

(1) **READING FOODS LIMITED**

and

(2) **HSBC UK BANK PLC**

and

(3) **READING BOROUGH COUNCIL**

Agreement

in respect of land at
233 London Road Reading RG1 3NY
pursuant to Section 106 of the Town and Country Planning Act
1990 (and all other enabling powers)
(Planning application reference number 220678)

IKEN Reference: 023814

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Agreement

Dated

4th June .

202⁴₃^{MC}

Between:

- (1) **READING FOODS LIMITED** (company registration number 12164436) of 29 The Business Village, Wexham Road, Slough, United Kingdom, SL2 5HF (the **Owner**); and
- (2) **HSBC UK BANK PLC** (company registration number 09928412) of 1 Centenary Square, Birmingham, United Kingdom, B1 1HQ (the **Mortgagee**); and
- (3) **READING BOROUGH COUNCIL** whose address is at Civic Offices, Bridge Street, Reading RG1 2LU (the **Council**)

Background

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the borough of Reading in which the Application Land is situated.
- (B) The Owner is the registered proprietor of the freehold interest in the Application Land under HM Land Registry title number BK117986 and has an interest in the Application Land within the meaning of section 106(9)(b) of the 1990 Act.
- (C) The Mortgagee has the benefit of a legal charge dated 1 October 2021 which is registered at HM Land Registry under title number BK117986 and has an interest in the Application Land within the meaning of section 106(9)(b) of the 1990 Act.
- (D) The Parties are satisfied that the planning obligations contained in this Agreement are:
 - (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.

It is agreed as follows:

1 Definitions

- 1.1 The following expressions shall have the following meanings which for the avoidance of doubt shall apply to all parts of this Agreement:

1990 Act means the Town and Country Planning Act 1990;

Affordable Housing means housing accommodation to be provided with some degree of financial subsidy enabling it to be delivered for sale or rent at a price or on rent terms which are lower than the prevailing open market for similar housing within Reading and to be managed and or owned by a Registered Provider or Housing Association for the benefit of Eligible Persons;

Affordable Housing Contribution means the sum of TWENTY-FIVE THOUSAND ONE HUNDRED AND SEVENTY-FIVE POUNDS (£25,175.00) to be paid to the Council towards the provision of Affordable Housing within the Local Area;

Agreement means this deed of agreement;

Application means the application for the Planning Permission and given the reference number 220678;

Application Land means land at 233 London Road Reading RG1 3NY being land against which this Agreement may be enforced as shown edged in red on the plan appended at Schedule 1 to this Agreement;

Approval means the written approval on behalf of the Council from the Assistant Director of Planning, Transport and Public Protection Services to the Owner or such other officer of the Council who is from time to time responsible for dealing with and/or approving matters set out in this Agreement and **Approved** and **Approve** shall be construed accordingly;

Assistant Director of Planning, Transport and Public Protection Services means the Council's Assistant Director of Planning, Transport and Public Protection Services for the time being or such other officer as the Council may from time to time designate;

Benchmark Land Value means one hundred and ninety-six thousand five hundred and eighty pounds (£196,580.00);

Building means (as the context permits) any building that comprises part of the Development and **Buildings** shall be construed accordingly;

Build Costs mean the costs, expenses, liabilities and other sums reasonably and properly incurred or anticipated to be incurred by or on behalf of the Owner in connection with the acquisition, disposal, construction, marketing and management of the Development including without limitation the following:

- (a) all reasonable and relevant construction costs (to include any site remediation, demolition, stripping out and site clearance works);
- (b) stamp duty land tax and land registry fees;
- (c) 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;
- (d) any Community Infrastructure Levy (excluding, for the avoidance of any doubt, any surcharges and/or late payment interest) that is payable;
- (e) the sums paid to the Council pursuant to this Agreement (including legal fees incurred in connection with this Agreement) other than the Deferred Contribution;
- (f) finance costs at a rate of seven percent (7%);
- (g) any costs 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
- (h) 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;

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

Commencement means the carrying out of a material operation as defined in Section 56(4) of the 1990 Act but (for the purposes of this Agreement only) not including any works of removing any above ground materials (excluding buildings) from the Application Land, temporary landscaping, ground investigation, site survey works, construction of boundary fencing or hauling, decontamination, soil investigation and archaeological testing 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;

