

DATED

2025

Agreement

under section 106 Town and
Country Planning Act 1990
relating to The Kennet Centre,
Newbury, RG14 5EN

- (1) WEST BERKSHIRE DISTRICT COUNCIL
- (2) LOCHAILORT NEWBURY LTD

Planning Reference: 23/02094/FULMAJ

Appeal Reference: APP/W0340/W/25/3359935

Shoosmiths Draft 10 June 2025

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This Agreement is made on

2025

Between

- 1 **WEST BERKSHIRE DISTRICT COUNCIL** of Council offices, Market Street, Newbury RG14 5LD (the "**Council**"); and
- 2 **LOCHAILORT NEWBURY LTD** (Co. Regn. No. 12190752) c/o Ocorian, Level 5, 20 Fenchurch Street, London EC3M 3BY (the "**Owner**");

Background

- (A) By virtue of the 1990 Act the Council is the Local Planning Authority for the purposes of this Agreement for the area in which the Site is situated and is the Local Planning Authority by whom the planning obligations hereby created are enforceable.
- (B) The Owner is the registered freehold proprietor with absolute title of all that land registered at HM Land Registry under Title Number BK235120.
- (C) The Bound Land is subject to numerous leasehold interest which are to be terminated (or otherwise come to an end) prior to the Commencement of Development in accordance with the provisions of this Agreement.
- (D) The Cinema Site is subject to numerous leasehold interests which are not to be terminated (or otherwise come to an end) and are to be retained throughout the Development.
- (E) The Owner has submitted the Application.
- (F) On 30 January 2025 the Council refused to grant planning permission for the Development at the Site and the Owners have since appealed that refusal to the Secretary of State.
- (G) The Council has confirmed that all the obligations and covenants included in this Agreement are compliant with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
- (H) The Owner by entering into this Agreement does so to create planning obligations in respect of the Bound Land and each part of it in favour of the Council pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants, agreements, conditions and stipulations hereinafter contained.

1 Definitions and interpretation

- 1.1 In this Agreement the following expressions shall have the following meanings:-

1990 Act: the Town and Country Planning Act 1990.

Application: means the full application for the Development submitted by or on behalf of the Owner to the Council to which the Council has allocated reference number 23/02094/FULMAJ.

Appeal: means the appeal submitted by the Owner to the Secretary of State pursuant to s78 of the Act against the refusal by the Council to grant planning permission for the Development and which appeal bears the reference APP/W0340/W/25/3359935.

Bound Land: means that part of the Site shown shaded pink on Plan 1, which for the avoidance of doubt excludes the Cinema Site;

Cinema Site: means that part of the Site not shaded pink on Plan 1;

Commencement of Development: the date upon which the Development shall commence by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT the term "material operation" shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office and erection of fencing to the site boundary and **Commence Development** shall be construed accordingly.

Developer Contributions Team Leader: the person from time to time holding the post of Developer Contributions Team Leader with the Council or the person who is designated as such by the Council for the purposes of this Agreement.

Development: the development of the Site to provide a Build to Rent development of up to 427 dwellings and residents' ancillary facilities; commercial, business and service floorspace including office (Use Class E (a, b, c, d, e, f and g)); access, parking and cycle parking; landscaping and open space; sustainable energy installations; and associated works in accordance with the Planning Permission.

Dwellings: the residential units (including amenity space and car parking associated with that dwelling unit) created pursuant to the Planning Permission and **Dwelling** shall be construed accordingly.

Expert: an independent person of at least ten years standing in the area of expertise relevant to the dispute to be agreed between the parties to this Agreement or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society.

Index: the General Index of Retail Prices (all items) published by the Office of National Statistics or during any period when no such index exists the index which replaces the same or is the nearest equivalent thereto as may reasonably be specified by the Council.

Index Linked: such increase to any sum or sums payable under this Agreement on an annual basis or pro rata per diem from the date of the grant of Planning Permission to the date of payment (or calculation as the case may be) based upon the relevant Index last published before the date of the decision to approve the grant of Planning Permission.

Occupation: beneficial occupation for the purposes permitted by the Planning Permission within the Bound Land which shall be the date upon which either Council Tax becomes payable for that Dwelling or when the Owner first transfers or leases that Dwelling (whichever is earlier) or business rates become payable for any commercial unit or part thereof or when the Owner first transfers or leases a commercial unit or part thereof (whichever is earlier) but shall not include occupation for the construction of Development, daytime occupation by workmen involved in the construction fitting out or decoration of the Development the use of finished buildings for sales purposes or use as temporary offices or for show houses or for the storage of plant and materials or in relation to security operations and "**Occupy**", "**Occupant**", "**Occupier**" and "**Occupied**" shall be construed accordingly.

Plan 1: the plan appended to this Agreement at Appendix 1.

Planning Permission: planning permission for the Development granted pursuant to the Application and subject to written approval or further decision by the Council or decision granted on appeal including any subsequent permissions to vary the conditions therein under Section 73, Section 73A and Section 96A of the Act.

