



**dated**

**2022**

**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

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# 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) As set out in the Council's committee report the Owner had agreed to pay the Initial County Contributions (as defined in Schedule 2).
- (F) On 16 September 2021, the Council refused to grant planning permission for the Development.
- (G) The Owner has submitted the Appeal against the Council's refusal.
- (H) On [ ] May 2022 the County, in their Appeal statement, requested the Additional County Contributions (as defined in Schedule 2).
- (I) The parties acknowledge and agree that the parties are entering into this Agreement without prejudice to any submissions as part of the Appeal.
- (J) The Council and the County consider it expedient should Planning Permission be granted 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.

## 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 appeal reference APP/C1950/W/22/3294860;

**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 shown indicatively edged red on the Plan being 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

**Borough** means the administrative area of the Council;

**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 on behalf of the Secretary of State 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 Contribution** means the sum of [ ] pounds (£) (index-linked) as hereinafter provided);

**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;

**Secretary of State** means the Secretary of State for Levelling Up, Housing and Communities (or any successor secretary of state from time to time);

**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.

## 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.

3.3 If the Inspector or the Secretary of State concludes that any planning obligation within this Agreement 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 paragraph 57 of 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 or Secretary of State'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.

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

- 3.4.1 the Inspector or the Secretary of State dismisses the Appeal such that the Planning Permission is not granted; or
- 3.4.2 the Inspector or the Secretary of State 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 paragraph 57 of the National Planning Policy Framework and accordingly attaches no weight to any of the obligations in determining the Appeal.

### 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.
- 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 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;
  - 5.1.2 to pay to the Council the Monitoring Fee within 21 days of grant of Planning Permission in the event that the Appeal is allowed;
  - 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;
- 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 Monitoring Contribution shall be index-linked by reference to the RPI Index figure of May 2014 to the finalised figure applicable to the month in which the Monitoring Contribution is paid

10.2 The Childcare Services Contribution the Library Services Contribution the Primary Education Contribution the Secondary Education Contribution the SEND Contribution and the Youth Services 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;

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 July 2006 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 or part thereof or it becomes a 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 Eligible Households;

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

- (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
- (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 3 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;

**Agreed Mix** means the number size tenure and mix of Affordable Housing Units 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 any Household:

- (a) who cannot afford to buy housing generally within Welwyn Garden City;
- (b) whose income and savings should be appropriate to the initial equity share in the Affordable Housing Unit offered by the RPSH;
- (c) which can be accommodated within an Affordable Housing Unit of a size suitable to the Household in accordance with the Housing Allocation Policy; and
- (d) which has a Local Connection;

**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 Allocation Policy** means the Council's policy (as adopted from time to time) for allocating properties to persons on the Housing Needs Register;

**Housing Needs Register** means the register maintained by the Council from time to time of a list of applicants looking for affordable accommodation within the Borough;

**Local Connection** means a Household which includes at least one person who:

- (a) is a permanent resident of the Borough for the previous five years or more prior to making an application or offer for an Affordable Housing Units;
- (b) has a close relative (to include parent, sibling and/or adult child) who has lived in the Borough for more than ten years prior to making an application or offer for an Affordable Housing Units;
- (c) is in permanent employment (with a minimum of 16 hours a week) within the Borough for at least 5 years prior to making an application or offer for an Affordable Housing Units;
- (d) is serving in the regular forces or have done so in the five years preceding prior to making an application or offer for an Affordable Housing Units; or
- (e) has an exceptional reason agreed by the Council in writing.

**Local Priorities** means the following priorities for allocation of Shared Ownership Housing:

- (a) Eligible Households who do not currently own a property and would be eligible to be placed on the Housing Needs Register in accordance with the Housing Allocation Policy;
- (b) Eligible Households who own existing property with other persons who do not form part of the Household and who need to move and cannot afford to buy a suitable property on the open market and who have a recognised need to move as in accordance with the Housing Allocation Policy; and
- (c) Eligible Households who own existing property and who need to move, but cannot afford to buy a suitable property on the open market, for example due to change in household or income details or relationship breakdown and who have a recognised need to move as in accordance with the Housing Allocation Policy.

**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;

**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 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 10% 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;

**Shared Ownership Sales Form** means a form which may be supplied by the Council to the Owner from time to time requiring information on the Occupation of each Shared Ownership Housing Unit, including details of the share purchased in each Shared Ownership Housing Unit and how the occupants met eligibility criteria set out within this Schedule;

**Shared Ownership Sale Notice** means a notice of an intention to sell a share in a Shared Ownership Housing Unit to include:

- (a) the estimated rent and service charge for the Shared Ownership Housing Unit;
- (b) the minimum share available to purchase within the Shared Ownership Housing Unit and any other costs; and
- (c) any other special requirements, such as minimum and maximum income levels;

**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 3 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 Transfer.

