidence**” means the following:

- (a) for any costs actually incurred at the First Trigger Date and/or the Second Trigger Date and/or the Third Trigger Date (as the case may be), received invoices or other evidence of payment or staged payment certified by the Owner's quantity surveyor or costs consultant or other professional and the Owner shall use reasonable endeavours to secure that such person provides an express duty of care to the Council;
- (b) for any costs yet to be incurred at the First Trigger Date and/or the Second Trigger Date and/or the Third Trigger Date (as the case may be), the up to date best estimate of such costs by the Owner or where available by the Owner's quantity surveyor or costs consultant or other professional and the Owner shall use reasonable endeavours to secure that such person provides an express duty of care to the Council;
- (c) for sale proceeds and all other monies and/or income received at the First Trigger Date and/or the Second Trigger Date and/or the Third Trigger Date (as the case may be), the Disposal Schedule together with certified copies of sale/letting contracts or completion statements by the Owner's solicitor and the Owner shall use reasonable endeavours to secure that such person provides an express duty of care to the Council; and
- (d) in relation to any Residential Unit, Commercial Uses or other revenue-generating element which is unsold or unlet and/or any element which remains vacant or not let at the First Trigger Date and/or the Second Trigger Date and/or the Third Trigger Date (as the case may be), then an independently obtained independent ‘Red Book’ valuation of the Market Value of the relevant Residential Unit(s), Commercial Uses and/or other revenue-generating element (as the case may be);

“**Surplus**” means the sum that is fifty percent (50%) of the figure that equates to the Gross Development Value less:

- (a) the Build Costs; and
- (b) the Owner’s Profit; and
- (c) the Benchmark Land Value;

PROVIDED THAT the sum shall not exceed the Deferred Contribution Cap;

“**Third Trigger Date**” means the date when seventy five percent (75%) of the Residential Units have been Practically Completed;

“**Transfer**” means:

- (a) (a) the completion of the transfer of the freehold interest; or

- (b) the grant of a leasehold interest (for a term of not less than one hundred and twenty five (125) years),

and for the avoidance of doubt Transfer shall not mean the exchange of contracts (and **Transferred** shall be construed accordingly);

“Travel Plan” means a full form travel plan to be submitted by the Owner and approved in writing by the Council pursuant to Schedule 3 the format of which shall be in accordance with the Residential Framework Travel Plan;

“Travel Plan Co-ordinator” means a person appointed by the Owner at its own cost who is responsible for setting up and managing the implementation of the Office Travel Plan and the Residential Travel Plan (as the case may be) in accordance with the terms of the Office Travel Plan and the Residential Travel Plan (as the case may be);

“Underpass Contribution” means the sum of one hundred thousand pounds (£100,000) to be used by the Council towards upgrading and improving the Reading Station Underpass so that it is suitable and safe for use by cyclists and pedestrians;

“Updated Viability Appraisal” means a viability appraisal in respect of the Development which shall be carried out in accordance with all relevant published industry, professional and government guidance in relation to viability by an individual who is a professional member of the Royal Institution of Chartered Surveyors and to be presented in ‘Argus developer’ format in order to assess whether there is a Surplus as at the Relevant Date to be used towards the provision of Additional Affordable Housing Units and/or payment of a Deferred Contribution (as the case may be) in accordance with the terms of this Agreement and which shall include an updated calculation of the Deferred Contribution Cap;

“Working Day(s)” means a day other than a Saturday or Sunday or public holiday in England;

1.2 In this Agreement

- 1.2.1 references in this Agreement to the “Owner” shall include its respective successors in title to the Land and their assigns;
- 1.2.2 references in this Agreement to the “Council” shall include any successor to its functions as local planning authority and/or local highway authority;
- 1.2.3 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;
- 1.2.4 where an obligation falls to be performed by more than one person the obligation can be enforced against every person so bound jointly and against each of them individually
- 1.2.5 a reference to writing or written does not include faxes or e-mail
- 1.2.6 the clause headings in this Agreement are for convenience only and do not form part of the Agreement;
- 1.2.7 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;
- 1.2.8 references to the singular shall include the plural and vice versa;

- 1.2.9 references to the Land include any part of the Land;
- 1.2.10 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;
- 1.2.11 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; and
- 1.2.12 the word “including” shall be construed without prejudice to the generality of the words preceding it.

2. STATUTORY POWERS

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act, section 1 of the Localism Act 2011, section 278 of the 1980 Act, section 111 of the Local Government Act 1972 and all other enabling powers with an intent to bind the Owner’s interest in the Land (and each and every part of it) subject to the provisions of Clauses 3 (land bound / liability), 4 (conditionality), 5 (Owner’s coveants), 7 (release and lapse), 10 (severability) and 17 (future mortgagees).
- 2.2 This Agreement is a planning obligation within the meaning of section 106 of the 1990 Act and the obligations contained within it shall, subject to the provisions of the Agreement, be enforceable by the Council against the Owner (including its successors in title and those deriving title from the Owner).
- 2.3 This Agreement is without prejudice to and shall not be construed as derogating from any of the rights powers and duties of the Council pursuant to any of its statutory functions nor in any other capacity.

3. LAND BOUND / LIABILITY

- 3.1 The Land is bound by the obligations in this Agreement.
- 3.2 The obligations under this Agreement shall not be binding on nor enforceable against:
 - 3.2.1 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
 - 3.2.2 owners or occupiers of any individual unit of commercial floor space within the Development and their successors in title and any mortgagees or chargees of such persons; or
 - 3.2.3 owners or occupiers of any individual Residential Unit and their successors in title and any mortgagees or chargees of such persons,

provided that, for the avoidance of any doubt, this clause shall not in any way affect the liability of the Owner who shall remain liable for compliance with the obligations and covenants in this Agreement.

4. CONDITIONALITY

- 4.1 The obligations in Clauses 5 and 6 of this Agreement are unless otherwise specified conditional upon:
 - 4.1.1 the grant of the Permission; and
 - 4.1.2 Commencement,

PROVIDED THAT, for the avoidance of any doubt, Clauses 1-4 and 7-23 of this Agreement shall come into effect upon the date of this Agreement.

5. OWNER COVENANTS

- 5.1 The Owner covenants with the Council to observe and perform the covenants on its part contained in Schedules 1 to 12 and 14.
- 5.2 The Owner covenants with the Council, as to bind the entirety of its interest in the Land, to comply with the restrictions and requirements in Schedules 1 to 12 and 14 of this Agreement.
- 5.3 The Owner covenants with the Council not to Commence each Phase unless and until it has served a Commencement Notice in respect of that Phase.

6. COUNCIL'S COVENANTS

The Council covenants with the Owner that it will observe and perform the covenants on its part contained in Schedules 2, 3, 4, 7, 9 and 13.

7. RELEASE AND LAPSE

- 7.1 The parties agree that the Owner 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.
- 7.2 It is further agreed that this Agreement shall lapse and be of no further effect if:
- 7.2.1 the Permission shall expire without having been Implemented; or
 - 7.2.2 the Permission shall be varied or revoked otherwise than with the consent of the Owner; or
 - 7.2.3 the Permission is quashed following a successful Legal Challenge; or
 - 7.2.4 the 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.
- 7.3 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.
- 7.4 Save where the context otherwise specifies nothing in this Agreement shall require the Owner to perform any obligation whatsoever in upon or under land outside the ownership of the Owner unless such land is public highway.

8. LOCAL LAND CHARGE

- 8.1 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.

9. 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.

10. 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.

11. LEGAL COSTS

The Owner will prior to completion of this Agreement pay the Council's reasonable legal costs for the negotiation and completion of this Agreement.

12. MONITORING FEE

The Owner covenants with the Council to pay the Monitoring Fee within ten (10) Working Days of the grant of the Permission.

13. 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.