Community Infrastructure Levy means community infrastructure levy as defined in the CIL Regulations;

Contribution means each and every financial contribution (excluding the Council's legal fees and the Monitoring Fee) that is payable by the Owner to the Council in accordance with this Agreement;

Deemed Disposal means a deemed transfer of the freehold interest or grant of a leasehold interest in a Residential Unit or other revenue-generating interests within the Development 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;

Deferred Contribution means, in respect of a Viability Review pursuant to Schedule 5, that part (being 50%) of 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 of one hundred and one thousand five hundred pounds (£101,500.00);

Development means the development as set out in Schedule 2 to this Agreement;

Disposal Schedule means a schedule setting out:

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

in each case clearly identifying the value of discounts, incentives or allowances allowed by the Owner in respect of each such Residential Unit 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 estimated rents receivable capitalised using an appropriate commercial all-risks yield rate;

Due Date means the date when a Contribution or sum of money (or any part of it) is required to be paid to the Council in accordance with the terms of this Agreement;

Effective Date means the date of this Agreement;

Eligible Person means a person or household in Housing Need and/or unable to afford housing on the open market at prevailing open market values including those on incomes which are insufficient to enable them to afford housing on the open market and who are nominated by the Council from its housing needs register in accordance with the Council's allocation policy;

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;

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) the consideration received on each Transfer or Disposal of other revenue-generating elements of the Development (as the case may be);
- (d) in respect of the Transfer or Disposal of the Residential Units 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 Disposed without deduction for the property taken in part exchange;
- (e) in respect of the Transfer or Disposal 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;
- (f) any other income received by the Owner from any uses within the Development;
- (g) all non-repayable sums secured from or through third parties in relation to the Development including (without limitation) government relief, grants, incentives, public subsidy and/ or tax opportunities;

- (h) the value of any overage or other performance-related payment attributable to any Transfer or Disposal;
- (i) 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, Disposal and Deemed Disposal; and
- (j) 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 ALWAYS that all such sale proceeds, capital payments receipts and other income shall only be taken into account once when calculating the gross development value;

Head of Planning, Transport and Public Protection means the Council's Head of Planning, Transport and Public Protection for the time being or such other officer as the Council may from time to time designate;

Housing Association means a housing association within the meaning of section 1 of the Housing Associations Act 1985;

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 Local Area on the open market determined with regard to local incomes and local house prices;

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 the amount of each Contribution payable under this Agreement and any other sum referred to in this Agreement shall be increased by an amount equivalent to the increase in the Index from the Effective Date until the Due Date;

Local Area means the Council's administrative area;

Marketing means advertisement of and promotion of (where the context so admits):

- (a) land comprised in the Application Land; and/or
- (b) Buildings or parts of Buildings comprised in the Development in such locations and at such a price as would be appropriate and consistent with open market value and otherwise suitably exposed to the market to ensure that the potential occupiers/purchasers could be reasonably expected to be aware of the opportunity

and **Market** shall be construed accordingly;

Market Value means the estimated amount for which an interest in real property should be leased or sold (as the case may be) on the valuation date:

- (a) between a willing lessor/seller and a willing lessee/buyer on appropriate terms in an arm's length transaction;
- (b) after proper marketing for a reasonable period; and
- (c) where the parties had each acted knowledgeably, prudently and without compulsion;

Monitoring Fee means the sum of FOUR HUNDRED pounds (£400.00) as a contribution towards the Monitoring Officer's costs of monitoring the provisions of this Agreement;

Monitoring Officer means the Council's monitoring officer (within the Council's Directorate of Economic Growth and Neighbourhood Services) (or any Directorate replacing it) as designated by the Council to monitor the obligations set out in this Agreement;

Occupation means (as the context permits) beneficial occupation for the purposes permitted by the Planning Permission of any Building (or part of a Building) constructed on the Application Land within the Development PROVIDED THAT, for the avoidance of any doubt, occupation for the purposes of construction, fitting out and marketing shall not constitute Occupation (and **Occupy**, **Occupied** and **Occupier** shall be construed accordingly);

Owner's Profit means an amount equal to the sum of SIXTEEN percent (16%) of the estimated Gross Development Value of the Development;