Site: all that land situated at The Kennet Centre, Newbury, RG14 5EN shown edged red on Plan 1 comprising both the Bound Land and the Cinema Site and registered with absolute title at HM Land Registry within Title Number BK235120.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1.2 Where the context so requires:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.2.3 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.2.4 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;
- 1.2.5 references to any party or body in this Agreement shall include that party's personal representatives successors in title and permitted assigns and in the case of the Council shall include any successors to its respective statutory functions.
- 1.2.6 wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;
- 1.2.7 any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing;
- 1.2.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.2.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.10 references to clauses, paragraphs, and Schedules are references to clauses, paragraphs, and Schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement;
- 1.2.11 the headings and contents list are for reference only and shall not affect construction.
- 1.2.12 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.2.13 References to clauses are to the clauses of this Deed.
- 1.2.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Operative provisions

- 2.1 This Agreement constitutes a planning obligation for the purposes of Section 106 of the 1990 Act, and to the extent that any obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, Section 1 of the Localism Act

2011 and s.33 of the Local Government (Miscellaneous Provisions) Act 1982 any other enabling powers.

- 2.2 The obligations contained in Schedules 1 to 7 of this Agreement are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Bound Land and their respective successors and assigns.

3 Conditionality

- 3.1 The Owner's obligations in this Agreement are conditional upon:

3.1.1 The grant of the Planning Permission; and

3.1.2 Commencement of Development

Save for this Clause and Clauses 1, 2, 5 to 17 which shall take effect immediately upon the completion of this Deed.

- 3.2 In the event that the planning inspector on behalf of the Secretary of State states in the appeal decision either that:

3.2.1 A planning obligation contained in this Agreement (or relevant part of a planning obligation) is not a material consideration in the granting of the Planning Permission pursuant to the Appeal; or

3.2.2 A planning obligation contained in this Agreement (or relevant part of a planning obligation) is incompatible with any one or more of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2020,

and accordingly attaches no weight to that obligation in determining the Appeal then that planning obligation (or part of the planning obligation as appropriate) shall from the date of the decision cease to have effect and the Owner shall not be required to comply with that obligation AND for the avoidance of doubt this shall not affect the lawfulness of the balance of covenants and obligations in this Agreement which shall continue to be enforceable AND it shall not be necessary to vary this Agreement in order that its terms have the effect and enforceability as determined by reference to the Secretary of State's appeal decision.

4 Planning obligations

- 4.1 The Owner hereby covenants with the Council that the Bound Land shall be subject to the restrictions and provisions regulating the Development pursuant to the terms of this Agreement.

- 4.2 The Council hereby covenants with the Owner to comply with the obligations contained in Schedule 5 of this Agreement.

5 Miscellaneous

- 5.1 No party shall be liable for the breach of any covenants restrictions or obligations or other provisions of this Agreement :

5.1.1 occurring after he or it has parted with his or its interest in the Bound Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest) and for the avoidance of doubt the benefit of any security shall not amount to an interest in the Bound Land for these purposes except as set out in clause 5.11 ;

5.1.2 A statutory undertaker which has an interest in any part of the Bound Land for the purposes of its undertaking shall only be liable for breaches of planning obligations

that directly relate to its statutory functions and operations on the Bound Land. The statutory undertaker's liability for breaches of planning obligations shall be proportional to its interest and involvement in the Bound Land for the purpose of its statutory undertaking.

- 5.2 The Obligations in this Agreement shall be enforceable against the Owner of the Bound Land and any successors in title, including any person deriving title from the Owner to the extent that such Obligations:
- 5.2.1 Have not been discharged or fulfilled at the date of any transfer: and
 - 5.2.2 Are relevant to that part of the Bound Land transferred or interest created.
- 5.3 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Agreement such agreement, approval, consent or expression of satisfaction shall be required to be in writing and shall not be unreasonably withheld or delayed.
- 5.4 This Agreement is a Local Land Charge and shall be registered as such by the Council and any other register as it so shall determine.
- 5.5 Within 25 (twenty-five) Working Days of a request from the Owner or their successors in title at any time after the obligations contained in this Deed have been satisfied, PROVIDED that the Council has had confirmation of receipt of any relevant fees, issue confirmation of such in writing and upon satisfaction of all of the obligations in this Deed thereafter secure that all related entries are cancelled in the Register of Local Land Charges.
- 5.6 This Agreement shall be determined and have no further effect (insofar only as it has not already been complied with) if the Planning Permission:
- 5.6.1 expires before the Commencement of Development;
 - 5.6.2 is varied or revoked other than at the request of the Owner;
 - 5.6.3 is quashed following a successful legal challenge.
- 5.7 If pursuant to clause **Error! Reference source not found.** this Agreement shall terminate and cease to have effect the Council shall upon request remove any entry relating to this Agreement from the Register of Local Land Charges.
- 5.8 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
- 5.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted after the date of this Agreement.
- 5.10 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local or public authority.
- 5.11 Any future mortgagee or chargee shall not be personally liable for any breach of the obligations in this Agreement unless it takes possession of all or any part of the Bound Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

6 Notification

6.1 A notice to be given under or in connection with this Agreement must be in writing and must be:

6.1.1 delivered by hand; or

6.1.2 sent by pre-paid first class post or other next Working Day delivery service.

6.2 Any notice to be given under this Deed must be sent to the relevant party as follows:

6.2.1 to the Council at: Council Offices, Market Street, Newbury, Berkshire, RG14 5LD marked for the attention of Developer Contributions Team Leader;

6.2.2 to the Owner at Lochailort Newbury Ltd, C/o Ocorian, Level 5, 20 Fenchurch Street, London, EC3M 3BY

or as otherwise specified by the relevant person by notice in writing to each other person.

