



[Forsters' comments 8.6.22](#)

dated **2024**

DRAFT WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

Welwyn Park Homes Limited
and
Welwyn Hatfield Borough Council
and
Hertfordshire County Council

**Planning Obligation by Deed of Agreement pursuant to
Section 106 of the Town and Country Planning Act 1990**

in relation to a planning application in respect of land at
Biopark, Broadwater Road, Welwyn Garden City, AL7 3AX

Trowers & Hamlins LLP
3 Bunhill Row
London
EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

1

[draft \(9\) dated 03-September-2024](#)

Contents

Commented [CC1]: Contents to be further updated in due course.

1	Definitions and interpretation	1
2	Legal basis	4
3	Conditionality	4
4	Miscellaneous	5
5	Obligations of the Owner	7
6	Covenants by the Council and the County	7
7	Waiver	9
8	Change in ownership	9
9	Interest	9
11	Value Added Tax	11
12	Dispute provisions	11
13	Planning consents granted pursuant to S73 of the Act	13
14	Future Mortgagee	13
15	Jurisdiction	14
16	Delivery	14
	Schedule 1 - Affordable Housing	15
	Schedule 2 - Financial Contributions to the County	21
	Schedule 3 – Financial Contributions to the Council	25
	Schedule 4 – Travel Plan	27
	Schedule 5 – Viability Reviews	29
	Schedule 6 – Open Space	30
	Schedule 7 – Car Park Management Plan	34
	Schedule 8 – Sustainable Drainage Systems	36
	Appendix 1 (Form of Notice) - Proforma Event Notification and Payment	38
	Appendix 2 - Plan	41
	Appendix 3 – Nominations Agreement	42
	Appendix 4 – Affordable Housing Plan	43
	Appendix 5 – Block Plan	44
	Appendix 6 – Open Space Land	45

Agreement

dated

Parties

- (1) **Welwyn Park Homes Limited** (company registration number 12070490) of 4 Hunting Gate, Hitchin, SG4 0TJ (the **Owner**);
- (2) **Welwyn Hatfield Borough Council** of Council Offices, The Campus, Welwyn Garden City, Hertfordshire (the **Council**); and
- (3) **Hertfordshire County Council** of County Hall, Pegs Lane, Hertford, Hertfordshire (the **County**).

Introduction

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Application Site is situated.
- (B) The County is also a local planning authority and the highway authority and the library authority and the education authority and the social services authority and the waste disposal authority and the fire and rescue authority for the area within which the Application Site is situated and as such is entitled to enforce the terms of this Agreement.
- (C) The Owner is the freehold owner of the whole of the Application Site.
- ~~(D)~~ The Application has been made to the Council for planning permission for the Development on the Application Site.
- ~~(E)~~ The Owner has appealed against the Council's refusal (by way of a decision notice dated []September 2021).
- ~~(F)~~ The parties acknowledge and agree that the parties are entering into this Agreement without prejudice to any submissions as part of the Appeal.
- ~~(G)~~ The Council and the County consider it expedient should Planning Permission be granted pursuant to the Application pursuant to the Appeal_ that provision should be made for regulating or facilitating the Development or use of the Application Site in the manner hereinafter appearing and the Council and the County consider that entering into this Agreement will be of benefit to the public.

~~(E)~~(H)

Agreed Terms

1 Definitions and interpretation

1.1 Definitions

For the purposes of this Agreement (including the Recitals and the Schedules) the following expressions shall have the following meanings in addition to the definitions set out in the Schedules hereto:

Act means the Town and Country Planning Act 1990 (as amended);

Appeal means the appeal against the refusal of the Application with reference [];

Application means the application for full planning permission submitted to the Council on 21 December 2020 and validated on 22 December 2020 for the Development and allocated reference number 6/2020/3420/MAJ;

Application Site means the land known as Biopark, Broadwater Road, Welwyn Garden City, AL7 3AX annexed hereto marked "Site Plan" being part of the land registered at the Land Registry under title numbers HD449848 and HD448196;

BCIS Index means the Building Cost Information Service All-in Tender Price Index published from time to time

Commencement Date means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site survey site clearance demolition works archaeological investigations for the purpose of assessing ground conditions preparation work remedial or remediation work in respect of any contamination or other adverse ground conditions diversion and laying or removal of services erection of any temporary means of enclosure including fences and hoardings the temporary display of site notices or advertisements and **Commencement** and **Commence** and **Commences** and **Commenced** shall mutatis mutandis be construed accordingly;

Development means the demolition of existing buildings and construction of 289 residential units (Use Class C3) and community hub (Use Class E/F.2), with public realm and open space, landscaping, access, associated car and cycle parking, refuse and recycling storage and supporting infrastructure as set out in the Application;

Dwelling means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and **Dwellings** shall be construed accordingly;

Head of Planning means Head of Planning of the Council and shall include their duly authorised agents and representatives or any successor;

Inspector means the inspector appointed by the Planning Inspectorate to determine the Appeal;

Interest means interest at 4% (four percent) above the base lending rate of Barclays Bank Plc from time to time;

Monitoring Fee means the payment of £5,000 (five thousand pounds) towards the Council's reasonable and proper administrative costs of monitoring compliance with the provisions of this Agreement;

Notice of Commencement means the written notice the form of which is contained at Appendix 1 of this Agreement advising of the proposed Commencement Date;

Occupation means occupation of the land or buildings for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction

fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **Occupied** and **Occupy** shall be construed accordingly;

Parties means the parties to this Agreement;

Plan means the plan attached to this Agreement at Appendix 2;

Planning Permission means the planning permission to be granted by the Council pursuant to the Application;

Practical Completion means issue of a certificate of practical completion of the Development by the Owner's architect or surveyor or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect or surveyor confirming that the Development has been constructed and is available for Occupation;

PUBSEC Index means the Tender Price Index of the Public Sector Non Housing All-in Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors (or any successor organisation) and specifically the series entitled "Extension of Public Sector Tender Price Index of Public Sector Building Non Housing" (or equivalent replacement index);

RPI Index means the measure of change in the prices charged for goods and services bought for consumption in the UK produced by the Office for National Statistics;

Schedules means Schedules 1 to 8 contained in this Agreement;

SPONS Index means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by Her Majesty's Stationery Office as collated into a single index known as the SPONS Construction Civil Engineering Cost Index; and

Working Days means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday and **Working Day** shall be construed accordingly.

Commented [CC2]: To be updated if deletion of schedules 5 and 6 is agreed.

Commented [RW3R2]: Deletion of these schedules is not agreed

1.2 Interpretation

- 1.2.1 Where in this Agreement reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Agreement.
- 1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner.
- 1.2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

- 1.2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.
- 1.2.6 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County the successors to their respective statutory functions.
- 1.2.7 The headings and contents list are for reference only and shall not affect construction.
- 1.2.8 The words **including** and **include** shall be deemed to be followed by the words **without limitation**.
- 1.2.9 References in this Agreement to **development** shall have the meaning given to it by Section 55 of the Act.

2 Legal basis

- 2.1 This Agreement is made pursuant to Section 106 of the Act and to the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and the County against the Owner in respect of the Application Site.
- 2.2 To the extent that any of the 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 all other enabling powers.
- 2.3 The Owner enters into the obligations (for itself and its successors in title and persons deriving title from the Owner) with the Council and the County with the intent that the obligations contained in this Agreement shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Application Site or any part thereof.

3 Conditionality

3.1 This Agreement shall come into immediate effect on the date of this Agreement save for the obligations in the Schedules which are conditional upon the grant of the Planning Permission and the Commencement of the Development save further for those obligations expressed to be complied with prior to Commencement.

3.2 The planning obligations contained within this Agreement are conditional upon the Inspector finding that such planning obligations are:

- a) Necessary to make the Development acceptable in planning terms; and
- b) Directly related to the Development; and
- c) Fairly and reasonably related in scale and kind to the Development.