Party means each party to this Agreement and its respective successors and those deriving title under it (and **Parties** shall be construed accordingly);

Planning Permission means planning permission for the Development to be granted pursuant to the Application;

Prescribed Period means the period commencing on the later of:

- (a) the Due Date; and
- (b) where payment of a Contribution is received by the Council after the Due Date, the date of actual receipt of the relevant payment,

and expiring at the end of ten (10) full financial years (ending 31 March) immediately following the end of either the financial year in which the Due Date falls in the case of (a) above or the financial year in which the actual payment is received by the in the case of (b) above;

Reasonable Endeavours means that (subject to the other terms of this Agreement) the Party under such an obligation will:

- a) be bound to attempt to fulfil the relevant obligation by the expenditure of such reasonable and proportionate effort and/or sums of money and the engagement of such professional or other advisors as in all the circumstances may be reasonable to expect PROVIDED THAT the Party will not be required to issue proceedings (including any appeal) in any court, public inquiry or other hearing; and
- b) keep proper records and evidence of such endeavours;

Registered Provider means an affordable housing provider as provided for in the Housing and Regeneration Act 2008;

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

Residential Unit means any residential dwelling in the Development (and **Residential Units** shall be construed accordingly);

Services means foul and surface water sewers, water, gas mains, electricity, telephone and any other cables, sewers, drains, soakaways, conduits, wires, gutters, downpipes, watercourses or pipes serving or intended to serve the Application Land including for the avoidance of doubt the Affordable Housing Units;

Supporting Evidence means the following:

- (a) for any costs actually incurred at the Trigger Date, receipted invoices or other evidence of payment or staged payment certified by the Owner's quantity surveyor or costs consultant or other professional (subject to such person expressly owing a duty of care to the Council);
- (b) for any costs yet to be incurred at the Trigger Date, 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 (subject to such person expressly owing a duty of care to the Council);
- (c) for sale proceeds and all other monies and/or income received at the Trigger Date, the Disposal Schedule together with certified copies of sale contracts or completion statements by the Owner's solicitor (subject to such solicitor expressly owing a duty of care to the Council); and
- (d) in relation to any Residential Unit or other revenue-generating element of the Development which is unsold and/or any element of the Development which remains vacant or not let at the Trigger Date, then an independently obtained independent 'Red Book' valuations of the Market Value of the relevant Residential Unit(s) and/or other revenue-generating element of the Development (as the case may be).

Surplus means the sum that equates to the Gross Development Value less:

- (a) the Build Costs as derived from the Updated Viability Appraisal; and
- (b) the Owner's Profit; and
- (c) the Benchmark Land Value;

Transfer means:

- (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);

Trigger Date means the date of first Occupation of any Residential Dwelling;

Updated Viability Appraisal means a viability appraisal in respect of the Development in order to assess whether there is a Surplus as at the Relevant Date to be used towards payment of a Deferred Contribution in accordance with the terms of this Agreement, and which shall be:

- (a) 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;

- (b) presented in 'Argus developer' format;
- (c) paid for in full (including the cost of any external advisors/consultants) by the Owner;

Working Days means any day (other than Saturdays Sundays or public holidays in England) when banks in London are open for business; and

2 Interpretation

- 2.1 Clause headings shall not affect the interpretation of this Agreement.
- 2.2 A person includes a natural person corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.
- 2.4 Unless the context otherwise requires words in the singular shall include the plural and in the plural shall include the singular.
- 2.5 Unless the context otherwise requires a reference to one gender shall include a reference to the other genders.
- 2.6 A reference to any Party shall include that Party's successors in title and assigns and personal representatives.
- 2.7 References in this Agreement to the Council shall include any successor to its functions as the local planning authority in relation to the Application Land and any body to which all or part of its functions may lawfully have been transferred.
- 2.8 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and an obligation on a person to do something includes an obligation to procure that thing to be done.
- 2.9 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.
- 2.10 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.11 Save as specified to the contrary any reference to Act of Parliament whether general or specific shall include any modification or re-enactment thereof for the time being in force and shall also include all instruments, orders, plans, regulations, by-laws and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 2.12 A reference to writing or written does not include faxes or e-mail.
- 2.13 References to Clauses, Plans, Schedules, Paragraphs and Appendices are to the Clauses, Plans, Schedules, Paragraphs and Appendices of this Agreement.