6.3 Any notice given in accordance with clause 6.1 and clause 6.2 will be deemed to have been received:

6.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address **PROVIDED THAT** if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

6.3.2 if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

6.4 A notice given under this Deed shall not be validly given if sent by e-mail.

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

7 Fetter of Discretion

7.1 Nothing in this Deed shall prejudice the exercise of any statutory power duty or discretion by the Council.

7.2 Nothing in this Deed constitutes a planning permission or an obligation to grant planning permission.

8 Third parties

No provisions of this Deed shall be enforceable under the Contract (Rights of Third Parties) Act 1999. A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

9 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.

10 Restriction on Implementation

10.1 The Owner covenants with the Council to:

10.1.1 Not Commence the Development or implement, allow or permit or otherwise procure implementation of the Planning Permission unless and until:

- (a) The Owner provides the Council with a warranty in a form agreed with the Council that no person other than the Owner has any legal or equitable interest in the Bound Land
 - (i) The written warranty referred to in clause 10.1.1 (a) must be given to the Council in writing and must be addressed to Nicola Thomas, Service Lead – Legal and Democratic Services, West Berkshire District Council, Market Street, Newbury RG14 5LD or such other person as the Council notifies the Owner of in writing.
- (b) The following documentation has been provided to the Council:
 - (i) Evidence that any leasehold interest subsisting at the date of this Agreement have been determined or otherwise comes to an end;
 - (ii) Copies of any relevant documents the Owners enters into to determine the leasehold interests subsisting at the date of this Agreement; and
 - (iii) Copies of any applications to HM Land Registry (if applicable) to close the title of the relevant leasehold interests have been provided to the Council.
- (c) The Council has provided written Notice that it is satisfied that the Owner is the only person(s) with a legal or equitable interest in the Bound Land.

10.1.2 The Owner covenants with the Council to respond to any requisitions raised by HM Land Registry as soon as reasonably practicable following receipt of the same.

10.1.3 The Owner covenants with the Council to provide up to date freehold title for the Bound Land following completion of the application(s) (if applicable) to HM Land Registry within 10 Working Days of receipt of the same.

11 Legal costs

The Owner shall pay to the Council on the date of this Deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the approval in this Deed being the sum of £3,500.00 and planning administration fee of £1,350.00.

12 Indemnity

12.1 The Owner shall indemnify and keep indemnified the Council against all actions, proceedings, liabilities, expenses, damages, costs, losses, claims and demands suffered or incurred by the Council arising out of or in connection with any breach of the obligations contained in this Deed (including but not limited to, any solicitors' or other professionals' costs, expenses and disbursements)

12.2 This indemnity shall remain in full force and effect notwithstanding the completion of the Development or the transfer of any interest in the Bound Land.

13 Ownership

- 13.1 The Owner covenants with the Council to give the Council immediate written notice of any change in ownership of any of their interests in the Bound Land other than the transfer (freehold or leasehold) of any individual Dwelling in the Bound Land occurring before all the obligations under this Agreement have been discharged. Such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Bound Land purchased by reference to a plan including details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Bound Land.

14 Indexation

- 14.1 All the financial contributions shall be Index Linked.
- 14.2 In addition to any sum stated as being payable in this Agreement as Index Linked it shall be calculated by multiplying the relevant sum by the percentage by which the Index has increased in accordance with the defined Index Link.

15 VAT

All consideration given in accordance with the terms of this Agreement all be exclusive of any Value Added Tax properly payable.

16 Jurisdiction

This Agreement any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

17 Delivery

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

In witness whereof the parties hereto have executed this Agreement the day and year first before written.

Schedule 1

NOTICES

Notification of Commencement of Development

- 1 The Owner covenants with the Council as follows:-
 - 1.1 To serve written notice of intended Commencement of Development upon the Developer Contributions Team Leader not less than fourteen (14) days before the intended Commencement of Development;
 - 1.2 Not to Commence Development unless at least fourteen (14) days has expired from the date upon which a written notice referred to in paragraph 1.1 has been served upon the Developer Contributions Team Leader.
 - 1.3 To serve written notice of intended Commencement of Phase 4 of the Development upon the Developer Contributions Team Leader not less than fourteen (14) days before the intended Commencement of Phase 4 of the Development;
 - 1.4 Not to Commence Phase 4 of the Development unless at least fourteen (14) days has expired from the date upon which a written notice referred to in paragraph 2.1 has been served upon the Developer Contributions Team Leader.

Schedule 2 BUILD TO RENT

In this Schedule 2 unless the context requires otherwise the following words and expressions shall have the following meanings:

"BTR Management Scheme"	means a written scheme setting out details of the long-term management and maintenance objectives of the management company serving the BTR Units.
"Build to Rent Term"	means the period of 10 (ten) years commencing on first Occupation of an Open Market Unit
"Build to Rent ("BTR") Unit"	purpose build Dwellings designed specifically to be rented out rather than sold and includes Open Market Units and Affordable Private Rented Units and BTR Unit(s) shall be construed accordingly.
"Build to Rent Purposes"	means the use of the Open Market Units specifically for Open Market rental purposes only, such rental units to be held collectively in a single ownership structure, with a unified professional on-going property management
"Clawback Amount"	<p>means the amount payable in respect of Qualifying Units identified in a Release Application which shall be calculated as follows:</p> <p>Clawback amount = (Value as Market Sale – Value as Build to Rent Housing) – Affordable Housing Contribution paid to the Council.</p> <p>PROVIDED THAT the Clawback Amount shall be £0 (zero pounds) where 35% of the Build to Rent Units are Affordable Private Rented Units at the date of the calculation of the Clawback Amount.</p>
"Index of Private Housing Rental Prices Index"	means an Office for National Statistics experimental price index tracking the prices paid for renting property from private landlords in the UK and including measures of owner occupiers' housing costs.
"Open Market Unit"	those Dwellings that are for rent on the private housing market and which are not Affordable Private Rented Units.
"Permitted Sale"	means the disposal of the Open Market Unit to a third party such that they continue to be used for Build to Rent Purposes.
"Qualifying Units"	means any Build to Rent Unit, except those that have been allocated and are used and occupied as Affordable Private Rented Units