14. NOTICES

14.1 The Owner covenants with the Council to notify the Council no less than 10 Working Days before the occurrence of each of the following:

14.1.1 the date that is six (6) months before Commencement of each Phase;

14.1.2 Commencement of Development; and

14.1.3 Commencement of each Phase;

14.1.4 Implementation of the Development; and

14.1.5 Implementation of each Phase;

14.1.6 First Trigger Date; and

14.1.7 Second Trigger Date; and

14.1.8 Third Trigger Date; and

14.1.9 the date that is six (6) months after Practical Completion of each Block; and

14.1.10 the date that is three (3) months before Practical Completion of the Affordable Private Rented Housing Units; and

14.1.11 the date that is five (5) months before Practical Completion of the Affordable Private Rented Housing Units; and

14.1.12 the date that is three (3) months before Occupation of each Phase containing Commercial Uses; and

14.1.13 Practical Completion of the first Phase; and

14.1.14 Occupation of the first Residential Unit; and

14.1.15 Occupation of each Build to Rent Unit; and

- 14.1.16 Occupation of the Affordable Private Rented Housing Units; and
 - 14.1.17 Occupation of each Phase; and
 - 14.1.18 Occupation of each Block; and
 - 14.1.19 Occupation of seventy-five percent (75%) of the Residential Units in each Residential Phase; and
 - 14.1.20 Occupation of seventy-five percent (75%) of the office floorspace within each Phase that includes office use; and
 - 14.1.21 Occupation of the Development.
- 14.2 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):
- 14.2.1 on the Council at the address shown above marked "For the attention of the Planning Section", Reading Borough Council, Civic Offices, Bridge Street, Reading RG1 2LU with a copy to the Head of Legal Services at the same address.
 - 14.2.2 on the Owner 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.

15. PAYMENTS

- 15.1 The Contributions payable under this Agreement shall be Index Linked.
- 15.2 The Contributions payable under this Agreement shall be taken to include the actual Contribution payable including any amount for Index Linking.
- 15.3 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.
- 15.4 Notwithstanding that the Owner shall pay Interest on the Index Linked sum as calculated pursuant to 15.3 above, the Owner 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.
- 15.5 Any Interest paid due to late payment will not form part of the Contribution due and will belong to the Council and for clarification will not be included in any repayment clause.

16. VAT

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

17. FUTURE MORTGAGEES

- 17.1 It is acknowledged and declared that this Agreement 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 not take effect subject to this Agreement unless and until any such mortgagee / chargee has entered into possession of that part of the Land in which case it shall be

liable as if it were a successor in title to the Owner in relation to that part of the Land but only insofar as the obligations relate to that part of the Land it has entered into possession of and 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:

17.1.1 any obligation still to be performed; and

17.1.2 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.

18. DISPUTE RESOLUTION

18.1 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:

18.1.1 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;

18.1.2 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

18.1.3 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.

18.2 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).

18.3 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.

18.4 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.

18.5 The decision of the Expert shall be final on all matters referred to him and in the absence of manifest and material error shall be binding on the parties.

18.6 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.

- 18.7 Each party shall bear its own costs save that the fees of the Expert shall be in the Expert's award or split equally between the parties if not specified in the Expert's award.
- 18.8 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.
- 18.9 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.

19. FUTURE SECTION 73 PERMISSION(S)

- 19.1 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") and unless otherwise agreed between the parties with effect from the date that the new planning permission is granted pursuant to section 73 of the 1990 Act:

19.1.1 the obligations in this Agreement shall (in addition to continuing to bind the Land in respect of the Permission) relate to and bind the Land in respect of development pursuant to such Future S73 Permission(s); and

19.1.2 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

19.1.3 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 Land 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 and/or section 106A of the 1990 Act.

20. OBLIGATION TO ACT REASONABLY AND IN GOOD FAITH

- 20.1 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.

21. 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.

22. 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.

23. APPEAL DECISION NOTICE

If the Decision Notice concludes that any one of the planning obligations set out in this Agreement does not comply with any one of the tests for planning obligations set out at Regulation 122 of the CIL Regulations and accordingly attaches no weight to that particular obligation in determining the Appeal, 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 Owner shall be under no obligation to comply with it provided that this shall not prejudice the remaining obligations which shall continue to remain in full force and effect in accordance with the terms of this Agreement.

SCHEDULE 1
LEASEHOLD INTERESTS

1. LEASEHOLD INTERESTS

1.1 Not to Implement each Phase until either:

1.1.1 all Leasehold Interests within that Phase have expired, been surrendered, forfeited or otherwise determined or extinguished and evidence of such expiration, surrender, forfeit, determination or extinguishment has been provided to the Council in writing and accepted in writing as satisfactory evidence by the Council Provided That the following forms of evidence shall be deemed to be satisfactory to the Council:

- (a) an up-to-date official copy from the Land Registry evidencing no registered Leasehold Interests within the relevant Phase; or
- (b) a completed deed of surrender in respect of each Leasehold Interest, signed by all parties (in Land Registry Form TR1); or
- (c) a copy of the relevant lease which shows it is excluded from the Landlord and Tenant Act 1954 (such that it does not benefit from security of tenure under such Act) and that the lease term has expired along with confirmation that the tenant has vacated; or
- (d) a copy of the relevant lease which shows it is not excluded from the Landlord and Tenant Act 1954, along with confirmation that the lease term has expired and the tenant has vacated such that the relevant tenant has no statutory rights to renew the lease under the Landlord and Tenant Act 1954; or
- (e) a notice of disclaimer; or
- (f) a break notice, together with a written confirmation signed by or on behalf of the Owner that the pre-conditions (if any) to the break have been satisfied and the relevant tenant has given up occupation; or
- (g) a forfeiture notice and evidence of compliance with the notice; and
- (h) where (b), (c), (d), (e), (f) or (g) above applies (and the relevant lease is registered at the Land Registry) confirmation that an application has been made to the Land Registry to remove the relevant Leasehold Interest within that Phase from the relevant title and a written undertaking from the solicitors acting for the party submitting such application that they shall: (i) diligently pursue such application; (ii) promptly respond to any requisitions raised by the Land Registry in respect of such application: and (iii) provide the Council with up-to-date official copy entries within five (5) Working Days of the application having been completed by the Land Registry; or

1.1.2 the holder of each and every Leasehold Interest within that Phase, which has not expired, been surrendered, forfeited or otherwise determined or extinguished, has entered into a Confirmatory Deed.

SCHEDULE 2
EMPLOYMENT AND SKILLS PLANS

1. EMPLOYMENT AND SKILLS PLANS

1.1 The Owner covenants with the Council as follows:

1.1.1 No later than six (6) months prior to Commencement of each Phase at the Owner's absolute discretion to either:

- (a) submit to the Council for its approval a Construction Employment and Skills Plan for that Phase; or
- (b) notify the Council of the intention to pay the Construction Employment and Skills Contribution for that Phase to the Council.

1.1.2 In the event that paragraph 1.1.1(b) of this Schedule applies, to pay the relevant Construction Employment and Skills Contribution to the Council prior to the Commencement of that Phase and not to Commence or permit Commencement of that Phase unless and until the Construction Employment and Skills Contribution has been paid in full to the Council.

1.1.3 In the event that paragraph 1.1.1(a) of this Schedule applies:

- (a) the Owner shall pay to the Council in full the Construction Employment and Skills Monitoring Fee in connection with the relevant approved Construction Employment and Skills Plan prior to the Commencement of the relevant Phase and not to Commence or permit Commencement of that Phase unless and until the Construction Employment and Skills Monitoring Fee has been paid in full to the Council; and
- (b) the Owner shall implement the relevant approved Construction Employment and Skills Plan (including any amendments to it that are approved in writing by the Council from time to time) throughout the Construction Period in respect of that Phase.

1.1.4 No later than three (3) months prior to Occupation of each Phase containing Commercial Uses at the Owner's absolute discretion to either:

- (a) submit to the Council for its approval an End Use Employment and Skills Plan for that Phase; or
- (b) notify the Council of the intention to pay the End Use Employment and Skills Contribution for that Phase to the Council.

1.1.5 In the event that paragraph 1.1.4(b) of this Schedule applies, to pay the End Use Employment and Skills Contribution to the Council prior to the Occupation of that 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 full to the Council.

1.1.6 In the event that paragraph 1.1.4(a) of this Schedule applies:

- (a) the Owner shall pay to the Council in full the End Use Employment and Skills Monitoring Fee in connection with the relevant approved End Use Employment and Skills Plan prior to the Occupation of the relevant Phase and

not to Occupy or permit Occupation of that Phase unless and until the End Use Employment and Skills Monitoring Fee has been paid in full to the Council; and

- (b) the Owner shall implement the relevant approved Construction Employment and Skills Plan (including any amendments to it that are approved in writing by the Council from time to time) throughout the End Use Occupation Period in respect of that Phase.

1.2 Following the submission of any Construction Employment and Skills Plan or End Use Employment and Skills Plan by the Owner in accordance with paragraph 1.1.1(a) or 1.1.4(a) of this Schedule the Council shall use reasonable endeavours to respond to the Owner either approving, refusing or requesting changes to the Construction Employment and Skills Plan or End Use Employment and Skills Plan no later than 8 (eight) weeks from the date of submission of the relevant Construction Employment and Skills Plan or End Use Employment and Skills Plan.