3 Legal Effect

- 3.1 This Agreement is made pursuant to:

- (a) section 106 of the 1990 Act;
- (b) section 1 of the Localism Act 2011;
- (c) section 111 of the Local Government Act 1972; and
- (d) all other enabling powers,

with an intent to bind the Owner's interest in the Application Land (and each and every part of it) subject to the provisions of Clauses 4 (conditionality), 5 (the Owner's obligations), 7.2 (lapse) and 7.5 (release).

3.2 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).

3.3 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.

4 Conditionality

4.1 Unless otherwise required in order to give legal effect to any provision in this Agreement, this Agreement is conditional upon:

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

save for Clause 7 which shall come into effect upon the Effective Date.

5 Owner's Obligations

5.1 The Owner covenants with the Council, so as to bind the entirety of its interest in the Application Land, to comply with the restrictions, covenants and requirements set out in Schedules 3 (triggers), 4 (affordable housing) and 5 (viability review) of this Agreement.

5.2 The Owner covenants with the Council:

- (a) not to Commence unless and until it has served a Commencement Notice; and
- (b) not to encumber nor deal with the Application Land (or any part of it) in any manner pursuant to which the Owner may be prevented from carrying out its covenants and obligations contained in this Agreement.

6 Council's Obligations

6.1 The Council covenants with the Owner to observe and perform the obligations on its part contained in Schedule 6 to this Agreement.

7 Agreements and Declarations

7.1 Fees

7.1.1 The Owner covenants with the Council to pay on or before the Effective Date:

- (a) the Council's reasonable legal costs and expenses incurred in the preparation, negotiation and completion of this Agreement; and

(b) the Monitoring Fee.

7.2 Lapse

7.2.1 The obligations in this Agreement shall cease to have effect (insofar only as they have not already been complied with) if the Planning Permission is quashed, revoked or modified (without the consent of the Owner) or is withdrawn or expires prior to Commencement of the Development.

7.3 Future Development

7.3.1 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Application Land in accordance with a planning permission (other than the Planning Permission) that is granted (whether or not on appeal) after the date of this Agreement.

7.4 Statutory Undertakers

7.4.1 This Agreement shall not be enforceable against any statutory undertakers (including their successors in title) that shall acquire an interest in the Application Land for the purpose of providing Services to or for the Development or neighbouring developments.

7.5 Release

7.5.1 The Owner shall upon parting:

- (a) with its interest in any part of the Application Land be released from all obligations and duties under the terms of this Agreement insofar as they relate to, or are binding on, that part of the Application Land; and
- (b) with the entirety of its interest in the Application Land be released from all liabilities whatsoever under the terms of this Agreement.

7.5.2 The Mortgagee shall upon redemption of the legal charge dated 1 October 2021:

- (a) be released from all obligations and duties under the terms of this Agreement insofar as they relate to, or are binding on, that part of the Application Land; and
- (b) be released from all liabilities under the terms of this Agreement.

7.5.3 The releases provided for in this Clause 7.5 shall not apply to any prior or existing breach of this Agreement as at the date of disposal.

7.6 Right of access

7.6.1 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Application Land at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

7.7 No waiver

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

7.8 No Fetter on Discretion

- 7.8.1 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.

7.9 Severance

- 7.9.1 Each clause, sub-clause, schedule or paragraph shall be separate, distinct and several from each other to the extent only that if any clause, sub-clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause, schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, sub-clause, schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause, schedule or paragraph contained in this Deed.

7.10 Indexation

- 7.10.1 The amount of each Contribution and any other sum payable under this Agreement shall be Index Linked.

7.11 Interest on unpaid monies

- 7.11.1 If any Contribution and/or other sum due under this Agreement is paid late the Owner shall pay to the Council interest at the rate of eight percent (4%) per annum above the base rate of the Bank of England for the time being in force on the sum of the Contribution due or (as the case may be) on any amount of that Contribution which may be outstanding from the date on which the Contribution (or the relevant part of it, as the case may be) is due to be paid in accordance with the terms of this Agreement up to the date of actual payment of the Contribution (or the relevant part of it, as the case may be).
- 7.11.2 Any interest paid or payable pursuant to Clause 7.11.1 above shall be deemed to be part of the Contribution or sum due to which such interest relates.