"Release Application"	means a written request from the Owner to the Council for the disposal of a Qualifying Unit which is not a Permitted Sale.
"Release Notice"	means a notice from the Council to the Owner permitting the disposal of a Qualifying Unit which is not a Permitted Sale.
"Value as Build to Rent Housing"	means value of the Qualifying Unit subject to the Release Application valued on a Build to Rent use.
"Value as Market Sale"	means the value of the Qualifying Unit subject to the Release Application valued on an Open Market sale basis.

- 1 In relation to Open Market Units, the Owner covenants with the Council as follows:
 - 1.1 That the Open Market Units shall be used for the Build to Rent Purposes and for no other purpose for the duration of the Build to Rent Term save as provided in paragraph 2 below;
 - 1.2 Not to Occupy cause suffer or permit to be Occupied any BTR Units unless and until the BTR Management Scheme has been approved by the Council.
 - 1.3 Not to Occupy cause suffer or permit to be Occupied any BTR Units otherwise than in accordance with the approved BTR Management Scheme (subject to any amendments agreed in writing with the Council).
 - 1.4 Upon reasonable written request to provide to the Council such evidence as the Council reasonably requires demonstrating the Build to Rent Units are being used as Build to Rent Units and the Owner's compliance with the approved BTR Management Scheme.
- 2 The Owner and the Council agree as follows:
 - 2.1 At any time during the Build to Rent Term, the Owner may submit to the Council a Release Application and the Owner covenants to provide Twenty (20) Working Days' notice to the Council of its intention to submit a Release Application
 - 2.2 Where a Release Application is made in respect of any Qualifying Unit, the Owner shall submit to the Council with the Release Application a statement setting out the Owner's calculation of

the Clawback Amount for such unit(s) with documentary evidence and a statement ("**Statement**") setting out:

- 2.2.1 the actual sale price of the Qualifying Units which were the subject of any previous Release Notices;
- 2.2.2 the agreed sale price of any Qualifying Units that are the subject of the Release Application;
- 2.2.3 the anticipated date of the disposal of the Qualifying Units;
- 2.2.4 the Owner's calculation of the Clawback Amount; and
- 2.2.5 the identity and address of the person(s) to whom the Qualifying Unit(s) are intended to be disposed

and for the avoidance of doubt the Clawback Amount shall only be payable where the Value as Market Sale exceeds the Value as Built to Rent Housing by 20%.

- 2.3 On receipt of the Release Application and the Statement, the Council shall assess the information to determine the Clawback Amount.
- 2.4 The Council may appoint an Expert (at the Owner's cost) independent consultant to assess the Release Application and the Statement and in the event of such appointment it is agreed that the Expert may, thereafter, be deemed to act on behalf of the Council in relation to the Release Application.
- 2.5 Within twenty (20) Working Days following receipt of the Release Application and the Statement pursuant to paragraph 2.2 above, the Council shall either:
 - 2.5.1 confirm in writing that it has received sufficient information to review the calculation of the Clawback Amount (in which case the date of such confirmation shall be the "**Clawback Amount Validation Date**"); or
 - 2.5.2 request such further valuation information as (acting reasonably) it deems necessary in order to review the calculation of the Clawback Amount, which may include evidence of the actual or agreed sale prices identified in the Release Application.
- 2.6 On receipt of any request for further information pursuant to paragraph 2.5.2 above, the Owner shall as soon as reasonably practicable and in any case within ten (10) Working Days of such request provide to the Council the information requested in which case the date such information is provided shall be the "**Clawback Amount Validation Date**".
- 2.7 Within twenty (20) Working Days of the relevant Clawback Amount Validation Date, the Council shall confirm in writing that either:
 - 2.7.1 it accepts the Owner's calculation of the Clawback Amount (which confirmation shall be the "**Clawback Amount Acceptance Notice**") or
 - 2.7.2 it does not accept the Owner's calculation of the Clawback Amount (which confirmation shall be the "**Clawback Amount Non-Acceptance Notice**")
- 2.8 In the event that pursuant to paragraph 2.7.2 above, the Owner and the Council have not agreed the Clawback Amount, either party shall be entitled to refer the matter to the Expert for determination pursuant to clause 13 of this Agreement and each shall use its reasonable endeavours to do so within one (1) calendar month of the date of the Clawback Amount Non-Acceptance Notice (unless otherwise agreed between the Council and the Owner)