1.3 In the event the Council confirms that either the Construction Employment and Skills Plan or End Use Employment and Skills Plan submitted in accordance with paragraph 1.1 of this Schedule is not acceptable or requires specified amendments in order to be acceptable then a revised Construction Employment and Skills Plan or End Use Employment and Skills Plan (as the case may be) shall be submitted and the provisions of paragraph 1.1 and 1.2 of this Schedule shall apply to such revised Construction Employment and Skills Plan or End Use Employment and Skills Plan (as the case may be) and shall continue to apply until such time as the Construction Employment and Skills Plan or End Use Employment and Skills Plan (as the case may be) is approved.

SCHEDULE 3
TRAVEL PLAN AND MONITORING

1. TRAVEL PLAN AND MONITORING

- 1.1 The Owner covenants with the Council:
- 1.1.1 Prior to Occupation of each Phase to appoint a Travel Plan Co-ordinator in respect of that Phase and to 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;
 - 1.1.2 Within five (5) months of Occupation of each Residential Phase to submit a Residential Travel Plan in respect of that Residential Phase to the Council for approval and not to Occupy more than seventy-five percent (75%) of the Residential Units within that Residential Phase unless and until such Residential Travel Plan has been approved in writing by the Council.
 - 1.1.3 Within five (5) months of Occupation of each Phase which includes office use to submit an Office Travel Plan in respect of that Phase to the Council for approval and not to Occupy more than seventy-five percent (75%) of the office floorspace within that Phase unless and until such Office Travel Plan has been approved in writing by the Council.
- 1.2 Following the submission of a Travel Plan by the Owner in accordance with paragraph 1.1.2 or 1.1.3 of this Schedule the Council shall use reasonable endeavours to respond to the Owner either approving, refusing or requesting changes to the Travel Plan no later than 8 (eight) weeks from the date of submission of the Travel Plan.
- 1.3 In the event the Council confirms that the Travel Plan submitted in accordance with paragraph 1.1.2 or 1.1.3 of this Schedule 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 1.2 of this Schedule shall apply to the revised Travel Plan and shall continue to apply until such time as the Travel Plan is approved.
- 1.4 The Owner shall:
- 1.4.1 implement, monitor and review each approved Residential Travel Plan from the date of first approval of the Residential Travel Plan for five (5) years;
 - 1.4.2 provide a written report to the Council on the third and fifth anniversaries of the date of first approval of each Residential Travel Plan and action any reasonable comments provided thereon by the Council; and
 - 1.4.3 ensure that such written report shall include a detailed survey of the number of movements generated by the Residential Units within that Residential Phase and shall be compared with the initial survey carried out in preparation of the relevant Residential Travel Plan (i.e. the control level) and in the event of any reduction not being secured the Owner shall undertake reasonable measures as first agreed in writing with the Council as are necessary to cause a reduction in the number of car borne trips to, as a maximum, the control level.
- 1.5 Following the expiry of the five year period from the date of first approval of the Residential Travel Plan the provisions contained in this Schedule shall determine and cease to be enforceable

by the Council in respect of that Travel Plan save in relation to any actions reasonably required to be carried out by the Owner as a result of the review undertaken on the 5th anniversary of the date of the Residential Travel Plan which shall be carried out and completed by the Owner in accordance with any reasonable comments received from the Council.

1.6 The Owner shall:

1.6.1 on the first anniversary of the approved Office Travel Plan and annually thereafter, submit an annual review of that approved Office Travel Plan for the written approval of the Council. This obligation shall continue unless and until the agreed targets identified within the approved Office Travel Plan have been consistently met for a five year period;

1.6.2 ensure that such review shall include a detailed survey of the number of movements generated by the office use within the relevant Phase and shall compare that number with the equivalent number in the initial survey that was carried out in preparation of the relevant Office Travel Plan (i.e. the control level) and in the event of any reduction not being secured the Owner shall undertake reasonable measures as first agreed in writing with the Council as are necessary to cause a reduction in the number of car borne trips to, as a maximum, the control level PROVIDED THAT if the targets identified in the relevant approved Office Travel Plan are complied with for a period of five (5) years then the provisions contained in this Schedule shall determine and cease to be enforceable by the Council in respect of that Office Travel Plan.

SCHEDULE 4 CAR CLUB

1. CAR CLUB

- 1.1 The Owner covenants with the Council:
- 1.1.1 prior to the Occupation of the first Residential Phase to submit and obtain the written approval of the Council of the Car Club Strategy;
 - 1.1.2 upon and from Occupation of the first Residential Phase to implement the approved Car Club Strategy and provide the Car Club Spaces for a minimum period of five (5) years from first establishment of the Car Club 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;
 - 1.1.3 to maintain at its own expense the Car Club Spaces and to make the Car Club Spaces available and ready for use for a minimum of five (5) years from first establishment of the Car Club during which time the Car Club Spaces shall be used for no other purpose and be marked “Car Club Use Only”;
 - 1.1.4 publicise the Car Club to residents of the Development annually for the minimum period of five (5) years from first establishment of the Car Club; and
 - 1.1.5 provide details of how to join the Car Club within its marketing materials for the Development to potential residents for the duration of the Car Club.
- 1.2 The Council shall use reasonable endeavours to confirm within eight (8) 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 to use reasonable endeavours to identify in writing within that eight (8) week period what measures are required to make the Car Club Strategy acceptable (the “**Car Club Non-Acceptance Notice**”).
- 1.3 In the event the Council confirms that the Car Club Strategy submitted in accordance with paragraph 1.1.1 of this Schedule 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 paragraph 1.2 of this Schedule shall apply to the revised Car Club Strategy and shall continue to apply until such time as the Car Club Scheme is approved.

SCHEDULE 5
PUBLIC REALM

1. PUBLIC REALM

- 1.1 The Owner covenants with the Council that no Phase shall be Occupied unless and until the Public Realm located within that Phase within the Land has been Practically Completed to the reasonable satisfaction of the Council in accordance with the plans approved pursuant to the relevant Reserved Matters Approval.
- 1.2 Subject to paragraph 1.3 of this Schedule, the Owner will from the date of Occupation of each 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 twenty-four (24) hours per day on foot (and where appropriate by cycle) to the Public Realm within that Phase.
- 1.3 The Owner may suspend public access to the relevant area of Public Realm (and only to the extent as is necessary):
- 1.3.1 if reasonably required in the interest of security or management or for maintenance or cleansing or other works in respect of the Public Realm (or the relevant part of it) and/or any parts of the Development abutting that Public Realm (or the relevant part of it);
 - 1.3.2 in case of emergency threatening danger to the public;
 - 1.3.3 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);
 - 1.3.4 for occasional temporary closure of not more than twenty four (24) hours 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
 - 1.3.5 for any other reason approved in writing by the Council,
- provided that any prevention, limitation or restriction of access to all or any parts of the Public Realm in accordance with paragraph 1.3 of this Schedule shall not without the Council's prior written approval:
- 1.3.6 be in place for a continuous period longer than five (5) Working Days; or
 - 1.3.7 exceed twenty (20) Working Days in any calendar year,
- PROVIDED FURTHER THAT there shall be no time restriction on prevention, limitation or restriction of access to all or any parts of the Public Realm in accordance with paragraph 1.3.2 of this Schedule.
- 1.5 The Owner will maintain at its own cost the Public Realm in good repair, lit and tidy (and comply with the obligations in this Schedule) 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.
- 1.6 The Owner shall not 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 unless a copy of the proposed rules and regulations have first been submitted to and approved in writing by the Council.

- 1.7 It is agreed between the Owner and the Council that if the carrying out of development on the Land pursuant to any planning permission (other than the Permission) granted 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 Schedule shall automatically and without further act on the part of the Owner be suspended or cease to have effect (as the case may be) in respect of any such part or parts of the Public Realm.

SCHEDULE 6
RESIDENTIAL CARBON OFF-SET CONTRIBUTION

1. RESIDENTIAL CARBON OFF-SET CONTRIBUTION

1.1 The Owner covenants with the Council:

- 1.1.1 To ensure a minimum of thirty five percent (35%) improvement in regulated emissions over the target emissions rate as set out in the Building Regulations 2013 is provided for in each and every Residential Unit.
- 1.1.2 No later than six (6) months after Practical Completion of each Block, to submit the standard assessment procedure (as set out in the Building Regulations 2013) calculations for each and every Residential Unit within that Block to the Council for approval.
- 1.1.3 No later than three (3) months after the Council's approval of the standard assessment procedure calculation in respect of each and every Residential Unit within the relevant Block pursuant to Paragraph 1.2 above, to pay the Residential Carbon Off-Set Contribution in respect of that Block to the Council.