7.12 Payments to the Council

- 7.12.1 All Contributions and other sums due to the Council under the terms of this Agreement shall (unless otherwise notified in writing by the Council to the Owner) be paid to the Council by means of telegraphic transfer to the Council as follows:

Reading Borough Council

Sort Code: 30-91-31

Account Number: 00271502

Lloyds Bank plc 24 Broad Street Reading RG1 2BT

Account: Reading Borough Council quoting reference: 106/220678/023814 or other reference quoted by the Council in the relevant S106 Demand Notice issued in respect of the obligation,

and the Council will not alter the account details without giving formal notice to such effect in accordance with Clause 7.13.

7.12.2 No Contribution or other sum required under this Agreement (or part of it) shall be paid to the Council earlier than eight (8) weeks before the Due Date.

7.13 Notice

7.13.1 Any notice or other written communication to be served by one Party upon another pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered or recorded delivery post to the Party to be served at its address specified in Clause 7.13.2 or such other address as may from time to time be notified for the purpose by notice in writing by any Party to the other Party and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by a duly authorised signatory.

7.13.2 The address for any notice or other written communication is as follows:

(a) in respect of the Council

Civic Offices, Bridge Street, Reading RG1 2LU

(b) in respect of the Owner

29 The Business Village, Wexham Road, Slough, United Kingdom, SL2 5HF

(c) in respect of the Mortgagee

1 Centenary Square, Birmingham, United Kingdom, B1 1HQ

or such other address as has been notified to the other Party as set out in this Clause 7.13.

7.13.3 The Owner shall ensure that any notice or other written communication that is required to be served on the Partner Organisation pursuant to this Agreement shall be copied to the Council (at the address specified in Clause 7.13.2 above) at the same time.

7.14 Consents and Approvals

7.14.1 In this Agreement 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.

7.15 Dispute Resolution

7.15.1 In the event of any dispute arising between the Parties (which cannot be resolved by the Parties) in respect of this Agreement either Party may at any time require by notice in writing to the other Party an independent expert (the **Expert**) to resolve the dispute in accordance with the provisions of this Clause 7.15 and as follows:

- (a) in the case of a dispute regarding the interpretation or meaning of any provision in this Agreement to leading planning counsel to be agreed between the Parties, or failing agreement, to be appointed by the President for the time being of the Law Society;
- (b) in the case of a dispute regarding physical works or other technical matters referred to in the Schedules to a member of the Institution of Civil Engineers to be agreed between the Parties, or failing agreement, to be appointed by the President for the time being of such Institution; or

- (c) in the case of any other dispute regarding this Agreement to a member of the Royal Institution of Chartered Surveyors to be agreed between the Parties, or failing agreement, to be appointed by the President for the time being of such Institution.
- 7.15.2 The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to this Clause.
- 7.15.3 The Expert shall be appointed within one (1) month of an application being made by one of the Parties pursuant to Clause 7.15.1.
- 7.15.4 The Expert shall be entitled to invite written representations from each of the Parties.
- 7.15.5 The Expert shall act as an expert and not as an arbitrator.
- 7.15.6 The costs of the dispute shall be payable by the Parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the Parties.
- 7.15.7 The decision of the Expert shall be final and binding on the Parties save in the case of manifest and material error.
- 7.15.8 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practical timescales allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.
- 7.15.9 Nothing in Clauses 7.15.1 – 7.15.8 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Agreement.
- 7.16 **Future Section 73 Permission(s)**
- 7.16.1 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:
 - (a) the obligations in this Agreement shall (in addition to continuing to bind the Application Land in respect of the Planning Permission) relate to and bind the Application Land in respect of development pursuant to that Future S73 Permission(s); and
 - (b) the definitions of Application, Development and Planning Permission shall be construed to include reference to any application for that Future S73 Permission(s), the Future S73 Permission(s) granted pursuant to that application and the development permitted by that Future S73 Permission(s); and
 - (c) this Agreement shall be endorsed with the following words in respect of that 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 Application 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 general discretion of the Council in determining any application(s) under section 73 of the 1990 Act including a requirement for a new deed or a supplemental deed to be entered into pursuant to section 106 and/or section 106A of the 1990 Act before that application is determined by the Council.