## **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**

6.1 The Owner covenants that the Affordable Housing Units shall be constructed and Completed in accordance with:

6.1.1 the compulsory requirements of Building Regulations 2010 (as amended); and

6.1.2 any requirements by Homes England or the Regulator in place as at the date of this Agreement save that 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 comply with the requirements of this Schedule.

## **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; and

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

- 8.2 Prior to selling or approving the sale of any share within any Shared Ownership Housing Unit, the Owner shall:
- 8.2.1 serve the Shared Ownership Sale Notice on the Council and any agent appointed by the Regulator from time to time so that they can advertise the sale of the relevant Shared Ownership Housing Unit(s); and
  - 8.2.2 market the relevant Shared Ownership Housing Unit(s) to Eligible Households in accordance with the Local Priorities and, where there is more than one applicant, to use reasonable endeavours to prioritise the allocation of the Shared Ownership Housing Unit(s) to any applicants who have Local Priorities.
- 8.3 The Affordable Housing Units shall not be let or occupied other than in accordance with the Affordable Housing Scheme approved pursuant to this Schedule in perpetuity.
- 8.4 The Owner shall complete and return the Shared Ownership Sales Form to the Council:
- 8.4.1 as soon as reasonably practicable following first Occupation of all of the Affordable Housing Units; or
  - 8.4.2 within 20 Working Days of any written request from the Council save that the Owner shall only be required to return the Shared Ownership Sales Form once each year and save further that the provisions of this clause 8.4.2 shall cease upon first Occupation of all of the Affordable Housing Units.
- 8.5 The initial Disposal of each Shared Ownership Housing Unit shall include the following terms:
- 8.5.1 The Disposal shall not involve the sale of an equity stake of less than 10% or more than 75%; and
  - 8.5.2 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.

## 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

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

**Additional Childcare Services Contribution** means the sum of £273,825 (two hundred and seventy three thousand 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 County's Guide to Developer Contributions July 2021;

**Additional County Contributions** means the Additional Childcare Services Contribution, the Additional Secondary Contribution, the SEND Contribution and the Additional Youth Services Contribution;

**Additional Secondary Contribution** means the sum of £616,131 (six hundred and sixteen thousand one hundred and thirty one 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 County's Guide to Developer Contributions July 2021

**Additional Youth Services Contribution** means the sum of £8,638 (eight thousand six hundred and thirty eight 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 County's Guide to Developer Contributions July 2021

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

**Childcare Services Contribution** means the Initial Childcare Services Contribution and the Additional Childcare Services Contribution (index linked as provided for in clause 10 of this Agreement) towards the increasing the capacity of the new 3FE Peartree Primary School;

**"Development Mix"** means



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+		
<b>Total</b>	<b>8</b>	<b>0</b>	<b>Total</b>	<b>272</b>	<b>9</b>

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

**Initial Childcare Services Contribution** means the sum of £12,200 (twelve thousand two hundred pounds), 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 County’s Guide to Developer Contributions July 2021;

**Initial County Contributions** means the Initial Childcare Services Contribution, the Initial Secondary Contribution and the Initial Youth Services Contribution;

**Initial Secondary Contribution** means the sum of £138,694 (one hundred and thirty eight thousand six hundred and ninety four pounds), 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 County’s Guide to Developer Contributions July 2021

**Initial Youth Services Contribution** means the sum of £3,668 (three thousand six hundred and sixty eight pounds), 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 County’s Guide to Developer Contributions July 2021

**Library Services Contribution** means the sum of £19,580 (nineteen thousand five hundred and 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 County’s Guide to Developer Contributions July 2021 (index linked as provided for in clause 10 of this Agreement) towards increasing capacity of Welwyn Garden City Library or its future re-provision

**Primary Education Contribution** means the sum of £839,102 (eight hundred and thirty nine thousand one hundred and two pounds) (index linked as provided for in clause 10.1 of this Agreement) towards a new 3FE primary school in Welwyn Garden City ;

**Secondary Education Contribution** means the Initial Secondary Contribution and the Additional Secondary Contribution (index linked as provided for in clause 10 of this Agreement) towards a 1FE expansion of Ridgeway Academy in Welwyn Garden City

**SEND Contribution** means the sum of £73,250 (seventy three thousand, two hundred and fifty pounds (index linked as provided for in clause 10.1 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 County's Guide to Developer Contributions July 2021 (index linked as provided for in clause 10 of this Agreement) towards a new Severe Learning Difficulty special school in the west of the county.