SCHEDULE 7
BUILD TO RENT AND AFFORDABLE HOUSING

Part 1
Build to Rent

1. BUILD TO RENT COVENANT

- 1.1 The Owner must submit a notice to the Council in writing with each Reserved Matters Application which proposes Residential Units confirming which Private Residential Units within a Block are intended to be used for Build to Rent Housing as at the date of the Reserved Matters Application.
- 1.2 If at any time after the submission of a Reserved Matters Application Private Residential Units within a Block are intended to be used for Built to Rent Housing the Owner must submit a notice to the Council in writing confirming which Private Residential Units within a Block are intended to be used for Build to Rent Housing before such Private Residential Units within a Block are Occupied as Build to Rent Housing.
- 1.3 Subject to paragraphs 2, 3 and 11 of this Schedule 7 during the Covenant Period the Build to Rent Units shall not be used other than as Build to Rent Housing.
- 1.4 Within ten (10) Working Days of Occupation of each Build to Rent Unit, the Owner shall notify the Council in writing of the date on which that Build to Rent Unit was Occupied together with confirmation that that Build to Rent Unit has been privately let in accordance with the Build to Rent Management Scheme as approved in writing by the Council in accordance with this Schedule.
- 1.5 Prior to Occupation of each Block, the Owner must submit a notice to the Council in writing confirming any/all community facilities/areas which are to be provided within that Block.

2. CLAWBACK DISPOSAL

- 2.1 Paragraphs 2.2 to 2.6 of this Schedule 7 shall not apply unless the most recent Updated Viability Appraisal approved by the Council or an Expert pursuant to Paragraph 7 of this Schedule 7 identifies a Surplus.
- 2.2 Subject to paragraph 2.5 below, not to cause or permit a Build to Rent Clawback Disposal of any of the Build to Rent Units during the Covenant Period unless and until:
- (a) the Build to Rent Clawback Valuation has been submitted to, and approved by, the Council; and
 - (b) the Clawback Amount has been paid in full to the Council.
- 2.3 To give the Council no less than twenty (20) Working Days prior written notification of its intention to complete a Build to Rent Clawback Disposal during the Covenant Period provided that such notice shall include the following information:
- (a) the anticipated date of that Build to Rent Clawback Disposal;
 - (b) the Build to Rent Unit(s) which is/are intended to be subject to that Build to Rent Clawback Disposal;
 - (c) the amount of consideration to be paid under that Build to Rent Clawback Disposal in respect of each Build to Rent Unit (including documentary evidence)

- (d) the Build to Rent Clawback Valuation; and
 - (e) confirmation that the Build to Rent Clawback Disposal of the Build to Rent Unit is not a Sham Transaction.
- 2.4 To pay the Council's costs that are reasonably and properly incurred (including those of any external consultant that may be appointed by the Council) in:
 - (a) assessing the information submitted under Paragraphs 2.1 and 2.2 above; and
 - (b) determining the Clawback Amount,within twenty (20) Working Days of receipt of a written request for payment from the Council accompanied by evidence from the Council of the reasonable costs properly incurred.
- 2.5 If the Council and/or its external consultant requests further information or evidence to determine the Clawback Amount, to provide any reasonably required information to the Council and/or the external consultant (as applicable) within twenty (20) Working Days of receiving the relevant request PROVIDED THAT this process may be repeated until the Council and/or its external consultant has all the information it reasonably requires to determine the Clawback Amount.
- 2.6 If the Council has not notified the Owner in writing of its approval of the Clawback Amount for a Build to Rent Clawback Disposal within thirty (30) Working Days of receipt of the information submitted under Paragraphs 2.2, 2.3 and 2.4 above (as appropriate), the Owner may cause or permit a Build to Rent Clawback Disposal once it has paid in full to the Council an amount that the Owner reasonably estimates to be the Clawback Amount based upon the Build to Rent Valuation as submitted to the Council and any subsequent exchanges of information between the Owner and the Council in respect of it (**Estimated Clawback Amount**) PROVIDED THAT no later than twenty (20) Working Days after the Council notifies the Owner in writing of its agreement to the Clawback Amount for a Build to Rent Clawback Disposal (or, if a dispute relating to the Clawback Amount is referred to an Expert in accordance with Clause 18 of this Agreement, no later than twenty (20) Working Days after the final determination of the Clawback Amount by the Expert), the Owner shall pay to the Council the difference between the Clawback Amount and the Estimated Clawback Amount (unless the difference is zero in which case no such payment is required, or if the difference is less than zero in which case the Council shall return the difference between the Estimated Clawback Amount and the Clawback Amount).
- 2.7 To notify the Council in writing within five (5) Working Days of a Build to Rent Clawback Disposal having been completed.
- 2.8 For the avoidance of doubt any differences and questions which arise between the parties in connection with any matter arising from a Build to Rent Clawback Disposal may be referred by either party to an Expert in accordance with Clause 18 of this Agreement.

3. **RELEASE**

Upon receipt in full of the relevant Clawback Amount in cleared funds in respect of a Build to Rent Unit, then that Build to Rent Unit shall no longer be bound by the obligations relating to Build to Rent Units set out in this Schedule Provided That if a Clawback Amount is payable in respect of that Build to Rent Clawback Disposal the obligations relating to the payment of the Clawback Amount shall continue to apply until such time as the Clawback Amount is paid.

4. BUILD TO RENT MANAGEMENT SCHEME

- 4.1 No Build to Rent Unit within a Block shall be Occupied until a Build to Rent Management Scheme for that Block has been submitted to and approved in writing by the Council and the Council shall use reasonable endeavours to respond to the Build to Rent Management Scheme within thirty (30) Working Days from receipt.
- 4.2 The Owner shall not Occupy or cause or permit the Occupation of the Build to Rent Units in each Block throughout the Covenant Period, unless let and Occupied in accordance with the approved Build to Rent Management Scheme for that Block.
- 4.3 An approved Build to Rent Management Scheme may be amended from time to time PROVIDED THAT the Council has given its prior written approval to any such amendment.
- 4.4 Upon reasonable notice from the Council and no more frequently than once every twelve (12) months, the Owner shall provide the Council with such evidence as the Council reasonably requires to demonstrate the Owner's compliance with an approved Built to Rent Management Scheme.
- 4.5 To ensure that the Service Charges payable in respect of each Build to Rent Unit shall be set at such a level as to cover the costs of providing the services to which the charge relates and a reasonable amount for administration but no more.
- 4.6 To ensure that any and all communal facilities/areas associated with the relevant Build to Rent Units are maintained in good order, repair, condition and appearance during the Covenant Period (including ensuring that all necessary structural and non-structural repairs, renewals, replacements, additions and improvements are promptly made).
- 4.7 At all times following the end of the Covenant Period, not to use all communal facilities/areas associated with the relevant Build to Rent Units otherwise than in accordance with the use(s) and/or purpose(s) that is specified in the approved Build to Rent Management Scheme or for such other use(s) and/or purpose(s) as is agreed in writing from time to time by the Council.
- 4.8 The Owner shall not Occupy (or cause or permit to be Occupied) each Build to Rent Unit unless and until the Council has been provided with the name and contact details of the management company that has been appointed to manage that Build to Rent Unit.
- 4.9 To notify the Council within ten (10) Working Days of any change in the name and contact details of the management company as previously notified pursuant to paragraph 4.8 above.

5. COUNCIL'S USE OF CLAWBACK AMOUNT

The Council shall use any Clawback Amount it receives pursuant to this Schedule towards the provision of Affordable Housing within the Council's Area.

6. RELEASE FROM BUILT TO RENT COVENANT

Upon the expiry of the Covenant Period in relation to a Block any obligation relating to Build to Rent Units set out in this Schedule shall no longer apply to the Private Residential Units in that Block.

Part 2
Viability Provisions

7. VIABILITY PROVISIONS

7.1 EARLY STAGE REVIEW

7.1.1 No earlier than the First Trigger Date and no later than twenty (20) working days after the First Trigger Date, the Owner shall submit:

- (a) an Updated Viability Appraisal and Supporting Evidence to the Council for approval; and
- (b) the current version of the Phasing Plans as approved in writing by the Council,

PROVIDED THAT the Owner shall pay the Council's reasonable costs that are properly incurred in commissioning an independent review of the Updated Viability Appraisal if the Council considers it necessary to do so in order properly to assess the Updated Viability Appraisal.