7.17 Mortgagee

- 7.17.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the security of its charge over the Application Land shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall have no liability under this Agreement unless it takes possession of the Application Land in which case it shall be deemed to be a successor in title to the Owner.

7.18 Third Party Rights

- 7.18.1 Unless the right of enforcement is expressly granted and except in relation to:

- (a) any successor bodies of the Council; and
- (b) any successors in title of and those deriving title under the Owner,

it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 7.18.2 This Agreement may be rescinded or varied without the consent of a third party to whom an express right to enforce any of its terms has been provided.

7.19 Local Land Charge

- 7.19.1 This Agreement is and shall be registered as a local land charge by the Council.

7.20 Change of Ownership

- 7.21 Save for disposal of individual Residential Units and any disposal to a statutory undertaker/utility company the Owner shall provide the Council with written notice of any change in ownership of its interest in the Application Land before all the obligations under this Agreement have been discharged within ten (10) Working Days of any such change occurring PROVIDED THAT such written notice shall include details of the name and address of the current and new owner of such interest(s) together with details of that part of the Application Land to which each of their interests apply.

7.22 Jurisdiction

- 7.22.1 This Agreement is governed by and interpreted in accordance with the law of England.

7.23 Warranties

- 7.23.1 The Owner warrants that:

- (a) it has full power to enter into this Agreement and that no person (other than the Owner and the Mortgagee) has any legal or equitable interest in the Land;
- (b) no consent from any person is necessary to make the Agreement binding on the Land and the Owner and any estates and interests therein; and

- (c) the details referred to in the Recitals of this Agreement are complete and accurate.

In witness whereof the Parties have executed this Agreement as a deed the day and year first above written.

Schedule 1 – Plans and Drawings

Schedule 2 – the Development

Erection of additional floor, rear extensions and new separate building at rear to provide 6 residential units. Remodelling of shop unit. Provision of refuse and cycle spaces, landscaping and other associated structures following removal of storage buildings.

Schedule 3 – Triggers

1 Triggers

- 1.1 Subject to Paragraph 1.2 below, to provide the Council with no less than ten (10) Working Days' prior written notice of the following events:
 - (a) Commencement of the Development; and
 - (b) first Occupation.
- 1.2 If any of the events listed in Paragraph 1.1 above are to occur within ten (10) Working Days of the Effective Date, to provide the Council with prior written notice of that event as soon as possible but it is agreed that such notice does not need to be given ten (10) Working Days in advance.

Schedule 4 - Affordable Housing

1 Affordable Housing

- 1.1** Not to Occupy (or permit to be Occupied) any Residential Units unless and until the Affordable Housing Contribution has been paid to the Council in full.

Schedule 5 – Viability Review

1 Viability Review

- 1.1 No earlier than the Trigger Date and no later than five (5) Working Days after the Trigger Date, to submit an Updated Viability Appraisal and Supporting Evidence to the Council for Approval.
- 1.2 No later than twenty (20) Working Days after receipt of the Updated Viability Appraisal and Supporting Evidence pursuant to Paragraph 2.1 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.
- 1.3 To provide any further information that is required by the Council pursuant to Paragraph 2.2 above no later than ten (10) Working Days following notification from the Council under Paragraph 2.2 above PROVIDED THAT this process shall continue until the Council is satisfied that it has sufficient information properly to determine the Updated Viability Appraisal.
- 1.4 If the Council has not Approved the Updated Viability Appraisal within thirty (30) Working Days of its submission pursuant to Paragraph 2.1 above (or such longer period as is agreed in writing between the Owner and the Council), the Council shall provide the Owner with written details of a suitably qualified and experienced independent assessor to determine the Updated Viability Appraisal for the Owner's approval (such approval not to be unreasonably withheld or delayed) PROVIDED THAT, for the avoidance of any doubt, the Council shall not be required to do so where the Parties (acting reasonably) consider that it would be preferable to continue discussions with a view to Approving the Updated Viability Appraisal without recourse to an independent assessor.
- 1.5 If the Council and the Owner (each acting reasonably) are unable to agree the identity of the independent assessor within ten (10) Working Days of the Council's notification pursuant to Paragraph 2.4 above, then either Party may ask the President for the time being of the Royal Institution of Chartered Surveyors to appoint an independent assessor being a surveyor from a major firm of surveyors with not less than ten (10) years' relevant experience.
- 1.6 The terms of appointment for the assessor shall be in a form approved by the Owner and the Council and the Parties shall use Reasonable Endeavours to appoint the assessor on such terms within five (5) Working Days of their identity being agreed or determined.
- 1.7 The Owner and the Council shall provide the assessor with the Updated Viability Appraisal and Supporting Evidence together with any other information relevant to the assessor's determination.
- 1.8 The assessor shall be entitled to request from either Party (with a copy to the other Party) such further information and clarification as the assessor reasonably requires for the purposes of his/her determination.
- 1.9 The Parties shall use Reasonable Endeavours to provide the assessor with any such further information as soon as reasonably practicable and shall copy the other Party on any response to the assessor.
- 1.10 The assessor shall be appointed on the basis that within twenty (20) Working Days (or such longer period as may from time to time be agreed in writing between the