**Sustainable Transport Contribution** means the sum of £138,875 (one hundred and thirty eight thousand eight hundred and seventy five pounds) (index linked as provided for in clause 10.6 of this Agreement) towards Packages 13 & 14 of the North-Central Growth and Transport Plan and/or WHBC's emerging LCWIP

**Waste Services Contribution** means the sum of £35,904 (thirty five thousand nine hundred and 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 Initial Youth Services Contribution and the Additional Youth Services (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 future re-provision).

## 2 **Financial Contributions**

2.1 The Owner hereby covenants with the County:

2.1.1 To pay the Monitoring Contribution to the County Council prior to the Commencement Date as a contribution to be allocated to and spent by the County Council towards the costs of monitoring and administering any obligations required pursuant to the Planning Permission

2.1.2 Not to Commence nor cause nor permit Commencement until the Monitoring Contribution has been paid to the County Council in accordance with paragraph 2.1.1 of this Schedule

2.1.3 To pay the Sustainable Transport Contribution to the County Council prior to the Commencement Date

2.1.4 Not to Commence the Development until the Sustainable Transport Contribution has been paid in accordance with paragraph 2.1.3 of this Schedule

2.1.5 to pay the 50% of Primary Education Contribution and 50% of the Secondary Education Contribution prior to Commencement of the Development; and

2.1.6 not to Commence or permit Commencement of the Development until 50% of Primary Education Contribution and 50% of the Secondary Education

Contribution have been paid in accordance with paragraph 2.1.5 of this Schedule 2.

- 2.1.7 to pay the Primary Education Contribution and the Secondary Education Contribution prior to Occupation of the 146<sup>th</sup> Dwelling; and
- 2.1.8 not to Occupy or permit Occupation of more than 145 Dwellings in the Development until the Primary Education Contribution and the Secondary Education Contribution have been paid in accordance with paragraph 2.1.7 of this Schedule 2.
- 2.1.9 to pay the Childcare Services Contribution, the Library Services Contribution, the SEND Contribution, the Waste Services Contribution and the Youth Services Contribution to the County prior to Commencement of the Development; and
- 2.1.10 not to Commence or permit Commencement of the Development until the Childcare Services Contribution, the Library Services Contribution, the SEND Contribution, the Waste Services Contribution and the Youth Services Contribution have been paid in accordance with paragraph 2.1.9 of this Schedule 2.

### 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.

### 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 £210,612 (two hundred and ten thousand six hundred and twelve pounds) (index linked as provided for in clause 10.7 of this Agreement) to be applied in the following amounts towards the following projects:

- (a) £2,699 for a new indoor bowls facility at King George V Playing Fields;
- (b) £101,439 for either of the following:
  - i Building a new sports hall facility at Monks Walk School or Gosling/a new preferred location within Welwyn Garden City; or
  - ii Maintenance at Monks Walk School, Stanborough School or Gosling; and
- (c) £106,474 towards maintenance works at the Hatfield swim centre or Gosling which includes any changing room or shower facilities;

**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 £195,872 (one hundred and ninety-five thousand eight hundred and seventy-two pounds) (index linked as provided for in clause 10.7 of this Agreement) to be applied in the following amounts towards the following projects:

- (a) £34,841 (index linked as provided for in clause 10.7 of this Agreement) for a 3G Artificial grass pitches and £6,383 (index linked as provided for in clause 10.7 of this Agreement) for a sand based Artificial grass pitches to be paid towards either of the following:
  - i Building a new facility in Welwyn Garden City at either of the following sites: Ridgeway Academy, Welwyn Garden City FC, Moneyhole Park, King George V playing fields or Monks Walk School; or
  - ii Maintenance repairs at either Welwyn Garden City FC, Ridgeway Academy or Monks Walk School;
- (b) £59,464 (index linked as provided for in clause 10.7 of this Agreement) towards an adult natural grass football pitch and £55,005 (index linked as provided for in clause 10.7 of this Agreement) for a youth natural grass football pitch to be paid towards either of the following:
  - i Maintenance repairs/improvement works at either King George V pavilion, Welwyn Garden City FC, Ridgeway Academy, Stanborough School or Monks Walk School; or
  - ii Towards a new facility to accommodate growth and demand in football at a chosen site in Welwyn Garden City (which could be where the new 3G pitch will be provided);
- (c) £3,993 (index linked as provided for in clause 10.7 of this Agreement) towards maintenance repairs at Digswell Park Pitch or Holwell Primary School;
- (d) £4,956 (index linked as provided for in clause 10.7 of this Agreement) towards Welwyn Rugby Football Club to develop additional pitch provision to accommodate their growing demand;
- (e) £12,212 (index linked as provided for in clause 10.7 of this Agreement) towards maintenance repairs and/or building a women/disability changing room area at Welwyn Rugby Club;
- (f) £19,018 (index linked as provided for in clause 10.7 of this Agreement) towards either of the following:
  - i Non-turf (artificial) wickets at either Welwyn Garden City Cricket Club or Hatfield Crusaders Cricket Club in order to accommodate junior team demand; or
  - ii Cricket pitch improvements at Welwyn Garden City club or Hatfield Hyde Cricket Club; and