If the Inspector concludes that any planning obligation within this Deed is incompatible with one or more of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (or any successor tests for planning obligations) and/or the National Planning Policy Framework and accordingly attaches no weight to the obligation in determining the Appeal then the relevant obligation shall, from the date of the Inspector's decision letter, cease to have effect and the Owner shall be under no obligation to comply with the obligation but such cancellation shall not affect the validity of enforceability of the remaining provisions of this Deed which shall remain in full force and effect.

Formatted: Body 2, No bullets or numbering

3.3 For the avoidance of doubt, none of the planning obligations in this Agreement will be binding if:

3.3.1 The Inspector dismisses the Appeal such that the Planning Permission is not granted; or

3.3.2 The Inspector finds that none of the planning obligations contained within this Agreement satisfy the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (or any successor tests for planning obligations) and/or the National Planning Policy Framework or that the obligations are otherwise not required, and accordingly attaches no weight to the obligations in determining the Appeal.

Formatted: Indent: Left: 3 cm

4 **Miscellaneous**

- 4.1 The Owner hereby warrants that it is the owner of the freehold of the Application Site and that no other party has a material interest in the Application Site.
- 4.2 No provisions of this Agreement shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to enforce any of the terms and provisions of this Agreement to any person who is not a party or successor in title or statutory successor to a party hereto.
- 4.3 This Agreement shall be registrable as a Local Land Charge by the Council.
- 4.4 Any notice to the parties hereto under this Agreement shall be deemed to be sufficiently served if delivered personally or by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

In respect of the Owner at:

Mark Quinn
Welwyn Park Homes Limited
4 Hunting Gate
Hitchin
SG4 0TJ

In respect of the Council at:

The Head of Planning
Welwyn Hatfield Borough Council

Council Offices
The Campus
Welwyn Garden City
Herts AL8 6AE
Ref: 6/2020/3420/MAJ

In respect of the County at:

The Chief Legal Officer
Hertfordshire County Council
County Hall
Pegs Lane
Hertford
Herts SG13 8DE
Ref: 16409 6/2020/3420/MAJ

- 4.5 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 or enforceability of the remaining provisions of this Agreement.
- 4.6 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to the Commencement Date.
- 4.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their entire interest in the Application Site save that they will remain liable for any breaches of this Agreement occurring before that date.
- 4.8 Any agreement obligation covenant or undertaking contained herein by the Owner which comprise more than one person or entity shall be joint and several. Where any agreement obligation covenant or undertaking is made with or undertaken towards any of the parties to this Agreement which comprise more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.9 No compensation shall be payable by the Council or the County to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the successors in title to the Owner and at no cost to the Council or the County.
- 4.10 The Owner grants an irrevocable licence to the Council and/or the County and/or any person duly authorised or instructed by them to enter upon any part of the Application Site at any reasonable time subject to providing at least 48 (forty-eight) hours' written notice to the Owner (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and/or of the Planning Permission are or have been complied with subject to complying with all health and safety requirements required by the Owner.
- 4.11 Nothing in this Agreement shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County of any statutory powers exercisable by them respectively under the Act or under any other act or authority.

Commented [BK4]: The County Council does not accept a release of part of the site, s106(4) provides that 'The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land.' That is a *may* not a *must*. The County Council's position is that in order to guarantee the performance of the obligations there must be a party against which the obligations can be enforced against. If the landowner wishes to include a clause allowing for its liability for breaches to cease once it has parted with its entire interest in the site, then individual occupiers must remain liable. If individual occupiers are to be excluded then the landowner must remain liable until all the obligations in the deed are satisfied. Of course once all the obligations have been satisfied the deed may be discharged and liability will cease at that point.

Commented [CC5R4]: The obligations will still be enforceable against the successor in title to the freehold of the site, save for any antecedent breach which the former owner would still be liable for.

However, the obligations cannot be binding on individual owner occupiers (i.e. leaseholders).

These two clauses are not mutually exclusive. There will still be a freehold owner against which the obligations can be enforced. This should not be a controversial point.

Commented [VDC6R4]: The County accepted this wording on the Bullens Green appeal s106. This is a flatted development – there will always be a freehold owner in addition to the individual owners and occupiers

4.12 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council and the County in the exercise of their functions in any capacity and the rights powers duties and obligations of the Council and the County under private public or subordinate legislation may be effectively exercised as if neither were a party to this Agreement (and in particular neither shall be precluded from entering into any agreement under the Act and/or under any other act or authority with any other party and shall not be deemed to be in breach of this Agreement by so doing).

4.13 Save for Schedule 1 and the restrictions on Occupation and use set out herein, the obligations in favour of the Council and the County shall not be enforceable against an individual owner occupier of the Development or their mortgagee or chargee.

5 Obligations of the Owner

5.1 The Owner so as to bind the Application Site covenants with the Council and the County:

- 5.1.1 to comply with its obligations set out in this Agreement and the Schedules to this Agreement;
- 5.1.2 to pay to the Council the Monitoring Fee on ~~completion of this Agreement~~ grant of the Planning Permission;
- 5.1.3 to pay to the Council and the County on completion of this Agreement their respective reasonable legal costs and disbursements of and incidental to the negotiation preparation and execution of this Agreement;
- 5.1.4 to provide the Notice of Commencement to the Council and the County no later than 20 (twenty) Working Days prior to the Commencement Date using the pro-forma set out in Appendix 1 hereto;
- 5.1.5 to give the County and the Council no less than 20 (twenty) Working Days' notice of the first Occupation of the Development such notice to be in writing using the pro-forma set out in Appendix 1 hereto; and
- 5.1.6 to give the County and the Council no less than 5 (five) Working Days' notice of the Practical Completion of the Development such notice to be in writing using the pro-forma set out in Appendix 1 hereto.

6 Covenants by the Council and the County

6.1 The County covenants with the Owner:

- 6.1.1 following receipt of a written request from the Owner, to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed;
- 6.1.2 where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the County or any officer of County is required for any purpose under or in connection with the terms of this Agreement such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed;

Commented [BK7]: Clause 4.7 can be included if this additional wording is added to 4.13

Commented [CC8R7]: Additional wording deleted. The obligations cannot be binding on individual occupiers. See above comment.

Commented [RW9R8]: Not agreed, individual leaseholders etc need to be bound by the restrictions on use etc

- 6.1.3 to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid;
 - 6.1.4 at any time prior to the expiry of the expenditure period for any contribution pursuant to clause 6.2 below the Owner shall be entitled to request from the County and the County shall provide such evidence as may reasonably be required to account for the County's expenditure and use of the relevant contribution as at the date of the Owner's request and in each instance such evidence shall be disclosed to the Owner within 20 (twenty) Working Days.
- 6.2 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Agreement the County covenants and undertakes, to apply such payments or financial contributions only for the purposes specified in this Agreement provided that the County will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Owner and for the avoidance of doubt the County may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Agreement and that it shall refund any portion of the County Contributions and the Travel Plan Evaluation and Support Contribution which has not been expended or allocated for expenditure in accordance with the provisions of this Agreement within 10 (ten years) of the date of receipt by the County of the notice of the Practical Completion of the Development in accordance with clause 5.1.6 hereof together with any interest accrued.
- 6.3 The Council covenants with the Owner:
- 6.3.1 following receipt of a written request from the Owner, to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed;
 - 6.3.2 where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the Council or any officer of Council is required for any purpose under or in connection with the terms of this Agreement such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed;
 - 6.3.3 to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid;
 - 6.3.4 at any time prior to the expiry of the expenditure period for any contribution pursuant to paragraph 6.4 below the Owner shall be entitled to request from the Council and the Council shall provide such evidence as may reasonably be required to account for the County's expenditure and use of the relevant contribution as at the date of the Owner's request and in each instance such evidence shall be disclosed to the Owner within 20 (twenty) Working Days.
- 6.4 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Agreement the Council covenants and undertakes, to apply such payments or financial contributions only for the purposes specified in this Agreement provided that the Council will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Owner and for the avoidance of doubt the Council may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Agreement and that it shall refund any

portion of the Council Contributions and the [Late Stage Review Contribution (if payable pursuant to Schedule [5] of this Agreement) which has not been expended or allocated for expenditure in accordance with the provisions of this Agreement within 10 (ten) years of the date of receipt by the Council of the notice of the Practical Completion of the Development in accordance with clause 5.1.6 hereof together with any interest accrued.