- 2.9 In making his determination pursuant to paragraph 2.8 above, the Expert shall have regard to:
- 2.9.1 all relevant material submitted to the Expert by the Council and the Owner;
- (a) such relevant financial, legal, planning or other matters the Expert considers relevant using reasonable care and skill and his professional expertise; and
 - (b) the provisions of this Agreement.
- 2.10 Unless otherwise agreed by the Council and the Owner or notified to them by the Expert, the Expert shall be appointed on the basis that his decision shall include a calculation of the Clawback Amount and such decision is to be final and binding on both the Council and the Owner.
- 2.11 The Clawback Amount shall be paid to the Council within 25 Working Days of either the Clawback Amount Acceptance Notice or the date of the Expert's determination where the Clawback Amount is determined by an Expert in accordance with paragraphs 2.8-2.10.
- 2.12 Within Twenty (20) Working Days following receipt of the relevant Clawback Amount in cleared funds in respect of a Release Application (such amount having either been accepted by the Council in writing or determined by the Expert), the Council shall issue to the Owner a Release Notice.
- 2.13 Upon the issue by the Council of a Release Notice, the Qualifying Unit to which that Release Notice relates shall no longer be bound by the restrictions set out in this Schedule 2
- 2.14 The Council covenants not to use the Clawback Amount(s) for any purpose other than to enable the provision of affordable housing within the Council's administrative area (excluding the Site).
- 2.15 Where the Clawback Amount has been paid to the Council, the Council covenants with the Owner that it will pay to the person who paid the Clawback Amount to the Council such part of the Clawback Amount which has not been expended or Committed for Expenditure in accordance with the provisions of this Agreement within 10 (Ten) years of the date of receipt by the Council of such payment together with interest accrued.

Schedule 3

AFFORDABLE HOUSING CONTRIBUTION

In this Schedule 3 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Application Stage Viability Appraisal"	means the financial viability appraisal by Rapleys LLP dated 14 February 2024 submitted as part of the Application.
"Affordable Housing Contribution"	means a financial contribution for the provision of off-site affordable housing in the Council's administrative area which may be payable following the Late Stage Review and the quantum shall equate to 50% of the surplus derived from the approved Late Stage Viability Appraisal, where a Surplus Arises
"Developer Return"	Means the profit on gross development value shown in the Late Stage Viability Appraisal
"Late Stage Review"	means a review of the financial viability of the Development at the Late Stage Review Date in accordance with the terms of this Schedule.
"Late Stage Review Date"	means the date 75% of Dwellings within the Development are Occupied
"Late Stage Viability Appraisal"	means a viability appraisal to be carried out as an update to the Application Stage Viability Appraisal which must meet the requirements set out in Part 2 of this Schedule.
"Surplus Arises"	means that the Developer Return exceeds the Target Return and "a Surplus Has Arisen" will be construed accordingly and "No Surplus Has Arisen" shall mean that the Developer Return does not exceed the Target Return.
"Target Return"	means a 17.5% return on gross development value for the entirety of the Development.

- 1 The Owner and the Council acknowledge and agree that the date of this Agreement the Development cannot provide affordable housing as it is not viable as demonstrated by the Application Stage Viability Appraisal and therefore the Development shall be subject to the Late Stage Review in accordance with this Schedule 3 to allow for the payment of the Affordable Housing Contribution (if applicable).
- 2 The Owner covenants with the Council:
- 3 Not to Occupy cause suffer or permit to be Occupied 75%% (Seventy-Five percent) of the Dwellings within the Development until the Late Stage Review has been submitted to the Council for approval, not to be unreasonably withheld.)
- 4 No later than 20 Working Days after the Late Stage Review Date, the Owner shall provide for the Council's approval (such approval not to be unreasonably withheld or delayed) the Late Stage Viability Appraisal.

- 5 The Council shall assess the Late Stage Viability Appraisal submitted and assess whether in its view an Affordable Housing Contribution is payable and, if so, the quantum.
- 6 The Council may appoint an external consultant to assess the Late Stage Viability Appraisal (at the Owner's cost) .
- 7 Not later than 25 Working Days after submission of the Late Stage Viability Appraisal, in the event that the Council and/or an external consultant requires further information or supporting evidence of the same then the Owner shall provide any reasonably required information to the Council or the external consultant (as applicable and with copies to the other parties) within 25 Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in its view any Affordable Housing Contribution is payable.
- 8 No later than:
- 8.1 40 (Forty) Working Days from the receipt by the Council of the Late Stage Viability Appraisal above, if no request is made under paragraph 5 above; or
- 8.2 40 (Forty) Working Days from the date of receipt by the Council and/or external consultant of the further information submitted pursuant to paragraph 5 above,
- the Council shall notify the Owner in writing of the Council's decision as to whether any Affordable Housing Contribution is required and, if so, how much.
- 9 In the event that the Owner does not agree with the Council's decision as to whether any Affordable Housing Contribution is required or does not agree with the quantum of the Affordable Housing Contribution it may refer the matter for determination by the Expert at the Owner's cost.
- 10 Where No Surplus Has Arisen, no Affordable Housing Contribution will be payable.
- 11 When the Council or its external consultant has completed its assessment of the Late Stage Viability Appraisal the Council shall notify the Owner in writing of its decision as to whether any Affordable Housing Contribution is required and, if so, how much PROVIDED THAT where the Owner does not agree to the outcome from the Council or its external consultant it may refer to the matter to the Expert in accordance with Clause 13 of this Agreement.
- 12 Where the Council notifies the Owner that an Affordable Housing Contribution is required (or as may be determined by the Expert), the Owner shall pay the Affordable Housing Contribution to the Council within 25 Working Days of the date on which such notice is received from the Council or Expert, as applicable.