**Waste and Recycling Contribution** means the sum of £22,490.32 (twenty-two thousand four hundred and ninety pounds and thirty-two pence) (index linked as provided for in clause 10.9 of this Agreement) towards the provision of household waste bins and mini recycling centres.

## 2 **Contributions**

The Owner covenants with the Council:

- 2.1 to pay the Outdoor Sport Facilities Contribution to the Council prior to the Commencement Date;
- 2.2 not to Commence or cause or permit Commencement of the Development until the Outdoor Sport Facilities Contribution has been paid to the Council in accordance with paragraph 2.1 of this Schedule;
- 2.3 to pay the Indoor Sports Facilities Contribution and the Waste and Recycling Contribution prior to first Occupation of the Development;
- 2.4 not to Occupy or cause or permit Occupation of the Development until the Sports Facilities Contribution and the Waste and Recycling Contribution have been paid to the Council in accordance with paragraph 2.3 of this Schedule;
- 2.5 to pay the NHS Contributions to the Council prior to 75<sup>th</sup> Occupation of the Development; and
- 2.6 not to Occupy or cause or permit 75<sup>th</sup> Occupation or use of the Development until the NHS Contributions have been paid to the Council in accordance with paragraph 2.5 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 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.

## 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:

**Resident Travel Pack** means a welcome pack for occupants of the Dwellings

containing all of the details of sustainable travel options in the local area

**Travel Plan** means a written plan to be submitted to and approved in writing by the County pursuant to paragraph X 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 a data collection study reviewing and monitoring the provisions of the Travel Plan (as more fully set out therein) carried out annually in accordance with the provisions of clause 2.9(d) . All monitoring that forms part of the Travel Plan Annual Review to be carried out in accordance with the provisions of the County's Travel Plan Guidance (such version current as at the date of commencement of the development). **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 £8,400 (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.

**Travel Plan Remedial Measures Notice** means a notice in writing served on the Owner via the Travel Plan Co-ordinator by the County where the Owner has failed to meet one or more of the targets identified in the Travel Plan specifying the remedial measures and/or actions required to be taken by the Owner to remedy the failed implementation towards the agreed targets with a reasonable time provision.

## 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 ;

- 2.1.3 To nominate a Travel Plan Coordinator for written approval of the County and obtain such approval and such nomination shall include contact details for the proposed Travel Plan Coordinator and the nature of their relationship to the Owners to appoint and retain the Travel Plan Coordinator 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 To carry out baseline surveys and submit an updated Travel Plan to the County to be approved, including amended targets where relevant, within 3 months of first Occupation of the Development.
- 2.4 To carry out baseline surveys upon the occupation of the 150th Dwelling and submit an updated Travel Plan to be approved by the County, including amended targets where relevant, within 3 months of occupation of the 150th Dwelling
- 2.5 to submit a draft Resident Travel Pack and the Sustainable Travel Voucher to the County Council for written approval by the County no less than three months prior to first Occupation
- 2.6 not to Occupy or permit or allow Occupation of any Dwelling until the draft Resident Travel Pack and Sustainable Travel Voucher have been approved in writing by the County Council
- 2.7 to provide a Resident Travel Pack to each Dwelling forming part of the Development within one (1) month of the first two Occupations of each Dwelling
- 2.8 to provide a Sustainable Travel Voucher to each Dwelling forming part of the Development within one (1) month of the first Occupation of each Dwelling
- 2.9 At all times during Occupation of the Development to:
- 2.9.1 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;
- 2.9.2 promote and publicise the approved Travel Plan to owners occupiers and visitors to the Development;
- 2.9.3 implement the Travel Plan by the dates or within the time limits set out in the Travel Plan;
- 2.9.4 carry out the Travel Plan Annual Review annually on the corresponding calendar month for a period of [ ]\* years commencing one year after the Baseline Survey Collection Date and submit a written report setting out the findings of such review to the County within three (3) calendar months from the date 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 whether or not the objectives of the Travel Plan have been achieved. 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 2.9.4 above and notified in writing to the Owner;