7 Waiver

No waiver (whether expressed or implied) by the Council (or the County) 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 (or the County) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 Change in ownership

Otherwise than in relation to transfers to utility companies and the sale, lease, transfer, mortgage or other disposal of an individual Dwelling the Owner shall give to the Council and the County within 1 (one) month of the Owner disposing of any part of the Application Site written notice of the name and address of the person to whom the Application Site or any part has been transferred.

9 Interest

If any payment by the Owner due under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment.

10 Indexation

10.1 the Secondary Education Contribution, the Childcare Services Contribution, the Library Services Contribution, and the Youth Services Contribution, shall each be index-linked to increases in the PUBSEC Index by the application of the formula $A = B \times (C \div D)$ where:

- A = is the total amount to be paid;
- B = is the principal sum stated in this Agreement;
- C = is the PUBSEC Index for the date upon which interim payment is actually due;
- D = is the figure of 175; and
- C÷D= is equal to or greater than 1

10.2 The Primary Education Contribution shall each be index-linked to increases in the BCIS Index by the application of the formula $A = B \times (C \div D)$ where:

- A = is the total amount to be paid;
- B = is the principal sum stated in this Agreement;
- C = is the BCIS Index for the date upon which the interim payment is actually due;

Commented [CC10]: We understand the HCC Guide to Developer Contributions published earlier this year states that non-highways/transport related contributions will be subject to BCIS (i.e. not PUBSEC). Please clarify.

D = is the figure shown in the BCIS Index for the period immediately prior to the 1Q2020

$C \div D =$ is equal to or greater than 1

10.3 The Waste Services Contribution shall be index-linked to increases in the BCIS Index by the application of the formula $A = B \times (C \div D)$ where:

A = is the total amount to be paid;

B = is the principal sum stated in this Agreement;

C = is the BCIS Index for the date upon which the interim payment is actually due;

D = is the figure shown in the BCIS Index for the period immediately prior to the 3Q2020

$C \div D =$ is equal to or greater than 1

10.4 An interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within 10 (ten) Working Days of written demand by the County or the payer of the interim payment (as the case may be) once the relevant indices have been finalised.

10.5 The Travel Plan Evaluation and Support Contribution shall be index linked by increases in the RPI Index from 1 May 2014 to the date on which the Travel Plan Evaluation and Support Contribution is paid.

10.6 The Sustainable Transport Contribution shall be index linked by increases in the SPONS Index from 1 March 2020 to the date on which the Sustainable Transport Contribution is paid.

10.7 The Outdoor Sports Facilities Contribution and the Indoor Sports Facilities Contribution shall be index linked to increases in the PUBSEC Index by the application of the formula $A = B \times (C \div D)$ where:

A = is the total amount to be paid;

B = is the principal sum stated in this Agreement;

C = is the PUBSEC Index for the date upon which the payment is actually due and;

D = is the figure at June 2020

$C \div D =$ is equal to or greater than 1

10.8 The General Medical Services Contribution, the Mental Health Services Contribution and the Community Healthcare Contribution shall be index linked to increases in the PUBSEC Index by the application of the formula $A = B \times (C \div D)$ where:

A is the total amount to be paid;

B is the principal sum stated in this Agreement;

C is the PUBSEC Index for the date upon which the payment is actually paid and;

D is the PUBSEC Index figure at December 2020

$C \div D$ is equal to or greater than 1

10.9 The Waste and Recycling Contribution shall be index linked to increases in the PUBSEC Index by the application of the formula $A = B \times (C \div D)$ where:

A = is the total amount to be paid;

B = is the principal sum stated in this Agreement;

C = is the PUBSEC Index for the date upon which the payment is actually due and;

D = is the figure of 178

$C \div D =$ is equal to or greater than 1

10.10 Indexing of those contributions referred to in clauses 10.7 to 10.9 (inclusive) shall be calculated using the latest firm published (not provisional or forecast) value available for the relevant index at the date of calculation.

11 Value Added Tax

All contributions paid in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable. The Owner shall not be obliged to make any contribution towards the value added tax payable by the Council or the County in respect of any works to be undertaken by the Council or the County insofar as and to the extent that the amount of such VAT is (by way of set-off or otherwise) recoverable by or reimbursable to the Council or the County.

12 Dispute provisions

12.1 One party may by serving written notice on all the other parties (the **Notice**) require a dispute to be referred to an expert for determination.

12.2 The Notice must specify:

12.2.1 the nature, basis and brief description of the dispute;

12.2.2 the clause or paragraph of a schedule or appendix pursuant to which the dispute has arisen; and

12.2.3 the proposed expert.

12.3 The expert may be agreed upon by the Parties and in the absence of such agreement within 1 (one) calendar month of the date that the notice is issued pursuant to clause 12.1 either Party may request that the following nominate the expert at their joint expense:

- 12.3.1 if such dispute relates to matters concerning the construction, interpretation and/or the application of this Agreement, the Chairman of the Bar Council to nominate the expert;
- 12.3.2 if such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the expert;
- 12.3.3 if such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the expert;
- 12.3.4 if such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the expert;
- 12.3.5 if such dispute relates to Affordable Housing the expert shall be nominated by the President of the Royal Town Planning Institute; and
- 12.3.6 in all other cases, the President of the Law Society to nominate the expert provided that if a dispute relates to a matter falling within two or more of sub-clauses 12.3.1 to 12.3.5 the President of the Law Society may nominate such person or persons falling within the description of sub-clauses 12.3.1 to 12.3.5 as he thinks appropriate including joint experts.
- 12.4 If an expert nominated or appointed pursuant to clause 12.3 shall die or decline to act another expert may be appointed in his place in accordance with the provisions of clause 12.3.
- 12.5 The expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 (twenty) Working Days from the date of the notice of his appointment which is served on the parties pursuant to clause 12.3
- 12.6 Notice in writing of the appointment of an expert pursuant to this clause 12.3 shall be given by the expert to the Parties and he shall invite each of the Parties to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further 5 (five) Working Days in respect of any such submission and material.
- 12.7 The expert shall act as an expert and not as an arbitrator. He shall consider any written representation submitted to him within the period specified in clause 12.6 and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
- 12.8 The expert shall give notice of his decision in writing and his decision will (in the absence of manifest error) be final and binding on the Parties hereto.
- 12.9 If for any reason the expert fails to make a decision and give notice thereof in accordance with clause 12.5 the Party or Parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).

- 12.10 The expert's costs shall be in the expert's award or in the event that he makes no determination, such costs will be borne by the parties to the dispute in equal shares.
- 12.11 Nothing in this clause 12 shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Agreement.
- 12.12 For the avoidance of doubt references to 'party' or 'parties' in this clause 12 exclude the County and the County shall not be required to submit to or be bound by the provisions of Clauses 12.1 – 12.11.

13 Planning consents granted pursuant to S73 of the Act

13.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the Act (as amended) and unless otherwise agreed between the Parties, with effect from the date that the any new planning permission is granted pursuant to Section 73 of the Act (as amended):

13.1.1 the obligations in this Agreement shall (in addition to continuing to bind the Application Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Application Site granted pursuant to Section 73 of the Act and the Application Site itself without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to Section 106 of the Act;

13.1.2 the definitions of Application, Development and Planning Permission in this Agreement shall be construed to include references to any applications under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

13.1.3 this Agreement shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Agreement relate to and bind the Application Site in respect of which a new planning permission referenced [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

provided that nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Agreement and required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the Act and **provided further that** to the extent that any of the obligations in this Agreement have already been discharged at the date that any new planning permission is granted under Section 73 of the Act they shall remain discharged for the purposes of that new planning permission.

14 Future Mortgagee

A mortgagee or chargee with a charge over the Application Site or part of the Application Site created after the date of this Agreement shall have no liability under this Agreement unless it takes possession of the Application Site of part thereof or it becomes a

Commented [CC11]: From our experience, this clause is becoming a standard requirement of future chargees.