7.1.2 No later than twenty (20) Working Days after receipt of the Updated Viability Appraisal pursuant to Paragraph 7.1.1 above, the Council shall notify the Owner in writing of any further information it reasonably requires in order to determine whether the Updated Viability Appraisal can be approved.

7.1.3 The Owner shall provide any further information that is reasonably required by the Council pursuant to Paragraph 7.1.2 above no later than twenty (20) Working Days following notification from the Council under Paragraph 7.1.2 above PROVIDED THAT this process shall continue until the Council is satisfied that it has sufficient information properly to determine the Updated Viability Appraisal.

7.1.4 If the Council has not approved in writing the Updated Viability Appraisal within thirty (30) Working Days of its submission to (and acceptance by) the Council pursuant to Paragraphs 7.1.1 and 7.1.3 above (or such longer period as is agreed between the Owner and the Council), either party may refer the Updated Viability Appraisal to be determined by an Expert pursuant to Clause 18 of this Agreement.

7.2 EARLY STAGE REVIEW – PROVISION OF ADDITIONAL AFFORDABLE HOUSING AND/OR PAYMENT OF A DEFERRED CONTRIBUTION

7.2.1 Where the Updated Viability Appraisal, as approved in writing by the Council or the Expert (as the case may be) pursuant to Paragraph 7.1 above, identifies a Surplus, the Owner shall provide Additional Affordable Housing Units and/or pay the Deferred Contribution in accordance with this Paragraph 7.2.

7.2.2 No later than two (2) months after approval of the Updated Viability Appraisal pursuant to Paragraph 7.1 above, the Owner shall submit the Affordable Housing Notice for approval by the Council PROVIDED THAT the Owner shall not be obliged to provide more than the Deferred Contribution Cap.

7.2.3 The Owner shall provide the Additional Affordable Housing Units and/or pay the Deferred Contribution (as the case may be) in accordance with the Affordable Housing Notice as approved in writing by the Council pursuant to Paragraph 7.2.2 above.

7.2.4 The Owner shall not Occupy (or permit to be Occupied) more than seventy percent (70%) of the Private Residential Units unless and until:

- (a) Additional Affordable Housing Units (if any) have been Practically Completed and are available for Occupation; and
- (b) The Additional Affordable Housing Units (if any) have been Transferred to a Registered Provider or a Housing Association; and/or
- (c) The Deferred Contribution has been paid in full to the Council,

in accordance with the Affordable Housing Notice as approved in writing by the Council pursuant to Paragraph 7.2.2 above.

7.2.5 The Owner shall provide the Council with no less than ten (10) Working Days' notice of the Transfer(s) pursuant to Paragraph 7.2.4(b) above.

7.2.6 Notwithstanding the above, Paragraphs 7.3 – 7.6 below shall continue to apply unless and until, following the grant of the final Reserved Matters Approval for the final Residential Phase, the Council and the Owner agree that the provision of Additional Affordable Housing Units and payment of a Deferred Contribution (as the case may be) in accordance with an Affordable Housing Notice, as approved in writing by the Council pursuant to this Paragraph 7, is sufficient to achieve the Deferred Contribution Cap.

7.3 MID STAGE REVIEW

7.3.1 No earlier than the Second Trigger Date and no later than twenty (20) Working Days after the Second Trigger Date, the Owner shall submit an Updated Viability Appraisal and Supporting Evidence to the Council for approval PROVIDED THAT the Owner shall pay the Council's reasonable costs that are properly incurred in commissioning an independent review of the Updated Viability Appraisal if the Council considers it necessary to do so in order properly to assess the Updated Viability Appraisal.

7.3.2 No later than twenty (20) Working Days after receipt of the Updated Viability Appraisal pursuant to Paragraph 7.3.1 above, the Council shall notify the Owner of any further information it reasonably requires in order to determine whether the Updated Viability Appraisal can be approved.

7.3.3 The Owner shall provide any further information that is required by the Council pursuant to Paragraph 7.3.2 above no later than twenty (20) Working Days following notification from the Council under Paragraph 7.3.2 above PROVIDED THAT this process shall continue until the Council is satisfied that it has sufficient information properly to determine the Updated Viability Appraisal.

7.3.4 If the Council has not approved in writing the Updated Viability Appraisal within thirty (30) Working Days of its submission to (and acceptance by) the Council pursuant to Paragraphs 7.3.1 and 7.3.3 above (or such longer period as is agreed between the Owner and the Council), either party may refer the Updated Viability Appraisal to be determined by an Expert pursuant to Clause 18 of this Agreement.

7.4 MID STAGE REVIEW – PROVISION OF ADDITIONAL AFFORDABLE HOUSING AND/OR PAYMENT OF A DEFERRED CONTRIBUTION

7.4.1 Where the Updated Viability Appraisal, as approved in writing by the Council or the Expert (as the case may be) pursuant to Paragraph 7.3 above, identifies a Surplus, the Owner shall provide Additional Affordable Housing Units and/or pay the Deferred Contribution in accordance with this Paragraph 7.4.

- 7.4.2 No later than two (2) months after approval of the Updated Viability Appraisal pursuant to Paragraph 7.3 above, the Owner shall submit the Affordable Housing Notice for approval by the Council PROVIDED THAT the Owner shall not be obliged to provide more than the Deferred Contribution Cap.
- 7.4.3 The Owner shall provide the Additional Affordable Housing Units and/or pay the Deferred Contribution (as the case may be) in accordance with the Affordable Housing Notice as approved in writing by the Council pursuant to Paragraph 7.4.2 above
- 7.4.4 The Owner shall not Occupy (or permit to be Occupied) more than eighty percent (80%) of the Private Residential Units unless and until:
- (a) the Additional Affordable Housing Units (if any) have been Practically Completed and are available for Occupation; and
 - (b) the Additional Affordable Housing Units (if any) have been Transferred to a Registered Provider or a Housing Association; and/or
 - (c) the Deferred Contribution has been paid in full to the Council,
- in accordance with the Affordable Housing Notice as approved in writing by the Council pursuant to Paragraph 7.4.2 above.
- 7.4.5 The Owner shall provide the Council with no less than ten (10) Working Days' notice of the Transfer(s) pursuant to Paragraph 7.4.4(b) above.

7.5 LATE STAGE REVIEW

- 7.5.1 No earlier than the Third Trigger Date and no later than twenty (20) Working Days after the Third Trigger Date, the Owner shall submit an Updated Viability Appraisal and Supporting Evidence to the Council for approval PROVIDED THAT the Owner shall pay the Council's reasonable costs that are properly incurred in commissioning an independent review of the Updated Viability Appraisal if the Council considers it necessary to do so in order properly to assess the Updated Viability Appraisal.
- 7.5.2 No later than twenty (20) Working Days after receipt of the Updated Viability Appraisal pursuant to Paragraph 7.5.1 above, the Council shall notify the Owner of any further information it reasonably requires in order to determine whether the Updated Viability Appraisal can be approved.
- 7.5.3 The Owner shall provide any further information that is required by the Council pursuant to Paragraph 7.5.2 above no later than twenty (20) Working Days following notification from the Council under Paragraph 7.5.2 above PROVIDED THAT this process shall continue until the Council is satisfied that it has sufficient information properly to determine the Updated Viability Appraisal.
- 7.5.4 If the Council has not approved in writing the Updated Viability Appraisal within thirty (30) Working Days of its submission to (and acceptance by) the Council pursuant to Paragraphs 7.5.1 and 7.5.3 above (or such longer period as is agreed between the Owner and the Council), either party may refer the Updated Viability Appraisal to be determined by an Expert pursuant to Clause 18 of this Agreement.

7.6 LATE STAGE REVIEW – PAYMENT OF A DEFERRED CONTRIBUTION

- 7.6.1 Where the Updated Viability Appraisal, as approved in writing by the Council or the Expert (as the case may be) pursuant to Paragraph 7.5 above, identifies a Surplus, the

Owner shall pay the Deferred Contribution (less any contribution that has been paid or Additional Affordable Housing Units that have been provided pursuant to Paragraphs 7.1 – 7.5 above and up to a maximum of the Deferred Contribution Cap) to the Council prior to Occupation of more than ninety percent (90%) of the Residential Units.

- 7.6.2 The Owner shall not Occupy (or permit to be Occupied) more than ninety percent (90%) of the Residential Units unless and until the Deferred Contribution has been paid in full to the Council in accordance with Paragraph 7.6.1 above.