- 2.9.5 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;
- 2.9.6 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.
- 2.9.7 If a Travel Plan Remedial Measures Notice is served upon the Owner by the County the Owner shall carry out the measures and actions specified in the Travel Plan Remedial Measures Notice in accordance with the timescales set out within it;
- 2.9.8 If in the reasonable opinion of the County the Owner has failed to comply with the Travel Plan Remedial Measures Notice within the timescales specified therein Owner acknowledges that they will be in breach of this Agreement and that the County may take such further action in respect of that breach or breaches as it considers appropriate without further recourse to the Owner.

## Schedule 5

### Viability Reviews

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

**Actual Build Costs** means the actual Build Costs of the Development incurred at the Relevant Review Date as demonstrated by a schedule of payments certified by a quantity surveyor together with invoices and receipts including construction and external works and which take into account and are in accordance with the Build Costs;

**Actual Development Costs** means the actual Development Costs of the Development incurred at the Relevant Review Date as demonstrated by a schedule of payments certified by a quantity surveyor together with invoices and receipts and are in accordance with the Development Costs;

**Actual Sales Values** means the actual sales values achieved in the sale to an independent third party;

**Additional Affordable Housing Amount** means the additional Affordable Housing which a Viability Review demonstrates can be viably delivered within the Development or any Change in Tenure Units which a Viability Review demonstrates can be viably delivered within the Development **provided always that** any increase (including any Development Programme Review Contribution and any Late Stage Review Contribution) shall not exceed the Affordable Housing Cap;

**Additional Affordable Housing Units** means any on-site Market Dwellings to be converted to Affordable Housing (in addition to the Affordable Housing Units set out in Schedule 1) and/or any Change in Tenure Units following a Viability Review which concludes that the Development can viably support more on-site Affordable Housing (or an alternative tenure for the Affordable Housing Units) and for the avoidance of doubt the tenures of these units shall be agreed by the Council as part of the Affordable Housing Programme having regard to relevant policies and shall not be limited to Shared Ownership Housing and may include Social Rented Housing or such other tenures reasonably required by the Council;

**Affordable Housing** means affordable housing managed by an RPSH (as defined in Schedule 1 of this Agreement) provided to Eligible Household (as defined in Schedule 1 of this Agreement) for persons nominated by the Council's Head of Housing (or his successor) for eligible persons;

**Affordable Housing Cap** means that the Affordable Housing Units plus any Additional Affordable Housing Units together with any Development Programme Review Contribution and/or any Late Stage Review Contribution (if applicable) shall not exceed the equivalent of 87 Dwellings being provided as Affordable Housing;

**Affordable Housing Programme** means a written programme submitted in accordance with this Schedule 5 showing how the Additional Affordable Housing Units will be delivered on-site following a Viability Review:

- (a) the location of the Additional Affordable Housing Units in the Development;
- (b) the number of Additional Affordable Housing Units;
- (c) the sizes (per person and bedroom) of the Additional Affordable Housing Units in the Development;
- (d) the location of any Change in Tenure Units (if applicable);
- (e) the tenures of the Additional Affordable Housing Units (which for the avoidance of doubt shall not be limited to Shared Ownership Housing and may include Social Rented Housing or such other tenures reasonably required by the Council) having regard to the relevant Council policies at the date of submission of the Affordable Housing Programme; and
- (f) if so required by the Council, a deed to be entered into pursuant to section 106 and s106A of the Act to secure the Additional Affordable Housing Units to the Council's reasonable satisfaction;

**Affordable Housing Units** means as defined in Schedule 1 of this Agreement;

**Blocks** means blocks A, B, C, D, E, F and G to be constructed as part of the Development and shown on the plan attached to this Agreement at Appendix [3];

**Benchmark Land Value** means in respect of the Development the amount of £6,000,000 (six million pounds);

**Build Costs** means the build costs of the Development supported by evidence of these costs including but not limited to:

- (a) details of payments made or agreed to be paid in the relevant building contracts applicable to schemes within the Development which have been completed or under construction at the time of the Viability Assessment;
- (b) costs certified by a Qualified Surveyor; and
- (c) for Estimated Build Costs the reasonable estimate of what such costs are likely to be in the construction of the Development as certified by a Qualified Surveyor;