Part 2: Requirements for Late Stage Viability Appraisal and Application of Surplus

The Owner and the Council agree that the Late Stage Viability Appraisal will comply with the following requirements:

Late Stage Review

- 1 The Late Stage Review will operate on an open book basis using Argus appraisal software (or similar appropriate package such as Excel, as may be agreed between the Council and the Owner.
- 2 The Late Stage Review will reflect actual costs incurred and forecast costs, actual receipts received and forecast values and actual areas and forecast areas at the next Working Day after the date the Late Stage Review is submitted to the Council in writing which will be substituted for the forecasts in the Application Stage Viability Appraisal.
- 3 All costs and revenues will be reviewed other than the Benchmark Land Values and Target Return which are fixed.
- 4 The appraisal should be created with a fixed land value equal to the Benchmark Land Value to generate a profit which should be compared to the Target Return to ascertain if a surplus has been generated.

Benchmark Land Value

- 5 The Benchmark Land Value is fixed at £4,675,000.

Target Return

- 6 The Target Return is fixed at 17.5% on GDV across the Development as a whole.

Revenues

- 7 The revenues and timings of receipts will be evidenced through the actual revenue received by the Owner at first sale or lettings. Where any parts of the Development have not been sold or let, the value of these Components shall be evidenced through an assessment of market value based on available comparable evidence.
- 8 The revenues and timings of receipts will be evidenced through the actual revenue received by the Owner at first sale and any public subsidy should be separately identified and included in the appraisal.
- 9 Any public subsidy received by the Owner shall be included as income in the Late Stage Viability Appraisal.
- 10 The level of operating expenses incurred by residential landlords is one of the key areas that needs to be identified in assessing a property's value to an existing landlord or potential investor. This was agreed within the application at a deduction of 25.00% from the gross rental value of the Built-to-Rent element of the scheme.

Costs

- 11 All costs reasonably incurred, or forecast to be incurred in the delivery of the Development, including any planning (including S106 and S278 costs and contributions) or CIL related costs, shall be included in the Late Stage Viability Appraisal. For the avoidance of doubt reasonable costs incurred prior to Day 1 shall be included in the Late Stage Viability Appraisal and build costs are to be indexed from the commencement until the Late Stage Review Date .

- 12 All costs include but are not limited to; construction costs, material & labour costs, demolition costs, site preparation works / enabling costs, utilities costs, professional fees, design fees, planning costs, finance costs, acquisition costs, insurance costs, costs associated with gaining vacant possession, letting agent's fees, letting legal fees, disposal fees, finance costs, off-site costs associated with the delivery of the site etc.
- 13 Costs will be supported by evidence included (but not limited to) details of payments made or agreed to be paid in a building contract, receipted invoices and costs certified by the Owner's quantity surveyor, costs consultant, agent or solicitor.
- 14 Where costs are yet to be incurred, these costs should be supported by comparable evidence or an explanation as to why they are reasonable costs to be included within the Late Stage Viability Appraisal.
- 15 Where construction costs are delivered in-house, i.e. without a main contractor, the accepted level of prelims and overheads combined and profit must have regard to allocation of prelims and overheads pertinent to a corporate housebuilder.
- 16 Where finance costs are based on a combination of external debt and internal equity, the cost of the internal equity will be charged at an agreed margin above the UK base rate (or any other rate considered appropriate (e.g.UK Gilt rates) as may be agreed between the Council and the Owner.

Schedule 4
FINANCIAL CONTRIBUTIONS

Definitions

In this schedule, the following additional words and expressions shall have the following meanings:

"Healthcare Contribution"	Means the sum of £262,872 (two hundred and sixty two thousand eight hundred and seventy two pounds) (Index Linked) towards the provision of appropriate primary healthcare facilities in the local area in Newbury to serve the proposed Development.
"Public Open Space Contribution"	means the sum of £52,738.56 (fifty two thousand seven hundred and thirty eight pounds and fifty six pence (Index Linked) towards the provision of open space in the West Berkshire area.
"Station Improvement Contribution"	Means the sum of £70,000 (seventy thousand pounds) (Index linked) towards improvements to the Market Street/ Station car park and pedestrian links from the car park to Market Street.
"Sustainable Travel Contribution"	means the sum of £15,000 (fifteen thousand pounds) (Index Linked) towards sustainability signage and wayfinding in the vicinity of the Development.
"TRO Contribution"	means the sum of £15,000 (fifteen thousand pounds) (Index Linked) towards the Council's cost of obtaining and implementing the necessary Traffic Regulation Orders relating to the Development.
"Visual Message Signage Contribution"	means the sum of £500,000 (five hundred thousand pounds) (Index Linked) towards the upgrading/replacing of the town centre Visual Messaging Signing.

The Owner covenants with the Council as follows:

- 1 Public Open Space Contribution**
 - 1.1 to pay to the Open Space Contribution in the following instalments:
 - 1.1.1 50% prior to first Occupation of 50% of the Dwellings; and
 - 1.1.2 50% Prior to Occupation of 75% of the Dwellings.
 - 1.2 Not to Occupy nor permit Occupation of more than 50% of the Dwellings until 50% of the Open Space Contribution has been paid to the Council.
 - 1.3 Not to Occupy nor permit Occupation of more than 75% of the Dwellings until the remainder of the Open Space Contribution has been paid in full to the Council.
- 2 Visual Message Signage Contribution**