Commented [RW12R11]: Any mortgagee taking possession must be liable to remedying any prior breach.

mortgagee or chargee in possession in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

15 **Jurisdiction**

This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

16 **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 on the day and year first before written.

Schedule 1

Affordable Housing

1 In this Schedule 1, the following expressions shall have the following meanings:

Affordable Housing means Shared Ownership Housing which is available to persons who have Local Housing Need;

Affordable Housing Scheme means a scheme which specifies in relation to the whole of the Application Site:

~~(a) the Agreed Mix;~~

~~(b) the location and distribution of the Affordable Housing within the Application Site ensuring that the Affordable Housing Units are not segregated from the Market Housing;~~

~~(c)~~(a) details of how the proposed design of the Affordable Housing will ensure that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from the market housing of similar size within the Development; and

~~(d)~~(b) the form of Shared Ownership Lease to be used for any Disposals of the Shared Ownership Housing (if applicable),

and which may be amended from time to time with the written approval of the Council;

Affordable Housing Units means at least 29 Dwellings identified pursuant to the plan attached at Appendix 4 of this Agreement to be constructed on the Application Site pursuant to the Planning Permission and provided as Affordable Housing in accordance with the Affordable Housing Scheme approved by the Council;

Commented [IPA13]: The Plan is approved

Agreed Mix means ~~subject to and in accordance with paragraph 2.3 of this Schedule, the number size tenure and mix of Affordable Housing Units approved by the Council in writing and which shall be determined having regard to the identified housing needs within the Council's administrative area~~ areas set out in paragraph 2.3;

Completed means constructed and fitted out ready for Occupation;

Disposal means sale, transfer, option, gift exchange, declaration of trust, assignment, lease and including a contract for any such disposal and **Disposals, Dispose** and **Disposed of** shall be construed accordingly;

Eligible Household(s) means a person or persons who are in Local Housing Need and who are nominated by the Council ~~from its Housing Needs Register~~ in accordance with the Council's Allocation Policy through its Choice Based Lettings (CBL);

Commented [VDC14]: Does this still apply to shared ownership units?

Homes England means Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part 2 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) or any successor organisation;

Household means any person or persons who are living together as a single household;

Housing Needs Register means the register maintained by the Council or its nominee for Eligible Households;

Local Housing Need means

(a) ~~Households who are in need of residential accommodation suitable for their needs as their sole or principal home otherwise unable to obtain such suitable accommodation within the administrative area of the Council by reason of a lack of financial resources and whom it is reasonable to live in the locality or persons for the time being registered on the Council's maintained housing register and/or other housing register maintained for the purpose of identifying Local Housing Need in accordance with the policy of the Council; and~~

(a) ~~in the event that there shall be no such persons ready willing and able to occupy an Affordable Housing Unit at the material time then a Household who is assessed by a Registered Provider of Social Housing or the Council to be in genuine and urgent housing need; the Household income and savings should be appropriate to purchase an initial []% equity share in the Affordable Housing Unit offered by the RPSH;~~

~~that the Affordable Housing Unit should be of a size suitable to the Household in accordance with Welwyn Hatfield Community Housing Trust's Housing Allocation Policy;~~

~~(b) that the Household has a local connection;~~

Market Dwelling means a Dwelling that is not an Affordable Housing Unit and "Market Dwellings" and "Market Housing" shall be construed accordingly;

Market Value means the price at which the whole interest in the Affordable Housing Unit would be expected to command on the open market if sold by a willing seller to a willing purchaser for residential purposes free of the restrictions and obligations contained in this Agreement;

Nominations Agreement means an agreement in the form appended at Appendix 3 with such amendments as may be reasonably agreed between the Council and the relevant RPSH;

Registered Provider of Social Housing and **RPSH** both mean a registered provider of social housing within the meaning of Section 80(2) of Part 2 of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with the Regulator and as approved by the Council or other competent authority pursuant to the Housing and Regeneration Act 2008 (including for the avoidance of doubt the Council) or any other body who may lawfully provide or fund Affordable Housing from time to time and as approved by the Council;

Regulator means Homes England or the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future

Commented [VDC15]: What does this mean? Text taken from the Council's draft noms agreement

Formatted: Body 4, No bullets or numbering

Formatted: Font: Not Bold

Commented [VDC16]: I'm awaiting instructions on the noms agreement and the principle around the Council having noms rights for shared ownership units.

authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Retained Equity means the proportion of the Market Value in a Shared Ownership Housing Unit represented by such share of unsold equity;

Serviced Condition means in relation to the land to be used for Affordable Housing the remediation of the land to a standard fit for its end use and the provision of roads, sewers, gas, wheelchair, electricity and telecommunications to the boundary of the said land in accordance with a scheme that the Owner shall submit to the Council for its approval.

Shared Ownership Housing means a form of tenure granted by lease by the RPSH to be disposed pursuant to shared ownership arrangements within the meaning of Section 70(4) of the Housing and Regeneration Act 2008 whereby a purchaser is able to purchase a share of the equity in an Affordable Housing Unit at a minimum of 25% and a maximum of 75% initially (at the option of the buyer) and pay an annual rent of up to 2.75% on the Retained Equity with no limitation in the aggregate equity that can be subsequently acquired by the lessee and **Shared Ownership Housing Unit(s)** and **Shared Ownership Lease** shall be interpreted accordingly;

Staircasing means the purchase by the Owner of additional equity in a Shared Ownership Unit; and

Transfer means the transfer of the freehold or grant of a lease for a term of at least 125 years unless otherwise agreed in writing with the Council and **Transferred** shall be construed accordingly

2 **Affordable Housing provisions**

The Owner covenants as follows:

- 2.1 The Affordable Housing Units shall not be used or Occupied or Disposed of other than as Affordable Housing in perpetuity and in accordance with the approved Affordable Housing Scheme and the requirements of this Schedule.
- 2.2 29 (twenty-nine) (equating to 10%) of the Dwellings to be permitted by the Planning Permission shall be constructed and retained as Affordable Housing Units in accordance with the plan at **Appendix 4** of this Agreement.
- 2.3 The Affordable Housing Units shall comprise:
 - 2.3.1 10 x one-bedroom Dwellings;
 - 2.3.2 13 x two-bedroom Dwellings; and
 - 2.3.3 6 x three-bedroom Dwellings.
- 2.4 To submit the Affordable Housing Scheme to the Council for approval prior to Commencement of Development and provided further that no Development shall Commence until the Affordable Housing Scheme has been submitted to and approved by the Council such approval not to be unreasonably withheld and in any event a response provided to the Owner within 30 (thirty) Working Days of receipt of the Affordable Housing Scheme, and thereafter the Owner shall ensure that the Affordable Housing Units are

retained and Occupied in accordance with the approved Affordable Housing Scheme in perpetuity.

3 **Timing of Occupation of Affordable Housing**

The Owner covenants that not more than 60% (sixty per cent) of the Market Dwellings shall be Occupied until:

- 3.1 all the Affordable Housing Units have been Completed in accordance with the Planning Permission, this schedule and the Affordable Housing Scheme and made ready for beneficial Occupation and use; and
- 3.2 all of the Affordable Housing Units have been Transferred to a Registered Provider of Social Housing in accordance with the Affordable Housing Scheme and the terms set out in this Schedule.

4 **Disposal of Affordable Housing to RPSH**

The Owner covenants that prior to Occupation of more than 60% (sixty per cent) of the Market Dwellings, the Affordable Housing Units shall be Transferred to the RPSH in accordance with this Agreement and on terms that accord with the Homes England funding requirements current at the date of ~~the construction of the Affordable Housing Units~~grant of the Planning Permission.

5 **Disposal mechanism for Affordable Housing Units Being Transferred to an RPSH**

The Owner covenants that not less than 12 (twelve) months prior to the anticipated Completion of the first Affordable Housing Unit to commence negotiation for the Transfer of the Affordable Housing Units to a RPSHs the identity of whom has been approved in writing by the Council and to give the Council notice of such commencement of negotiation forthwith.