**Component** means a part of the Development including but not limited to:

- (a) Market Dwellings;
- (b) Affordable Housing Units; and
- (c) the Open Space Land (as defined in Schedule 6);

**Change in Tenure Units** means a change to the tenure of some or all of the Affordable Housing Units;

**Concluded** means the Owner and the Council have agreed the outcome of a Viability Review or the outcome of a Viability Review has been determined by an expert pursuant to clause 12;

**Development Costs** means the Actual Development Costs and Estimated Development Costs of the Development at the point of the Relevant Review fully evidenced on an open book basis by a Qualified Surveyor with a duty of care to the Council including but not limited to:

- (a) the Build Costs;
- (b) site preparation costs;  
the costs of complying with this Agreement;
- (c) professional fees relating to the Development, including professional fees relating to the Application, the Appeal and any Statutory Challenge (which shall be no more than 6% of the Build Costs for the Estimated Development Costs);
- (d) 2.22% of the Build Costs as contingency (for Estimated Development Costs only);
- (e) costs of finance (at market rates for estimated Development Costs and properly evidenced for actual Development Costs);
- (f) Owner insurances reasonably incurred during scheme delivery but excluding holding costs of the land prior to development and any insurances included within the Build Costs;
- (g) marketing, letting, sales agent and legal costs;
- (h) Scheme Profit Margin Percentage; and
- (i) Benchmark Land Value,

but for the avoidance of doubt Development Costs exclude all internal costs of the Owner including but not limited to project management costs, overheads and administration expenses;

**Development Programme** means a programme submitted by the Owner to the Council which sets out a detailed timetable for the construction of the Development, such programme to detail how the Development Programme Objectives shall be achieved;

**Development Programme Objectives** means the objectives to construct the Development in its entirety as a single phase and to Practically Complete the entire Development within 24 months of the Commencement Date;

**Development Programme Review** means a Viability Review of the Development in accordance with Part [2] of this Schedule 5;

**Development Programme Review Contribution** means a financial contribution equivalent to 60% (sixty percent) of any Surplus Profit to be used towards the provision of Affordable Housing in the Council's administrative area subject to the Affordable Housing Cap;

**Development Viability Information** means the following information that is available at the Relevant Review Date:

- (a) Actual Sales Values of residential units being both the Market Dwellings and the Affordable Housing Units including the capital value of any ground rents;
- (b) Actual Sales Values of any car parking spaces sold as a Component of the Development;
- (c) Actual Sales Values of any Component of the Development;
- (d) estimated GDV of the unsold residential units being both the Market Housing Units and the Affordable Housing Units including the capital value of any ground rents;
- (e) estimated GDV of any Undervalue Transactions (to replace the Actual Sales Value of such transactions);
- (f) estimated capitalised value of any unsold car parking spaces;
- (g) estimated capitalised value of any Component;
- (h) Development Costs;

and including in each case supporting evidence to the Council's reasonable satisfaction;

**Disposal** means:

- (a) the Sale of a Component(s) of the Development;
- (b) the grant of a lease of a term of less than 125 years of a Component of the Development; or
- (c) the grant of an assured shorthold tenancy agreement or a short term let in respect of a Component of the Development,

**ALWAYS** excluding Undervalue Transactions and the terms Dispose Disposals and Disposed shall be interpreted accordingly;

**Early Stage Review** means a Viability Review of the Development in accordance with the provisions of Part 1 of Schedule 5 in the event that the Substantial Implementation does not occur by the Substantial Implementation Target Date;

**Estimated Build Costs** means the estimated Build Costs of the Development to be incurred at the Relevant Review Date based on agreed building contracts or estimates

provided by the Owner's quantity surveyor or cost consultant including construction and external works and which take into account and are in accordance with the Build Costs;

**Estimated Development Costs** means the estimated Development Costs of the Development to be incurred at the Relevant Review Date based on agreed contracts or estimates provided by the Owner's quantity surveyor or cost consultant and are in accordance with the Development Costs;

**External Consultant** means an appropriately qualified and experienced external consultant appointed by the Council to assess the Development Viability Information;

**GDV** means gross development value;

**Late Stage Review** means a Viability Review carried out on the Late Stage Review Date in accordance with the provisions of Part [3] of this Schedule 5;

**Late Stage Review Contribution** means a financial contribution equivalent to 60% (sixty percent) of any Surplus Profit to be used towards the provision of Affordable Housing in the Council's administrative area subject to the Affordable Housing Cap;