Owner and the Council) of receiving the Updated Viability Appraisal and Supporting Evidence and any further information, the assessor shall notify the Parties in writing of the outcome of his/her determination.

1.11 The assessor's determination shall be binding on the Parties save in the case of manifest and material error.

1.12 The Owner shall pay the Council's reasonable costs in the Approval of the Updated Viability Appraisal within 10 Working Days of the Council's written notice of those costs.

2 Viability Review – Payment of a Deferred Contribution

2.1 Where the Updated Viability Appraisal, as approved in writing by the Council or the independent assessor (as the case may be) pursuant to Paragraph 1 above, identifies a Surplus, the Owner shall pay the Deferred Contribution in accordance with this Paragraph 2.

2.2 The Owner shall not Occupy (or permit to be Occupied) any Residential Units unless and until the Deferred Contribution has been paid in full to the Council PROVIDED THAT the Owner shall not be obliged to provide more than the Deferred Contribution Cap (Index Linked).

Schedule 6 - Council's obligations

1 Planning Permission

To issue the Planning Permission within five (5) Working Days of the Effective Date.

2 Contributions

2.1 Not to use the Contributions (or any part of any of them) otherwise than for the purposes specified in this Agreement and for no other purposes unless otherwise agreed in writing by the Owner.

2.2 Following receipt of a written request from the person who paid the relevant Contribution, to re-pay to that person such Contribution (or part of that Contribution) which has not upon the expiration of the Prescribed Period been expended, committed, allocated and/or contracted to be expended together with interest on any balance then remaining unspent of the relevant Contribution (or part of that Contribution) at the Bank of England base rate for the time being in force such payment to be made within twenty-eight (28) days of receipt by the Council of the written request PROVIDED THAT:

(a) any such written request for repayment must be made within six (6) months of the expiration of the Prescribed Period; and

(b) the Council shall not be required to return any part of the Contribution if it does not receive such a request within six (6) months of expiration of the Prescribed Period.

2.3 If a request for repayment of any Contribution, as specified in paragraph 2.2 above, is not received in writing, any remaining Contribution (or part of the Contribution) including any interest on any balance then held by the Council shall be used by the Council for any other purpose identified for any other Contribution in this Agreement or for the benefit of the local area in the vicinity of the Development.

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

Michael J. Fuchs

Minute	See ODN
Originator	DA
Seal No.	141/24
Checked	

Executed as a Deed by)
READING FOODS LIMITED acting)
by a director:)

sign here:

Director

```
print name:
```

In the presence of:

Witness signature:

Witness sign here:

Witness name:

```
print name:
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Witness address:

Bartholomew Leach
Charsley Harrison LLP
Windsor House
Victoria Street
Windsor SL4 1EN

Witness occupation:

Executed as a Deed by
HSBC UK BANK PLC

acting by its attorney

[**Lisa Maria Rodgers**]
in the presence of:

)
)
)

sign here:



Attorney

print name:

Lisa Maria Rodgers

In the presence of:

Witness signature:

Witness sign here:



Witness name:

print name:

Glenn Paul Battersby

Witness address:

Grosvenor House
1 Wellington Street
SHEFFIELD
S1 4NB

Witness occupation:

Bank official