6 **Design and Construction of the Affordable Housing**

The Owner covenants that the Affordable Housing Units shall be constructed and Completed in accordance with compulsory requirements of Building Regulations 2010 (as amended) and any requirements by Homes England or the Regulator ~~from time to time~~in place as at the date of this Agreement and in the event of any conflict between the detail shown on the approved plans of the Planning Permission and these requirements, the former shall take precedence.

7 **Terms of Affordable Housing transfer**

- 7.1 The Owner covenants that where any Affordable Housing Units are Transferred to a RPSH, it shall be:
 - 7.1.1 with vacant possession;
 - 7.1.2 on such terms as may be agreed between the Owner and the RPSH concerned;

7.1.3 shall contain provisions that the grant of rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units; and

7.1.4 in a Serviced Condition.

7.2 The terms of any Transfer of the Affordable Housing Units to an RPSH shall (unless the RPSH is the Council) impose a requirement on the RPSH to enter into the Nominations Agreement in respect of the said Affordable Housing Units in respect of the first sale, transfer, lease or mortgage in respect of each Affordable Housing Unit only that are the subject of the Transfer unless otherwise agreed in writing by the Council.

8 Occupation of the Affordable Housing

8.1 Subject to paragraph 8.2 below the Owner shall not permit or otherwise allow any of the Affordable Housing Units to be Occupied otherwise than:

8.1.1 as the sole private residence of the Occupier;

8.1.2 by an Eligible Household at the time of the commencement of Occupation of the Affordable Housing Unit; and

8.1.3 unless the RPSH is the Council, in accordance with the Council's Nominations Agreement to be entered into by the Council and the Registered Provider RPSH.

8.2 The Affordable Housing Units shall not be let or occupied other than in accordance with the Affordable Housing Scheme in perpetuity.

8.3 The initial Disposal of each Shared Ownership Housing Unit shall include the following terms:

8.3.1 The Disposal shall not involve the sale of an equity stake of less than 25% or more than 75%; and

8.3.2 The rent payable under the Shared Ownership Lease shall not amount to more than 2.75% of the Market Value of the unsold equity of the relevant Shared Ownership Housing Unit.

9 RPSH Mortgagee Disposal

9.1 The affordable housing provisions in Schedule 1 of this Agreement shall not be binding on a mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver **provided that**:

9.1.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less

than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- 9.1.2 if such disposal has not completed within the 3 (three) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.

9.2 The provisions of this Schedule shall:

9.2.1 cease to apply to any part or parts of the property which are disposed of in accordance with paragraph 9.1.2;

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

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

9.2.4 cease to apply to any Shared Ownership Housing Unit where the tenant has Staircased up to 100% in accordance with the terms of such Shared Ownership Lease.

Commented [CC17]: Definition should be provided.

Commented [RW18R17]: To follow

Commented [VDC19R17]: Applicable?

10 Proceeds of Sale Arising from Sale of Affordable Housing

10.1 The RPSH shall use reasonable endeavours to utilise any monies which arise from the sale of any Affordable Housing Unit following the exercise of:

10.1.1 a tenant's right to buy; or

10.1.2 a tenant's right to acquire (including any share of their Affordable Housing Unit); or

10.1.3 upon the sale of a share in each Shared Ownership Housing Dwelling following the exercise of Staircasing rights;

for other Affordable Housing projects within the Council's administrative area **provided that** the RPSH's primary obligation in relation to the use of any such funds shall be to satisfy its obligations to any mortgagee or chargee of the Affordable Housing Unit which shall always take priority.

Schedule 2

Financial Contributions to the County

Commented [VDC20]: Updated as per HCC's appeal submission, but awaiting instructions on whether the massively increased sums are agreed.

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

County Contributions means the Childcare Services Contribution, the Library Services Contribution, the Primary Education Contribution, the Secondary Education Contribution, the ~~Sustainable Travel Contribution~~ SEND Contribution, the Waste Services Contribution and the Youth Services Contribution;

Childcare Services Contribution means the sum of ~~£12,200,285.825~~ (twelve two hundred and eighty five thousand two eight hundred and twenty five pounds) based on the Development Mix however, should the size type tenure and/or total number of Dwellings differ from that specified in the Planning Permission any additional contribution due will be calculated in accordance with the table at paragraph 4 of this Schedule 2 (index linked as provided for in clause 10.1 of this Agreement) towards the new Peartree Primary School;

“Development Mix” means

Commented [CC21]: This table is incorrect. The figures should be:
Houses: 4B+ (OM) 8 (SR) 0
Flats:
1B (OM/SO) - 129 (SR) - 0
2B (OM/SO) - 126 (SR) - 0
3B (OM/SO) - 26 (SR) - 0
TOTAL UNITS = 289

Development Mix by Tenure and Size					
HOUSES			FLATS		
Number of bedrooms	A) Open Market	B) Affordable (Social Rent)	Number of bedrooms	A) Open Market	B) Affordable (Social Rent)
1			1	127	2
2			2	121	5
3			3	24	2
4+	8		4+		
Total	8	0	Total	272	9

“Fire and Rescue Service” means that part of the County Council known as the Hertfordshire Fire and Rescue Service

Library Services Contribution means the sum of ~~£34,952,19,580~~ (thirty one nineteen thousand nine five hundred and fifty two eighty pounds) based on the Development Mix, however, should the size type tenure and/or total number of Dwellings differ from that specified in the Planning Permission any additional contribution due will be calculated in accordance with the table at paragraph 4 of this Schedule 2 (index linked as provided for in clause 10.1 of this Agreement) towards enhancement and improvement of Welwyn Garden City Library;

Primary Education Contribution means the sum of ~~£872,402,839.102~~ (eight hundred and seventy two thirty nine thousand one hundred and two pounds) (index linked as provided for in clause 10.2 of this Agreement) towards the new Peartree Primary School;

Secondary Education Contribution means the sum of ~~£138,694,754.825~~ (one seven hundred and thirty eight fifty four thousand six eight hundred and ninety four twenty five pounds) based on the Development Mix, however, should the size type tenure and/or total number of Dwellings differ from that specified in the Planning Permission any additional

contribution due will be calculated in accordance with the table at paragraph 4 of this Schedule 2 (index linked as provided for in clause 10.1 of this Agreement) towards the expansion of Ridgeway Academy Secondary School;

SEND Contribution means the sum of £73,250 (seventy three thousand, two hundred and fifty pounds (index linked as provided for in clause 10.4 of this Agreement) based on the Development Mix, however, should the size type tenure and/or total number of Dwellings differ from that specified in the Planning Permission any additional contribution due will be calculated in accordance with the table at paragraph 4 of this Schedule 2 (index linked as provided for in clause 10.1 of this Agreement) towards [] **Sustainable Travel Contribution** means the sum of £192,772 (one hundred and ninety two thousand seven hundred and seventy two pounds) (index linked as provided for in clause 10.4 of this Agreement), towards:

Commented [VDC22]: HCC to confirm

- (a) ~~bus service improvement for two years at the value of £100,000 (one hundred thousand pounds) (index linked as provided for in clause 10.4 of this Agreement); and~~
- (b) ~~packages PK14 of the South Central Growth and Transport Plan at the value of £92,772 (index linked as provided for in clause 10.4 of this Agreement);~~

~~however, should the size type tenure and/or total number of Dwellings differ from that specified in the Planning Permission any additional contribution due will be calculated in accordance with the table at paragraph 4 of this Schedule 2;~~

Waste Services Contribution means the sum of £35,904~~2~~ (thirty five thousand nine hundred and ~~two~~four pounds) (index linked as provided for in clause 10.3 of this Agreement) towards increasing the capacity of the Tewin Road Recycling Centre;

Water Scheme means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus OR where existing water services are to be used "Water Scheme" shall mean the details of the units and the water supply to them; and

Youth Services Contribution means the sum of £3,668~~12,306~~ (~~three~~twelve thousand ~~six~~three hundred and ~~sixty~~eight~~six~~ pounds) based on the Development Mix, however, should the size type tenure and/or total number of Dwellings differ from that specified in the Planning Permission any additional contribution due will be calculated in accordance with the table at paragraph 4 of this Schedule 2 (index linked as provided for in clause 10.1 of this Agreement) towards increasing the capacity at Welwyn Garden City Young People's Centre (or its re-provision).