**Late Stage Review Date** means the date on which 75% (seventy five percent)] of the Dwellings in the Development have been Disposed as determined by the Council pursuant to this Agreement;

**Market Dwelling** means as defined in Schedule 1 of this Agreement;

**Market Value** means the price at which the sale of the relevant property interest would have been completed unconditionally for cash consideration on the Relevant Review Date based on detailed comparable market evidence, including evidence of rental values achieved for any Component of the Development which has been Disposed but not Sold, to be assessed by the Council and assuming:

- (a) a willing seller and a willing buyer;
- (b) that, prior to the date of valuation (which is to be carried out in accordance with the RICS Valuation Standards), there has been a reasonable period of not less than six months for the proper marketing of the interest (having regard to the nature of the property and the state of the market) for the agreement of the price and terms and for the completion of the sale;
- (c) that no account is taken of any additional bid by a prospective purchaser with a special interest; and
- (d) that both parties to the transaction have acted knowledgeably, prudently and without compulsion;

**Original Viability Appraisal** means the financial viability appraisal dated 15 February 2021 prepared by Aspinall Verdi on behalf of the Council in connection with the Application;

**Review Date** means the date on which any Viability Review is required to be undertaken (as the context requires) and the terms **Relevant Review Date** and **Relevant Review** shall be interpreted accordingly;

**Sale** means:

- (a) the sale of the freehold of a Component; or
- (b) the grant of a lease of a Component with a term of 125 years or more and subject to nominal rent,

and the term **Sold** shall be interpreted accordingly;

**Scheme Profit Margin Percentage** means an allowance on the return to the Owner of:

- (a) 17.5% of GDV for Market Dwellings for sale;
- (b) 6% of GDV for Affordable Housing Units;
- (c) 15% of the GDV for all commercial areas of the Development;

to be used in any Viability Review undertaken

**Social Rented Housing** means Affordable Housing which is managed by local authorities and RPSH and where the rent is no higher than Target Rent and "Social Rented Housing Units" and "Social Rent" shall be construed accordingly;

**Statutory Challenge** means a court challenge to the grant of Planning Permission made pursuant to section 288 of the 1990 Act;

**Statutory Challenge Period** means the period of time from service of a Statutory Challenge up to the date that any Statutory Challenge is finally disposed of leaving in place a valid Planning Permission free from challenge;

**Substantial Implementation** means demolition of all existing buildings and construction up to the first floor of Blocks F and G as shown on the plan attached to this Agreement at Appendix [4] to be erected pursuant to the Development;

**Substantial Implementation Target Date** means the date 21 months from the date following the grant of Planning Permission PROVIDED THAT in the event of a Statutory Challenge the 21 month period shall be extended by a period equal to the Statutory Challenge Period;

**Surplus Profit** means an additional sum over and above the Scheme Profit Margin Percentage calculated as part of a Viability Review;

**Target Rent** means target rents for Social Rented Housing (or its equivalent) as determined through the National Rent Regime and published from time to time by the Regulator (as defined in Schedule 1 of this Agreement or such other body as may replace the Regulator, having responsibility for setting target rents for social housing);

**Undervalue Transaction** means:

- (a) a transaction the purpose or effect of which is to artificially reduce the Review Stage GDV; and/or
- (b) a Disposal of a Component of the Development at less than Market Value and that is not an arm's length third party bona fide transaction;

**Viability Review** means an update of the Original Viability Appraisal which demonstrates:

- (a) whether or not the Development has achieved the Scheme Profit Margin Percentage;
- (b) the Additional Affordable Housing Amount (if any) which is available; and
- (c) the Late Stage Review Contribution for the Development if appropriate,

provided always that such Viability Review shall use the same assumptions and methodology as stated in the Original Viability Appraisal but shall use updated Development Viability Information as is available at the Relevant Review Date; and

**Viability Review Fee** means the fee per Viability Review reasonably and properly incurred by the Council in assessing any Viability Review and which shall include the fee for the appointment of an External Consultant and/or independent surveyor to act on the Council's behalf.