Part 3
Additional Affordable Housing Provision

8. AFFORDABLE HOUSING MORTGAGEE EXCLUSION CLAUSE

8.1 The affordable housing provisions in this Deed (including, for the avoidance of doubt, this Schedule) shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or receiver,

provided that:

8.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation relating only to the Affordable Housing Units including all accrued principal monies, interest and costs and expenses; and

8.1.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Deed which provisions shall determine absolutely.

8.2 The provisions of this Agreement shall:

8.2.1 cease to apply to any part or parts of the Land and the Affordable Housing Units erected thereon which are transferred or leased by any party referred to in paragraph 8.1 above.

8.2.2 cease to apply to any completed Affordable Housing Units where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under Section 180 of the Housing and Regeneration Act 2008 or any similar or substitute right applicable.

8.2.3 cease to apply to any completed Affordable Housing Units where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof.

8.2.4 cease to apply to any completed Affordable Housing Units in respect of which a lease of a Shared Ownership Units has been granted and where a Registered Provider shall have disposed of one hundred percent (100%) of the equity in such units under the terms of such lease.

9. DESIGN AND CONSTRUCTION OF THE ADDITIONAL AFFORDABLE HOUSING UNITS

The Owner covenants with the Council that the Additional Affordable Housing Units shall be constructed and Practically Completed at its own cost and expense in accordance with the Standards.

10. OCCUPATION OF THE ADDITIONAL AFFORDABLE HOUSING UNITS

- 10.1 The Additional Affordable Housing Units shall not be used or Occupied or Disposed of other than as Affordable Housing in accordance with the requirements of this Schedule.
- 10.2 The Owner shall not permit or otherwise allow any of the Affordable Housing Units to be Occupied otherwise than:
- 10.2.1 as the sole private residence of the Occupier;
 - 10.2.2 by Eligible Households; and
 - 10.2.3 in accordance with paragraph 13 of this Schedule.
- 10.3 To ensure that each and every lease of a Shared Ownership Unit to an Eligible Household includes a covenant that prevents that Eligible Household (in circumstances where it has staircased to one hundred percent (100%) ownership of that Shared Ownership Unit) from disposing of any interest in that Shared Ownership Unit (save for a mortgage or any other charge) unless the following conditions are satisfied:
- 10.3.1 the owner of that Shared Ownership Unit (i.e. the Eligible Household that has staircased to one hundred percent (100%) ownership) has first offered to sell the Shared Ownership Unit at Market Value to a Registered Provider (to be approved in writing by the Council) such offer to be open for acceptance for three (3) months from the date of the offer;
 - 10.3.2 the Council is notified in writing whether, at the end of this offer period, any Registered Provider has acquired the Shared Ownership Unit; and
 - 10.3.3 if, at the end of this offer period, no Registered Provider has acquired the Shared Ownership Unit, the Council shall be entitled to acquire the Shared Ownership Unit on the same basis as it was offered to the Registered Provider but must notify the owner of the Shared Ownership Unit in writing of its decision within eight (8) weeks from the date the entitlement arises and complete the transaction within two (2) months of such notification.

11. AFFORDABLE RENTED HOUSING

The Affordable Rented Housing Units shall not be let other than at the Reading Affordable Rent.

12. NOMINATIONS

- 12.1 The Council and the relevant Registered Provider shall have the following nomination rights in respect of the Affordable Rented Housing Units in respect of each Residential Phase:
- 12.1.1 one hundred percent (100%) of the initial allocation of each of the Affordable Rented Housing Units in the first Affordable Housing Notice approved pursuant to Paragraph 7 of this Schedule are to be utilised by the Council; and
 - 12.1.2 thereafter seventy-five percent (75%) of subsequent allocations of the Affordable Rented Housing Units shall be utilised by the Council and the remaining twenty-five percent (25%) shall be utilised by the Registered Provider.

13. PROVISION OF ADDITIONAL AFFORDABLE PRIVATE RENTED HOUSING

- 13.1 If Additional Affordable Housing Units are required to be provided as Affordable Private Rented Housing pursuant to an Affordable Housing Notice approved by the Council pursuant to Paragraph 7 of this Schedule the Owner covenants to:
- 13.1.1 provide the Affordable Private Rented Housing at an Affordable Private Rent inclusive of any service charge to tenants of the Affordable Private Rented Housing;
 - 13.1.2 offer to prospective tenants of the Affordable Private Rented Housing who meet the Qualifying Criteria tenancies of at least three (3) years in length although prospective tenants are not required to take a three (3) year tenancy and may opt for a shorter tenancy;
 - 13.1.3 include in tenancies such terms which enable tenants to determine the tenancy after six (6) months from the commencement of the tenancy giving two (2) months' notice without incurring any fee or other penalty;
 - 13.1.4 not increase the rent of each Affordable Private Rented Housing Unit by more than the increase in the Local Housing Allowance or, if the Local Housing Allowance rate no longer exists, by no more than the Retail Price Index published by the Office for National Statistics from time to time (or, if the Retail Price Index ceases to be published, a comparable index to be agreed in writing between the Owner and the Council);
 - 13.1.5 in the event of a change from the Build to Rent status of the Private Residential Units comprising the Development, ensure that the Affordable Private Rented Housing Units shall continue to be made available as Affordable Private Rented Housing on terms including those in this Schedule except as set out below.
- 13.2 In the event that the Private Residential Units comprising the Development cease to be operated as Build to Rent Units:
- 13.2.1 the Owner shall notify the Council within ten (10) Working Days of the date that the Private Residential Units comprising the Development ceased to be operated as Build to Rent Units; and
 - 13.2.2 if the Affordable Private Rented Housing Units are not in the ownership of a Registered Provider and in the event that the Owner no longer wishes to retain control of the Affordable Private Rented Housing Units, then within one (1) month of the Private Residential Units comprising the Development ceasing to operate as a Build to Rent scheme the Owner shall offer the Affordable Private Rented Housing Units on leases of at least one hundred and twenty five years (125) years to a Registered Provider to be approved in writing by the Council, such offer to be open for acceptance for three (3) months from the date of the offer (the "**Offer Period**").
- 13.3 If at the end of the Offer Period no Registered Provider has acquired the Affordable Private Rented Housing Units the Council shall be entitled to acquire the Affordable Private Rented Housing Units on the same basis but must notify the Owner in writing of its decision within eight (8) weeks from the date the entitlement arises and complete the transaction within two (2) months of such notification.
- 13.4 In the event that the Affordable Private Rented Housing Units are not let on long leases of at least one hundred and twenty five years (125) years to a Registered Provider or transferred to the Council as envisaged above and within the time limits set out above the Owner shall pay a

financial contribution (the “**Additional Affordable Housing Payment**”) which shall comprise the quantum of the Surplus that was allocated to the provision of the Affordable Private Rented Housing Unit(s) in the relevant approved Affordable Housing Notice and such amount to be agreed between the Owner and the Council (or determined by an Expert in accordance with Clause 18) and for the avoidance of doubt in the event of any failure to agree the Additional Affordable Housing Payment within four (4) months of:

13.4.1 the date when the Council notifies the Owner that it will not acquire the Affordable Private Rented Housing units; or

13.4.2 (if there is no such notification) the date when the Council’s entitlement to acquire the Affordable Private Rented Housing Units expires,

the amount of the Additional Affordable Housing Payment shall be determined by an Expert in accordance with Clause 18.

13.5 The Owner shall pay the Additional Affordable Housing Payment within ten (10) Working Days of agreement between the Council and the Owner or following determination by an Expert.

13.6 In the event that the Owner pays to the Council the Additional Affordable Housing Payment pursuant to this paragraph 13 the remainder of this paragraph 13 of this Schedule will cease to have further effect.

13.7 For the avoidance of doubt where an Additional Affordable Housing Payment is paid in respect of an Affordable Private Rented Housing Unit no Clawback Amount shall be payable in respect of that Unit.

14. INITIAL TENANCIES

14.1 Three (3) months before Practical Completion of the Affordable Private Rented Housing Units, the Owner shall notify the Council (the “**Affordable Housing PC Notification**”) of the expected dates when the Affordable Private Rented Housing Units will be available and make either a typical unit, or a show apartment or the marketing suite for viewings.

14.2 No later than one (1) month after the Affordable Housing PC Notification:

14.2.1 the Owner shall provide information as to rents, specifications (fixtures, fittings and finishes), floorplans and management arrangements for the Affordable Private Rented Housing Units; and

14.2.2 the Marketing Period shall commence.