- 2.1 Not to Commence the Development without first paying to the Council 50% of the Visual Message Signage Contribution.
- 2.2 Not to Occupy cause suffer or permit to be Occupied 33% of the Dwellings unless and until 100% of the Visual Message Signage Contribution has been paid to the Council.
- 3 **TRO Contribution**
 - 3.1 To pay to the TRO Contribution prior to first Occupation of any Dwellings and no later than six months before first Occupation,
 - 3.2 Not to Occupy nor permit Occupation of the Dwellings until the TRO Contribution has been paid to the Council
- 4 **Sustainable Travel Contribution**
 - 4.1 Not to Commence the Development without first paying to the Council 50% of the Sustainable Travel Contribution.
 - 4.2 Not to Occupy cause suffer or permit to be Occupied 33% of the Dwellings unless and until 100% of the Sustainable Travel Contribution has been paid to the Council.
- 5 **Healthcare Contribution**
 - 5.1 Not to Commence the Development without first paying to the Council the Healthcare Contribution.
- 6 **Station Improvements Contribution**
 - 6.1 Not to Commence the Development without first paying to the Council 50% of the Station Improvements Contribution.
 - 6.2 Not to Occupy cause suffer or permit to be Occupied 33% of the Dwellings unless and until 100% of the Station Improvements Contribution has been paid to the Council.

Schedule 5

HIGHWAY WORKS

Definitions

In this schedule, the following additional words and expressions shall have the following meanings:

"Highway Works"	Means:
	i) Closure of the existing Market Street vehicle Access and reinstatement of footway;
	ii) Footway resurfacing along the frontage of Market Street;
	iii) Resurfacing of Bartholomew Street from Market Street to the proposed new vehicular access;
	iv) Relocation of rising bollards within Bartholomew Street;
	v) Reconfiguration of the Bartholomew Street/ Market Street traffic signal junction including replacing signal equipment when required;
	vi) Provision of vehicle access onto Cheap Street; and
	vii) Associated works with the above.
"Highway Works Agreement"	means an agreement or agreements between the Owner and the Council made pursuant to sections 38 and/or 278 of the Highways Act 1980 (and any other enabling power) for the carrying out of the relevant Highway Works
"Highway Works Plans"	means the drawings with references 18916-WIE-RD-01-DR-C-06017_P01 showing the Highway Works annexed to this Agreement at Appendix 2 (or such other alternative drawing as agreed by the Council) which provides details as to the proposed Highway Works.

The Owner covenants with the Council as follows:

- 1 The Owner shall not Commence the Development unless and until a written request to enter into a Highway Works Agreement for the Highways Works has been submitted to the Council.
- 2 The Owner shall carry out or procure that the Highways Works are carried out and completed at the Owner's expense in accordance with the Highway Works Agreement(s).
- 3 The Owner shall not Commence the Development unless and until the Owner has entered into a Highways Works Agreement for the Highway Works.
- 4 Not to Occupy or cause suffer or permit to be Occupied any Dwellings unless otherwise agreed with the Council in writing, unless and until the issuing of a provisional certificate of completion of the Highways Works by the Council pursuant to the Highway Works Agreement.

Schedule 6

Travel Plan

Definitions

In this schedule, the following additional words and expressions shall have the following meanings:

"Draft Travel Plan"	means the travel plan for the Dwellings prepared by the Owner and submitted as part of the Application.
"Travel Plan"	means the travel plan to be submitted in accordance with the terms of the Draft Travel Plan and any reasonable comments of the Council.
"Travel Plan Co-Ordinator"	Means the person appointed by or on behalf of the Owner and who is responsible for setting up and managing the implementation of the Travel Plan in accordance with the terms of the Approved Travel Plan
"Travel Plan Contribution"	means the sum of £277,550.00 (Five Hundred and Seventy Seven Thousand and Five Hundred and Fifty Pounds) (Index Linked) towards the provision of the Travel Plan measures to encourage sustainable and low carbon modes of travel.
"Travel Plan Monitoring Fee"	means the sum of £5,000.00 (Five Thousand Pounds) (Index Linked) towards the monitoring of the Travel Plan

The Owner covenants with the Council:

- 1 The Development shall not be Occupied unless and until a Travel Plan Co-Ordinator has been appointed and the details have been notified to the Council.
- 2 Prior to first Occupation and no later than six months before first Occupation:
 - 2.1 a Travel Plan shall be submitted to and approved by the Council (the **"Approved Travel Plan"**).
 - 2.2 The Owner must pay to the Council:
 - 2.2.1 The Travel Plan Contribution in full.
 - 2.2.2 The Travel Plan Monitoring Fee in full.
- 3 The Approved Travel Plan shall be monitored annually over a five year period from its implementation in accordance with the requirements set out in the Approved Travel Plan.
- 4 If any of the requirements of the Approved Travel Plan are not complied with the Council shall notify the Owner of such failure and allow the Owner a reasonable period of time in all the circumstances to remedy the failure. If the Owner does not remedy the failure within the reasonable time period, the Council may:
 - 4.1 Carry out such works or take such other steps as the Council reasonably determines to remedy the failure to comply with the requirements of the Approved Travel Plan; and
 - 4.2 Implement such alternative measures with the Council reasonably determines to achieve the aims of the Approved Travel Plan.

- 5 The reasonable costs of any works carried out or steps taken pursuant to paragraph 4 of this Schedule shall be payable by the Owner to the Council.
- 6 Not to Occupy cause suffer or permit to be Occupied any Dwellings unless and until 100% of the Travel Plan Contribution and Travel Plan Monitoring Fee has been paid to the Council.