2 Financial Contributions

2.1 The Owner hereby covenants with the County:

2.1.1 to pay 50% of the County Contributions to the County prior to **first Occupation of the Development;**

Commented [CC23]: These contributions are substantial and it is onerous for all the contributions to be required to be paid prior to Commencement. Please reconsider.

Commented [VDC24R23]: Given the massively increased sums requested by HCC, if we do accept the sums, the payments will need to be phased.

2.1.2 not to Occupy or permit Occupation or use of the Development until 50% of the County Contributions have been paid in accordance with paragraph 2.1.1 of this Schedule 2;

2.1.3 to pay the remaining 50% of the County Contributions to the County prior to Occupation of 50% of the Development;

2.1.4 not to Occupy or permit Occupation or use of 50% of the Development until the remaining 50% of the County Contributions have been paid in accordance with paragraph 2.1.1 of this Schedule 2;

2.1.22.1.5

3 Expenditure in Advance

If prior to the receipt of any of the County Contributions the County incurs any expenditure in providing additional library, primary education, secondary education, childcare services, waste services, and/or youth facilities the need for which arises from or in anticipation of the Development then the County may immediately following receipt of such contribution deduct from it such expenditure incurred.

4 Obligations Table

Hertfordshire County Council Services planning obligations contributions table

Commented [VDC25]: HCC to update

Bedrooms*	1	2	3	4	5+	1	2	3
	HOUSES Market & Shared Ownership					FLATS Market & Shared Ownership		
Secondary education	£263	£802	£2,561	£4,423	£5,662	£47	£444	£1,677
Childcare	£14	£64	£138	£199	£244	£8	£57	£89
Youth facilities	£6	£16	£50	£82	£105	£3	£13	£41
Library facilities	£98	£147	£198	£241	£265	£77	£129	£164
	HOUSES Affordable Rent					FLATS Affordable Rent		
Secondary education	£62	£450	£1,676	£2,669	£2,405	£14	£261	£1,084
Childcare	£12	£121	£188	£226	£277	£4	£65	£113
Youth facilities	£2	£8	£31	£51	£55	£1	£6	£21
Library facilities	£48	£91	£130	£156	£155	£38	£82	£107

*uses an assumed relationship between bedrooms and habitable rooms All figures are subject to indexation and will be indexed using the **PUBSEC** index base figure 175

Commented [CC26]: PUBSEC or BCIS?

4.1

Commented [CC27]: T

Schedule 3

Financial Contributions to the Council

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

Community Healthcare Contribution means the sum of £52,607 (fifty-two thousand six hundred and seven pounds) (index linked as provided for in clause 10.8 of this Agreement) towards a project to increase the clinical capacity at Queensway Health Centre in Hatfield (including but not limited to the reconfiguration of the facility and the installation of a lift);

Council Contributions means the Indoor Sports Facilities Contribution, the Outdoor Sports Facilities Contribution and the Waste and Recycling Contribution;

General Medical Services Contribution means the sum of £204,612 (two hundred and four thousand six hundred and twelve pounds) (index linked as provided for in clause 10.8 of this Agreement) towards the three existing practices within the Peartree Group (Peartree Surgery, Moors Walk Surgery and Hollybush Lane Surgery) by way of expanding and/or reconfiguring and/or creating an additional practice;

Indoor Sports Facilities Contribution means the sum of £210,429 (two hundred and ten thousand four hundred and twenty-nine pounds) (index linked as provided for in clause 10.7 of this Agreement) towards the cost of the provision and construction of an indoor bowl facility at King George V Playing Fields in Welwyn Garden City;

Mental Health Services Contribution means the sum of £58,306 (fifty-eight thousand three hundred and six pounds) (index linked as provided for in clause 10.8 of this Agreement) towards the evolving expansion, re-configuration and refurbishment of Rosanne House, Welwyn Garden City to increase capacity;

NHS Contributions means the Community Healthcare Contribution, the General Medical Services Contribution and the Mental Health Services Contribution;

Outdoor Sports Facilities Contribution means the sum £194,417 (one hundred and ninety-four thousand four hundred and seventeen pounds) (index linked as provided for in clause 10.7 of this Agreement) towards one of the following three projects:

- (a) the development and building of a pump track which is now part of the British Cycling development pathway in BMX;
- (b) the development and improvement works of the Cycling Velodrome at Gosling Sports park; and
- (c) the development and improvement work of the athletics track at Gosling Sports;

Waste and Recycling Contribution means the sum of £22,336.64 (twenty- two thousand three hundred and thirty six pounds and sixty four pence) (index linked as provided for in clause 10.9 of this Agreement) towards the provision of household waste bins and mini recycling centres.

Commented [RW28]: This sum should be £22,336.64 as per the Council's Client Services latest consultation response

Commented [CC29R28]: Awaiting confirmation as to the correct figure.

2 Contributions

The Owner covenants with the Council:

2.1 ~~to pay 50% of the Council Contributions to the Council prior to the Commencement Date to first Occupation of the Development;~~

~~2.2 not to Commence-Occupy or cause or permit Commencement-Occupation of the Development until 50% of the Council Contributions have been paid to the Council in accordance with paragraph 2.21 of this Schedule;~~

~~2.3 to pay the remaining 50% of the Council Contributions to the Council prior to Occupation of 50% of the Development;~~

~~2.4 not to Occupy or cause or permit Occupation of 50% of the Development until the remaining 50% of the Council Contributions have been paid to the Council in accordance with paragraph 2.3 of this Schedule;~~

~~2.2~~

~~2.32.5~~ to pay the NHS Contributions to the Council prior to Occupation of the Development;

~~2.42.6~~ not to Occupy or cause or permit Occupation or use of the Development until the NHS Contributions have been paid to the Council in accordance with paragraph ~~2.32.5~~ of this Schedule.

3 Expenditure in Advance

3.1 If prior to the receipt of any of the Council Contributions and/or NHS Contributions referred to in paragraph 2.1 and 2.3 of this Schedule 3 the Council, any other relevant statutory authority and/or any body which is allocated money pursuant to clause 6.3.3 of this Agreement incurs any expenditure in providing or enhancing facilities or services pursuant to any Council Contributions or NHS Contributions (as applicable) the need for which arises from or in anticipation of the Development then the recipient of the relevant contribution may immediately following receipt deduct from it such expenditure incurred.

Commented [RW33]: Payment of the Council contributions are required prior to commencement.

Commented [RW30]: Payment of the Council contributions are required prior to commencement.

Commented [CC31R30]: TBC

Commented [VDC32R30]: Given the huge sums now requested by HCC, if we agree to them, WHBC's contributions will need to be phased

Formatted: No bullets or numbering

Schedule 4

Travel Plan

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

Travel Plan means a written plan (submitted to and approved in writing by the County pursuant to paragraph Error! Reference source not found. of this Schedule 4) setting out a scheme to encourage and regulate and promote sustainable travel measures for owners occupiers and visitors to the Development and which may from time to time be varied with the written consent of the County or any amendments or improvements to the Travel Plan notified by the County to the Owner pursuant to paragraph 2.3.4 of this Schedule;

Travel Plan Annual Review means an annual study reviewing and monitoring the provisions of the Travel Plan (as more fully set out therein) such annual study to be carried out by the Owner and submitted to the County 12 (twelve) calendar months from the date following the first Occupation and then to be carried out annually on the corresponding calendar month for a period of 5 (five) years;

Travel Plan Champion means the person appointed by the Owner and approved by the County who shall be responsible for managing on behalf of the Owner the implementation monitoring progression reporting and review of the Travel Plan in order to achieve its objectives and targets;

Travel Plan Evaluation and Support Contribution means the sum of six thousand pounds (£6,000) (index linked as provided for in Clause 10.7 of this Agreement) to be paid to the County towards the marketing and administration of the Travel Plan; and

Travel Plan Guidance means the County's published guidance entitled 'Travel Plan Guidance for Business and Residential Development' or such version current as at the date of submission of the Travel Plan.