14.3 For the first six (6) weeks of the Marketing Period the Affordable Private Rented Housing Units will be exclusively marketed to the Council nominees, and the following will apply:

(a) the Council will have ten (10) Working Days to advertise the Affordable Private Rented Housing Units and arrange viewing days for the potential tenants;

(b) the Council will then have ten (10) Working Days to confirm eligibility of the potential tenants against the Qualifying Criteria and then nominate those potential tenants to the Owner;

(c) subject to appropriate checks by the Owner that the Qualifying Criteria have been met each of the potential tenants will then have two (2) Working Days

to confirm if they wish to take the particular Affordable Private Rented Housing Units for which they have applied;

- (d) if the Owner (acting reasonably) considers that the Qualifying Criteria have not been met in respect of a particular proposed tenant, it will notify the Council within ten (10) Working Days of receiving a nomination pursuant to paragraph 14.3(b) above, who will then have an additional ten (10) Working Days to nominate an alternative tenant for that particular Affordable Private Rented Housing Units.

14.4 Where more than one potential tenant wants the same Affordable Private Rented Housing units, priority will be given as per the following hierarchy:

- (a) households on the Council's housing waiting list;
- (b) households where at least one person both lives and works in the Council's Area;
- (c) households where at least one person either lives or works in the Council's Area;
- (d) households where at least one person lives or works in a neighbouring local authority.

14.5 After the initial six (6) week period specified at paragraph 14.3 of this Schedule, any remaining available Affordable Private Rented Housing Units can be marketed by both the Council and the Owner provided that within this period the Council may still nominate potential tenants but priority will be determined on a first come first served basis, subject to the Qualifying Criteria being met.

15. SUBSEQUENT TENANCIES

15.1 Tenancies will require that tenants of the Affordable Private Rented Housing Units must provide two (2) months' notice to the Owner and the Council of their intention to activate a break clause, at which point the Affordable Private Rented Housing Unit can be marketed,

15.2 The principles and processes set out in paragraphs 13 to 14 of this Schedule shall apply to any subsequent vacancies and tenancies in respect of each Affordable Private Rented Housing Unit.

16. MANAGEMENT STRATEGY AND ANNUAL STATEMENT

16.1 No later than five (5) months before Practical Completion of the Affordable Private Rented Housing Units the Owner shall submit a management strategy (the "**Affordable Housing Management Strategy**") in respect of the Affordable Private Rented Housing Units to the Council for approval in writing to include the following:

- 16.1.1 details of the individual weekly rent and service charge (noting that all rents are inclusive of service charges);
- 16.1.2 management, maintenance and servicing agreements for the Occupiers of the Affordable Private Rented Housing Units (e.g, on-site presence hours, bin disposal, visitor parking);
- 16.1.3 details as to how the Affordable Private Rented Housing Units will be marketed to prospective tenants (for both first and subsequent lettings) and the different forms of media proposed to be used; and

- 16.1.4 a plan showing the location and purpose of all communal facilities within the Development.
- 16.2 Within FOUR (4) weeks of the Affordable Housing Management Strategy being submitted by the Owner:
- 16.2.1 The Council shall confirm whether it accepts the Affordable Housing Management Strategy submitted by the Owner; or
- 16.2.2 The Council shall provide to the Owner details of amendments it reasonably considers are necessary to the submitted Affordable Housing Management Strategy.
- 16.3 If amendments are requested to the Affordable Housing Management Strategy by the Council pursuant to paragraph 16.2.2 of this Schedule:
- 16.3.1 The Owner shall amend the Affordable Housing Management Strategy requested by the Council and resubmit it;
- 16.3.2 The Council shall confirm to the Owner within two (2) weeks of the amended Affordable Housing Management Strategy being submitted whether it is approved as amended.
- 16.4 If the Council notifies the Owner that it objects to the amended Affordable Housing Management Strategy, the Council and the Owner shall either agree to repeat the process set out in paragraphs 16.2 and 16.3 of this Schedule or refer the dispute to an Expert for resolution in accordance with Clause 18.
- 16.5 The Owner shall not Occupy or permit to be Occupied each of the Affordable Private Rented Housing Units until the Affordable Housing Management Strategy in respect of that Affordable Private Rented Housing Unit has been approved in writing by the Council.
- 16.6 No Affordable Private Rented Housing Unit shall be Occupied otherwise than in accordance with the approved Affordable Housing Management Strategy in respect of that Affordable Private Rented Housing Unit (as may be revised from time to time with the written approval of the Council).
- 16.7 The Owner shall submit an annual statement to the Council with such evidence as is reasonably required by the Council to confirm that the Owner is complying with the requirements of this Part 3 of this Schedule provided that the first statement shall be submitted on the first anniversary of Occupation of the first Affordable Private Rented Housing Unit.

SCHEDULE 8
OPEN SPACE CONTRIBUTION

The Owner covenants with the Council:

- 1.1 to either submit the Open Space Assessment for each Residential Phase to the Council as part of the first Reserved Matters Application for that Residential Phase or to confirm in writing (as part of the first Reserved Matters Application for that Residential Phase) that no Open Space Assessment would be submitted to the Council;
- 1.2 not to submit to the Council the first Reserved Matters Application for each Residential Phase unless and until either the Open Space Assessment for that Residential Phase is included as part of that Reserved Matters Application or the Owner has confirmed in writing (as part of that Reserved Matters Application) that no Open Space Assessment would be submitted to the Council in respect of that Residential Phase;
- 1.3 not to Commence each Residential Phase unless and until the Open Space Assessment (if any) for that Residential Phase has been approved in writing by the Council;
- 1.4 to pay the Open Space Contribution in respect of each Residential Phase in full to the Council prior to Occupation of any Residential Unit in that Residential Phase; and
- 1.5 not to Occupy or permit Occupation of any Residential Unit in a Residential Phase until the Open Space Contribution in respect of that Residential Phase has been paid to the Council in full.

SCHEDULE 9
PUBLIC ART

The Owner covenants with the Council:

- 1.1 Not to Practically Complete the first Phase of the Development nor to Commence any other Phase of the Development unless and until either:
 - 1.1.1 A Public Art Scheme has been submitted to and approved by the Council; or
 - 1.1.2 The Public Art Contribution has been paid to the Council.
- 1.2 If a Public Art Scheme is approved by the Council pursuant to paragraph 1.1.1 above, the Owner covenants with the Council:
 - 1.2.1 Not to amend the Public Art Scheme, as approved by the Council pursuant to Paragraph 1.1.1 above, without the further approval of the Council; and
 - 1.2.2 To Practically Complete the public art as set out in the Public Art Scheme as approved by the Council pursuant to Paragraph 1.1.1 above.
- 1.3 If the Owner pays the Public Art Contribution in accordance with Paragraph 1.1.2 above, the obligations in this Schedule 9 shall absolutely determine and cease to be of any further legal effect upon payment of the Public Art Contribution.
- 1.4 Following the submission of a Public Art Scheme by the Owner in accordance with paragraph 1.1.1 of this Schedule the Council shall use reasonable endeavours to respond to the Owner either approving, refusing or requesting changes to the Public Art Scheme no later than 8 (eight) weeks from the date of submission of the Public Art Scheme.
- 1.5 In the event the Council confirms that the Public Art Scheme submitted in accordance with paragraph 1.1.1 of this Schedule is not acceptable or requires specified amendments in order to be acceptable then a revised Public Art Scheme shall be submitted and the provisions of paragraph 1.4 of this Schedule shall apply to the revised Public Art Scheme and shall continue to apply until such time as the Public Art Scheme is approved.

SCHEDULE 10
DISTRICT HEATING NETWORK

The Owner covenants with the Council:

- 1.1 to submit with each Reserved Matters Application(s) for each Phase details of where future connection(s) to a District Heating Network within the boundary of that Phase may be located for the written approval of the Council; and
- 1.2 not to Occupy or permit the Occupation of each Phase unless and until it has provided connection(s) to a District Heating Network for that Phase in accordance with such details as are approved in writing by the Council.