Schedule 7

Car Club

The Owner covenants with the Council:

In this schedule the following definitions also apply:

“Car Club”	means a club that makes cars available for hire to members that is open to Occupiers which is operated by a company that is accredited by CoMoUK (formerly Carplus) whose registered office address is Kings House, Kings Street, Leeds LS1 2HH or its successor or an equivalent organisation being the umbrella organisation for the promotion of sustainable car use and which gives accreditation to car club operators that meet set standards for car club companies as a tool for organisations to use in assessing which clubs to support
“Car Club Contribution”	means the sum of £150,000.00 (One Hundred and Fifty Thousand Pounds) (Index Linked) towards the establishment and operation of Car Club within the Development.
“First Date”	means the earliest date upon which any Dwelling is first Occupied

- 1 Unless otherwise agreed with the Council, the Owner covenants with the Council:
- 1.1 Not to Commence the Development without first paying to the Council the Car Club Contribution.
- 1.2 to retain at their expense three car parking spaces as part of the Development which shall be used exclusively as Car Club spaces for a minimum period of 5 (Five) year from the First Date;
- 1.3 to publicise (annually) and provide details on how Occupiers of the Developments can join Car Club schemes within its marketing materials for the Developments for a minimum period of 5 (Five) years from the First Date of each relevant individual Dwelling;
- 1.4 to monitor at 6 (six) monthly intervals for a minimum period of 5 (Five) years from the First Date, the use of the Car Club cars and to provide the Council with the reports;
- 1.5 offer or procure that the first Occupier (of each and every Dwelling) who has a full driving licence and who agrees to abide by the Car Club's membership conditions and rules is offered free Car Club membership scheme for a minimum period of Five years commencing from their Occupation with such cost to be met by the Owner.

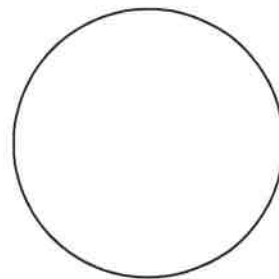
Schedule 8

The Council's Covenants

The Council covenants with the Owner:

- 1 to issue written confirmation on request for any sum paid to the Council under this Agreement;
- 2 not to apply the financial contributions for any purpose other than for the purposes set out in this Agreement within the Council's area;
- 3 where the agreement approval consent or any other expression of satisfaction is required from the Council that agreement approval consent or any other expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed;
- 4 Save as set out in paragraph 6, that it shall expend or contractually commit to the expenditure of any contributions paid to it under this Agreement within the period of 10 years from the payment of the relevant contribution;
- 5 Save as set out in paragraph 6, that in the event that the Council has not expended or committed to expend any of the contributions by that date, the Council shall within 40 (Forty) Working Days of receiving a written request from the owner to do so (such request not to be served before the expiration of the said 10 year period) confirm the amount of the relevant contribution(s) that have not been expended or contractually committed with relevant supporting documentation and repay that sum or the part of the relevant contribution(s) (for the avoidance of doubt, any contribution or part of any such contribution shall be Index Linked) that have not been certified to have been expended or contractually committed along with interest calculated with reference to the Index to the person or body who paid the contribution(s) and not their successors in title within 40 (Forty) Working Days of such confirmation; and
- 6 That in the event that the Council has not expended or committed to expend the Travel Plan Contribution within [six months] from the first Occupation of a Dwelling, the Council shall within 40 (Forty) Working Days of receiving a written request from the owner to do so (such request not to be served before the expiration of the said [six month] period) confirm the amount of the travel Plan Contribution that has not been expended or contractually committed with relevant supporting documentation and repay that sum or the part of the Travel Plan Contribution (for the avoidance of doubt, such contribution or part of shall be Index Linked) that have not been certified to have been expended or contractually committed along with interest calculated with reference to the index to the person or body who paid the Travel Plan Contribution and not either successors in title within 40 (forty) Working Days of such confirmation.

Executed as a deed (but not delivered until dated) by affixing the common seal of **West Berkshire District Council** in the presence of:



Signature

Print name

Job title

Executed as a deed (but not delivered until dated) by **Lochailort Newbury Ltd** acting by a director in the presence of a witness

Director

Print name

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

Occupation:

Appendix 1

Plan 1



NOTES

1. Contractors must check all dimensions on site. Only figured dimensions are to be worked from. Discrepancies must be reported to the Architect or Engineer before proceeding.
© This drawing is copyright.
2. Direct scaling off the drawing is permissible for planning purposes only.
3. Copyright Statement. Ordnance Survey © Crown Copyright 2014. All rights reserved. Licence number 100022412.

KEY

Application boundary.



REV	DESCRIPTION	DWG	CHK	DATE
<input checked="" type="checkbox"/>	PRELIMINARY	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>
<input type="checkbox"/>	CONSTRUCTION	<input type="checkbox"/>	AS BUILT	<input type="checkbox"/>
SCALE	1:1250 @ A3	DATE	JUN. 2023	
DRAWN	AT	CHK	JAL	
DRAWING NO.	19401/1060	REV		
TITLE	Eagle Quarter II, Newbury.			
DETAILS	Site Plan A			

LOCHAILORT

Woods Hardwick
Architecture Engineering Planning Surveying

BIRMINGHAM
BEDFORD : HEAD OFFICE
15-17 Godington Road
Bedford MK40 3JH
T: +44 (0) 1234 28882
ONLINE: mail@woods-hardwick.com | woods-hardwick.com

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