Commented [CC34]: A copy of this is to be obtained.

2 Travel Plan

The Owner covenants:

2.1 Prior to Occupation of the Development:

- 2.1.1 to pay the Travel Plan Evaluation and Support Contribution;
- 2.1.2 to submit a draft Travel Plan for written approval to the County and obtain such approval and for the avoidance of doubt the Travel Plan shall be based on and accord with the Travel Plan Guidance and shall further contain as many of the provisions of the Travel Plan Guidance as in the opinion of the County are appropriate to the nature of the Development such written approval shall not be unreasonably withheld and in any case the County shall respond within 10 (ten) Working Days;
- 2.1.3 to nominate a Travel Plan Champion for written approval of the County and obtain such approval and such nomination shall include contact details full particulars and curriculum vitae of the proposed Travel Plan Champion and the

nature of their relationship to the Owner such written approval shall not be unreasonably withheld and in any case the County shall respond within 10 (ten) Working Days; and

- 2.1.4 to appoint and retain the Travel Plan Champion at its own expense which retention shall endure throughout the duration of the Travel Plan.
- 2.2 Not to Occupy nor cause nor permit Occupation of the Development until the Travel Plan has been submitted to and approved in writing by the County.
- 2.3 At all times during Occupation of the Development to:
 - 2.3.1 comply with the terms of the approved Travel Plan including but not limited to implementing any actions by any dates specified in the Travel Plan;
 - 2.3.2 promote and publicise the approved Travel Plan to owners occupiers and visitors to the Development;
 - 2.3.3 implement the Travel Plan by the dates or within the time limits set out in the Travel Plan;
 - 2.3.4 carry out the Travel Plan Annual Review and submit a written report setting out the findings of such review to the County within three (3) calendar months from the dates of each Travel Plan Annual Review such report shall include (but shall not be limited to) recommendations for amendments or improvements to the approved Travel Plan and whether or not the objectives of the Travel Plan have been achieved;
 - 2.3.5 comply with any variations or amendments to the Travel Plan permitted by this Agreement which shall in addition include any amendments or improvements reasonably required by the County following review of the report submitted pursuant to paragraph 2.3.4 above and notified in writing to the Owner;
 - 2.3.6 to ensure that they will include in any transfer tenant's lease or occupier's licence of any part or parts of the Application Site a covenant that the purchaser tenant or occupier will comply with the approved Travel Plan for such part or parts of the Application Site and further that they will use all reasonable endeavours to enforce such obligation against any such purchaser tenant or occupier;
 - 2.3.7 within twenty (20) Working Days of the transfer or letting of the Application Site or any part or parts thereof they will procure the delivery to the County of a notice giving the following details:
 - (a) the name and address of the purchaser and/or tenant;
 - (b) a description of the premises transferred or demised;
 - (c) the length of the term; and
 - (d) a sufficient extract of the transfer or lease setting out the terms of the covenant expressed in favour of the County in relation to the approved Travel Plan.

Schedule 5
Viability Reviews

[TH: To be inserted once schedule agreed]

Schedule 6

Open Space

Commented [CC35]: This schedule is generally subject to further possible

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

Hard Open Space Works means all hard Open Space Works as shown shaded yellow, blue and, purple on the Open Space Plan including but not limited to roads, paths, concreted areas and play space to be provided pursuant to the Planning Permission;

Open Space means all of the Open Space Land to be provided pursuant to the Development which shall be open to the general public at large for use as a green and open space to be privately funded and managed;

Open Space Certificate means a certificate or certificates in writing relating to the Open Space Land issued by a Chartered Landscape Architect and in relation to the equipped play area(s) issued by an inspector registered on the Register of Play Inspectors International that confirms that the Open Space Land has been laid out in accordance with the approved Open Space Scheme;

Open Space Land means the land identified as shaded yellow, blue, purple and green on the Open Space Plan which shall for the avoidance of doubt include any grass and/or play area(s) and/or landscaped and/or hardstanding and/or parking areas and/or estate roads excluding such areas that are or are to be publicly maintainable highway or within the curtilage of Dwellings; |

Commented [CC36]: Plan provided.

Commented [RW37R36]: My client agrees the plan

Open Space Management Company means a private limited company established or appointed for inter alia the purpose of managing the Open Space Land in accordance with the approved Open Space Management Scheme and for the avoidance of doubt the Open Space Management Company may be the same company as the SUDS Management Company (as defined in Schedule 8 of this Agreement);

Open Space Management Scheme means a written scheme prepared by the Owner to be submitted to the Council for approval for the ongoing long term management and maintenance of the Open Space (as may be amended from time to time with the written approval of the Council) including for the avoidance of doubt details of the Owner's open space management obligations, management by the Open Space Management Company and funding for the management scheme;

Open Space Plan means the plan attached at Appendix 6 of this Agreement;

Open Space Programme means a programme setting out the timetable for the provision of Open Space at the Development;

Open Space Scheme means a written scheme prepared by the Owner to be submitted to the Council for approval for the provision of Open Space to include details of the Open Space Works (including clear identification of the Hard Open Space Works and Soft Open Space Works) and details of how from the practical completion of the Open Space Works public access 24 hours per day 365 days a year shall be permitted and secured (save for a Permitted Closure) and it being agreed between the Parties that there is no intention to

create any public rights of way over the Open Space Land which shall be enforceable by the Council;

Open Space Works means the specification and works required for the provision of the Open Space in accordance with the Open Space Scheme;

Permitted Closure means that the Owner may from time to time temporarily restrict or prevent access to the Open Space by giving reasonable prior notice to the Council (EXCEPT in cases of emergency or danger to the public where such closure is necessary in the interests of public safety or otherwise for reasons of public safety or at the request of the emergency services when no prior notice or consent shall be required) but only for so long as is reasonably necessary for the following purposes:

- (a) for a maximum of one (1) day per year to assert rights of proprietorship preventing any additional public rights from coming into being by means of prescription or any process of law PROVIDED THAT there shall be no such closure if the entire Open Space Land has been closed for an entire day or more for any of the other purposes specified in this definition during the preceding year;
- (b) in the interests of public safety generally or for the purposes of maintenance, repair, cleansing, renewal or resurfacing of the Open Space Land;
- (c) the laying cleaning maintenance and repair of any cables wires pipes drains or ducts over along or beneath the Open Space Land;
- (d) the inspection maintenance repair renewal rebuilding or demolition or development of any building or buildings on land adjoining the Open Space Land (including the erection of scaffolding);
- (e) the inspection maintenance repair renewal rebuilding or demolition or development of any building or buildings on land adjoining the Open Space Land (including the erection of scaffolding); or
- (f) with the prior written approval of the Council for any reasonable and proper purpose.

PROVIDED THAT the Owner shall (i) take reasonable steps to minimise the duration and extent of any such closures and (ii) re-open the Open Space Land as soon as is reasonably practicable; and

Soft Open Space Works means all soft Open Space Works as shown shaded green on the Open Space Plan including but not limited to planting and trees to be provided pursuant to the Planning Permission;

2

Open Space covenants

The Owner hereby covenants with the Council:

- 2.1 prior to Commencement of Development, the Owner shall submit to the Council for approval:
- 2.1.1 the Open Space Scheme;
 - 2.1.2 the Open Space Programme; and
 - 2.1.3 the Open Space Management Scheme.
- 2.2 not to Commence Development until it has submitted to and obtained the Council's written approval of:
- 2.2.1 the Open Space Scheme;
 - 2.2.2 the Open Space Programme; and
 - 2.2.3 the Open Space Management Scheme,
- such written approval not to be unreasonably withheld or delayed and in any event the Council shall respond within 20 (twenty) Working Days;
- 2.3 to implement and fully comply with the approved Open Space Scheme and the approved Open Space Programme;
- 2.4 not to Occupy or permit Occupation of any Dwellings until the Hard Open Space Works have been provided in accordance with the approved Open Space Scheme and the Council has received the appropriate Open Space Certificate(s) for those works;
- 2.5 to complete the Soft Open Space Works within the first planting and seeding season following first Occupation of the first Dwelling in accordance with the approved Open Space Scheme and to provide to the Council the appropriate Open Space Certificate(s) for those works;
- 2.6 to maintain the Open Space Land in accordance with the approved Open Space Scheme and Open Space Management Scheme until the date upon which the transfer described in paragraph 2.7 of this Schedule 8 has been completed and until the relevant transfer has been completed if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary with a tree or shrub or other plant or turfing of same size and species;
- 2.7 not before the expiration of nine (9) months from the date of issue of the Open Space Certificate it shall transfer the Open Space Land to the Open Space Management Company;
- 2.8 to include in the transfer of the Open Space Land as appropriate to the Open Space Management Company:
- 2.8.1 a covenant by the Open Space Management Company only to permit the Open Space Land to be utilised as grassed areas and/or play areas and/or parking areas and/or roads and/or open areas for recreation in accordance with this Agreement;

Commented [CC38]: This trigger is subject to confirmation.