SCHEDULE 11
NEW CROSSING CONTRIBUTION

- 1.1 If the 55 Vastern Road Development is commenced before Commencement of the Development and
- 1.1.1 The Council does not complete the New Crossing Investigation in accordance with Paragraph 2.1 of Schedule 13 or provide a copy of the New Crossing Investigation Report to the Owner in accordance with Paragraph 2.2 of Schedule 13; or
- 1.1.2 The New Crossing Investigation confirms that the New Crossing will cost less than £200,000 (two hundred thousand pounds),
- the obligations in this Schedule shall no longer apply and shall determine and cease to be enforceable by the Council.
- 1.2 Before Occupation of any Residential Unit, the Owner shall pay to the Council the New Crossing Contribution.
- 1.3 Not to Occupy any Residential Unit unless and until the New Crossing Contribution has been paid to the Council.
- 1.4 For the avoidance of doubt, if Commencement of Development occurs before the 55 Vastern Road Development is commenced, then:
- 1.4.1 the Council shall be under no obligation to undertake the New Crossing Investigation; and
- 1.4.2 the amount of the New Crossing Contribution shall be seventy-five thousand pounds (£75,000) Index Linked from the date of this Agreement.

SCHEDULE 12
UNDERPASS CONTRIBUTION

The Owner covenants with the Council as follows:

1. UNDERPASS CONTRIBUTION

- 1.1 The Owner shall not Commence nor permit Commencement unless and until it has paid the Underpass Contribution in full to the Council.

SCHEDULE 13
COUNCIL'S COVENANTS

The Council covenants with the Owner:

1. CONTRIBUTIONS

- 1.1 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.
- 1.2 Where any Contribution paid by the Owner in accordance with this Agreement has not been used or allocated by the Council within ten (10) years after the date of receipt of the final instalment of the relevant Contribution it will be repaid to the paying party within thirty (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).

2. NEW CROSSING

- 2.1 If the 55 Vastern Road Development is commenced before Commencement of the Development the Council covenants with the Owner to carry out and complete the New Crossing Investigation within nine (9) months of Commencement of the Development.
- 2.2 The Council covenants to provide the Owner with a copy of the New Crossing Investigation Report within ten (10) Working Days of completion of the New Crossing Investigation.

SCHEDULE 14
SHARED ACCESS ROAD

1.1 The Owner covenants with the Council as follows:

1.1.1 If the Owner Implements the Permission before the owner of the Hermes Land Implements a Hermes Permission then:

- (a) The Owner shall construct Shared Access Road A (Part 1) in accordance with a programme that ensures that it is Practically Completed and is available for use at the date the Development or the Hermes Development is first Occupied (whichever is the earlier).
- (b) The Owner shall not Occupy the Development until Shared Access Road A (Part 1) has been Practically Completed and is available for use.
- (c) From the date of Practical Completion of Shared Access Road A (Part 1) then subject to:
 - (i) the owner of the Hermes Land having Implemented a Hermes Permission; and
 - (ii) the owner of the Hermes Land having paid (or contracted to pay) the Owner fifty percent (50%) of the cost of construction of Shared Access Road A (Part 1) (subject to any other costs sharing arrangements that may be agreed from time to time between the Owner and the owner of the Hermes Land); and
 - (iii) the owner of the Hermes Land providing the Owner with such easements and other rights as are reasonably required and agreed between the Owner and the owner of the Hermes Land to allow access and egress to the Development using Shared Access Road A (Part 2) (if such road is required to be constructed by a Hermes Permission) subject to the Owner having paid (or contracted to pay) fifty percent (50%) of the cost of construction of Shared Access Road A (Part 2) (subject to any other costs sharing arrangements that may be agreed from time to time between the Owner and the owner of the Hermes Land) to the owner of the Hermes Land,

the Owner shall provide the owner of the Hermes Land with such easements and other rights as are reasonably required and agreed between the Owner and the owner of the Hermes Land to allow access and egress to the Hermes Development along Shared Access Road A (Part 1).

- (d) if:
 - (i) the Owner is in default of its obligations in paragraphs 1.1.1 (a) or (b) above and has been served a Default Notice by the owner of the Hermes Land or the Council; and
 - (ii) the Owner has failed to carry out the steps required by the Default Notice within the period specified in the Default Notice (or such longer period as may be agreed in writing between the Owner and the owner of the Hermes Land or the Council (as the case may be)),

the Owner shall permit the owner of the Hermes Land or the Council (as the case may be) (including their respective authorised contractors and/or sub-contractors) access (with or without vehicles, plant and/or equipment) on such part of the Land as is necessary to enable the owner of the Hermes Land or the Council (as the case may be) to carry out and Practically Complete Shared Access Road A (Part 1) in accordance with this Agreement and/or to ensure the proper maintenance of Shared Access Road A (Part 1) (until such time as Shared Access Road A (Part 1) is adopted by the Council as highway maintainable at public expense).

- (e) if the Council exercises its powers pursuant to paragraph 1.1.1(d) above then the Owner agrees the Council may recover from the Owner the Council's expenses reasonably incurred by them doing so pursuant to Section 106(6)(b) of the 1990 Act.

1.1.2 The Owner shall use reasonable endeavours to:

- (a) agree arm's length commercial terms with the owner of the Hermes Land; and
- (b) subject to agreeing such terms, enter into a Co-operation Agreement

for the provision of access to the Development via Shared Access Road B by the owner of the Hermes Land in accordance with the Shared Access Road B Principles but only in circumstances where the owner of the Hermes Land Implements the Hermes Permission before the Owner Implements the Permission.

1.1.3 If the owner of the Hermes Land Implements the Hermes Permission (written notice of which shall be provided by the Council to the Owner within seven (7) days of the Council receiving such notification from the owner of the Hermes Land) before the Owner Implements the Permission, then the Owner shall not construct Shared Access Road A (Part 1) and the Owner agrees that:

- (a) Shared Access Road B shall instead be constructed by the owner of the Hermes Land in accordance with the Hermes Agreement; and
- (b) the Development will be accessed from the Hermes Land via Shared Access Road B.

1.1.4 The Owner's covenants in paragraph 1.1.3 above shall be conditional upon the owner of the Hermes Land:

- (a) constructing and Practically Completing Shared Access Road B in accordance with a programme that ensures that it is completed and available for use at the date the Development or the Hermes Development is first Occupied (whichever is the earlier);
- (b) granting step in rights to the Owner to permit the Owner to enter upon the Hermes Land to construct and/or Practically Complete Shared Access Road B and/or to ensure the proper maintenance of Shared Access Road B (until such time as Shared Access Road B is adopted by the Council as highway maintainable at public expense) in the event of a failure by the owner of the Hermes Land to do so in accordance with the Hermes Agreement; and

- (c) granting the Owner such easements and other rights as are reasonably required and agreed between the Owner and the owner of the Hermes Land to allow access and egress to the Development along Shared Access Road B.

1.2 The obligations in this Schedule 14 shall lapse and be of no further effect if:

- 1.2.1 The Hermes Application is refused and any subsequent appeal against that refusal is dismissed; or
- 1.2.2 The Hermes Permission expires without having been Implemented; or
- 1.2.3 The Hermes Permission is quashed following a successful Legal Challenge and no further Hermes Permission is granted; or
- 1.2.4 The Hermes Permission is granted (or subsequently amended) in a manner which does not grant planning permission for Shared Assess Road B as shown on the plan at Annex 8; or
- 1.2.5 The Hermes Agreement does not contain obligations on the owner of the Hermes Land in respect of Shared Access Road B benefitting the Owner in the same (or substantially the same) terms as the Owner's obligations in this Schedule 14.

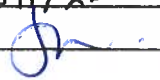
This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement.

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

EXECUTION PAGE

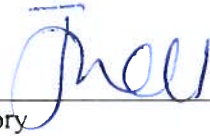
EXECUTED (BUT NOT DELIVERED)
UNTIL THE DATE HEREOF) by the)
 affixing of the **COMMON SEAL** of
READING BOROUGH COUNCIL
 in the presence of:

(affix seal)

Minute	Council 18.10.219
Originator	AS
Seal No.	34/22
Checked	

sign here:

Authorized Signatory



print name:


Justin Lall

EXECUTED AS A DEED (but not delivered until)
 the date inserted above) by)

HUGH MERRITT
 as attorney for **AVIVA INVESTORS GLOBAL**
SERVICES LIMITED as attorney for **AVIVA**
LIFE & PENSIONS UK LIMITED

in the presence of:)

.....
 as attorney for **AVIVA INVESTORS**
GLOBAL SERVICES LIMITED as
 attorney for **AVIVA LIFE & PENSIONS**
UK LIMITED

Signature of Witness: 

Name of Witness:

Kat Pozniak
 Document Services Lead
 Aviva Investors
 St Helens, 1 Undershaft
 London EC3P 3DQ

Address of Witness:

Occupation of Witness:

**ANNEX 1
LOCATION PLAN**