Commented [RW39]: My client has requested that the trigger be tailored to require hard landscaping and doorstep play prior to first occupation; and soft landscaping within the first planting and seeding season following first occupation?

Commented [CC40]: Okay, agreed.

- 2.8.2 a covenant by the Open Space Management Company to maintain the Open Space Land in perpetuity in accordance with the approved Open Space Management Scheme and Open Space Scheme and to allow public access to the Open Space 24 hours a day for 365 days a year save for any Permitted Closure;
 - 2.8.3 a covenant by the Open Space Management Company not to transfer the Open Space Land into the individual ownership of the owners of the Dwellings; and
 - 2.8.4 an obligation on the Open Space Management Company that should the Council so require for the Open Space Management Company to enter into a direct covenant with the Borough Council to perform the obligations set out in paragraphs 2.8.1 to 2.8.3 of this Schedule;
- 2.9 to provide the Council with a copy of the completed transfer of the Open Space Land and to inform the Council in writing of the contact details of the Open Space Management Company;
- 2.10 to:
- 2.10.1 include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the Open Space Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Open Space Management Company to discharge its obligations under this Agreement in relation to the Open Space Land; and
 - 2.10.2 procure that the buyer or lessee of each Dwelling upon any subsequent sale or letting of such Dwelling they will procure that the incoming buyer or lessee shall enter into direct covenants with the Open Space Management Company in the form of paragraph 2.10.1 and 2.10.2 of this Schedule.

Schedule 7

Car Park Management

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

Car Club means a scheme for sharing private car and van facilities to be made available for the occupiers of the Dwellings;

Car Club Operator means an operator of a Car Club who will be responsible for the operation and management of the Car Club and Car Club Space including bookings and charges;

Car Club Space means one (1) of the car parking spaces to be used exclusively by the Car Club pursuant to the Car Park Management Strategy;

Car Park Management Strategy means the parking management strategy at section 7 of the Transport Strategy prepared by i-Transport dated 17 December 2020 with reference NM/MD/AT/ITL161195-004C which has been approved by the Council for managing the car parking spaces provided pursuant to the Development and which may be varied with the written consent of the Council to incorporate any amendments or improvements to the Car Park Management Strategy as notified by the Council to the Owner pursuant to paragraph 2.3.4 of this Schedule; and

Car Park Management Strategy Annual Review means an annual study reviewing and monitoring the provisions of the Car Park Management Strategy such annual study to be carried out by the Owner and submitted to the Council 12 (twelve) calendar months from the date following the first Occupation and then to be carried out annually on the corresponding calendar month for a period of 5 (five) years.

Commented [CC41]: Please confirm this is the correct Transport Strategy

Commented [RW42R41]: This has been agreed by my client

2 Car Park Management

The Owner covenants with the Council:

Commented [RW43]: This schedule shall be enforceable by the Council

2.1 To fully implement the Car Park Management Strategy prior to Occupation and not to Occupy nor cause nor permit Occupation or use of the Development save for in accordance with the Car Park Management Strategy;

2.2 At all times during Occupation of the Development to:

2.2.1 comply with the terms of the Car Park Management Strategy including but not limited to implementing any actions by any dates specified in the Car Park Management Strategy;

2.2.2 promote and publicise the Car Park Management Strategy to owners occupiers and visitors to the Development;

2.2.3 carry out the Car Park Management Strategy Annual Review and submit a written report setting out the findings of such review to the Council within three (3) calendar months from the dates of each Car Park Management Strategy Annual Review such report shall include (but shall not be limited to) recommendations for amendments or improvements to the Car Park

Commented [CC44]: Council to provide a definition for this.

Commented [RW45R44]: See above

Management Strategy and whether or not the objectives of the Car Park Management Strategy have been achieved;

2.2.4 comply with any variations or amendments to the Car Park Management Strategy permitted by this Agreement which shall in addition include any amendments or improvements reasonably required by the Council following review of the report submitted pursuant to paragraph 2.2.3 above and notified in writing to the Owner PROVIDED THAT any amendments or improvements reasonably required by the Council shall not include a reduction in the number of car parking spaces provided as part of the Development; and

2.2.5 to ensure that any transfer tenant's lease or occupier's licence of any part or parts of the Application Site contains a covenant that the purchaser tenant or occupier will ~~implement~~ comply with the Car Park Management Strategy for such part or parts of the Application Site and further that they will use all reasonable endeavours to enforce such obligation against any such purchaser tenant or occupier.

Commented [CC46]: Query as to whether this is necessary?

Commented [RW47R46]: This is required

3 Car Club

The Owners hereby covenant with the Council:

3.1 Prior to Occupation of more than 25% (twenty five per cent) of the Dwellings, to:

3.1.1 provide the Car Club Space in accordance with the details approved as part of the Car Park Management Strategy; and

3.1.2 provide the Council with a copy of the contract entered into with a Car Club Operator for the provision of the Car Club at the Car Club Space;

3.2 Not to Occupy nor cause nor permit Occupation of more than 25% (twenty five per cent) of the Dwellings until:

3.2.1 the Car Club Space has been provided in accordance with the details approved as part of the Car Park Management Strategy; and

3.2.2 the Council has been provided with a copy of the contract entered into with a Car Club Operator for the provision of the Car Club at the Car Club Space.

Schedule 8
Sustainable Drainage Systems

[TH: To be inserted once schedule agreed]

Executed as a deed by affixing the Common Seal)
of **Hertfordshire County Council**)
in the presence of:)

Director

Director/Secretary

Executed as a deed by affixing the Common Seal)
of **Welwyn Hatfield Borough Council**)
in the presence of:)

Authorised Officer

Executed as a deed by)
Welwyn Park Homes Limited)
acting by [**name of director**], a director)
in the presence of:) Director

witness signature:

name:

address:

occupation:

Appendix 1 (Form of Notice)
Proforma Event Notification and Payment
Pursuant to Section 106 Agreement

dated

made between

Planning Permission Reference: 6/2020/3420/MAJ

HCC DU Reference: []

Site Address
.....

Site Owner Details:

Name:

Contact Name:

Address:
.....

Telephone No.

Mobile:

Email:

Events Being Notified

Commencement Date – date:

**Occupation of Development
(Number if relevant) – date:**

**Completion of Development
– date:**

Compliance with obligation(s)

Schedule

Paragraph

Details of obligation and compliance

Payment of s106 contributions

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example	X	Y	Z	Y + Z	Herts County Council
Library Contribution	£	£	£	£	

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

1 The Chief Legal Officer
 Hertfordshire County Council
 County Hall,
 Pegs Lane
 Hertford Hertfordshire
 SG13 8DE
 Ref: **[HCC TO ADVISE]**

2 The Head of Planning

Welwyn Hatfield Borough Council
Council Offices
The Campus
Welwyn Garden City
Herts AL8 6AE
Ref: 6/2020/3420/MAJ

Appendix 2

The Plan

Appendix 3
Nominations Agreement

Appendix 4
Affordable Housing Plan

Appendix 5
Block Plan

Appendix 6
Open Space Land