The Owner hereby covenants with the Council:

### **Part 1 – Early Stage Review**

#### **2 Early Stage Review - Trigger**

- 2.1 An Early Stage Review shall be undertaken if Substantial Implementation has not occurred by the Substantial Implementation Target Date.
- 2.2 To notify the Council in writing of the date of Substantial Implementation no later than 10 (ten) Working Days after such date and such notice to be accompanied by full documentary evidence on an open book basis to enable the Council to independently assess whether Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.
- 2.3 In the event that the Substantial Implementation Target Date has not been achieved an Early Stage Review shall be undertaken and paragraphs 3 to 5 of Part 1 of this Schedule 5 shall apply.
- 2.4 No later than 10 (ten) Working Days after receiving a written request from the Council, the Owner shall provide to the Council any additional documentary evidence reasonably requested by the Council to enable it to determine whether Substantial Implementation has been achieved on or before the Substantial Implementation Target Date.
- 2.5 No later than 25 (twenty-five) Working Days after the Council receives notice pursuant to paragraph 2.2 of Part 1 of this Schedule 5 the Council shall be afforded an opportunity to inspect the Application Site if the Council considers it necessary to inspect and assess



whether or not the works which have been undertaken achieve Substantial Implementation **provided always that** the Council shall:

- (a) provide the Owner with reasonable written notice of its intention to carry out such an inspection;
- (b) comply with relevant health and safety legislation; and
- (c) at all times comply with the Owner's reasonable requirements.

2.6 No later than 10 (ten) Working Days after the date of any inspection by the Council pursuant to paragraph 1.5 of Part of this Schedule 5 the Council shall provide written confirmation (together with reasons) to the Owner as to whether or not the Council considers that Substantial Implementation has been achieved and whether it was achieved on or before the Substantial Implementation Target Date.

2.7 If the Council notifies the Owner that the Council acting reasonably considers that Substantial Implementation has not been achieved then the provisions of this Part 1 of this Schedule shall continue to apply mutatis mutandis until the Council has notified the Owner pursuant to paragraph 1.6 of Part 1 of this Schedule 5 that Substantial Implementation has been achieved.

2.8 If Substantial Implementation has been achieved on or before the Substantial Implementation Target Date then no Early Stage Review is required and paragraphs 2 to 5 of Part 1 of this Schedule 5 will not apply.

2.9 If Substantial Implementation has not been achieved on or before the Substantial Implementation Target Date then the Owner shall not Occupy the Development or any part thereof until either:

2.9.1 the Council has notified the Owner that no change to the Affordable Housing Programme is required; or

2.9.2 the Council has notified the Owner pursuant to paragraph [3.4] of Part 1 of this Schedule 5 that the Affordable Housing Programme needs to be reconciled and an updated Affordable Housing Programme has been submitted to the Council and approved pursuant to paragraph [2] of this Schedule 5,

**provided always** that the construction of the Development can continue and will not be delayed or otherwise hindered by the requirement to comply with paragraphs 2 to 4 of Part 1 of this Schedule 5.

### 3 **Early Stage Review – Submission of Information**

3.1 Where Substantial Implementation has not occurred before the Substantial Implementation Target Date (as determined by the Council under paragraph 1.7 of Part 1 of this Schedule or pursuant to dispute resolution in accordance with clause 12 of this Agreement) then the Owner shall undertake a Viability Review and submit the following information no later than 20 (twenty) Working Days after the date on which the Owner is notified pursuant to paragraph 1.7 of Part 1 of this Schedule 5 that the Substantial Implementation Target Date has not been achieved:

- 3.1.1 the Development Viability Information as is available at the date on which the Viability Review is undertaken;
  - 3.1.2 a written statement that applies the relevant Development Viability Information to the Original Viability Appraisal thereby confirming whether in the Owner's view any Surplus Profit is available to provide any Additional Affordable Housing Amount; and
  - 3.1.3 where such written statement confirms that an Additional Affordable Housing Amount is due an updated Affordable Housing Programme which includes the Additional Affordable Housing Amount for the Development.
- 3.2 For the avoidance of doubt in the event that the Early Stage Viability Review determines that a Surplus Profit has been made then all such Surplus Profit shall be used towards the provision of the Additional Affordable Housing Amount.
- 4 **Early Stage Review - Assessment**
- 4.1 The Council shall assess the Development Viability Information submitted pursuant to paragraph 2 of Part 1 of this Schedule 5 and assess whether in its view any Surplus Profit is available to provide an Additional Affordable Housing Amount or whether the level of Affordable Housing for the Development shall remain as per the provisions in Schedule 1 of this Agreement.
- 4.2 The Council may appoint an External Consultant to assess the Development Viability Information submitted pursuant to paragraph 2 of Part 1 of Schedule 5.
- 4.3 In the event that the Council and/or an External Consultant requires further Development Viability Information or further supporting evidence then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 (ten) Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether any Additional Affordable Housing Amount is due.
- 4.4 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 2 of Part 1 of Schedule 5, the Council shall notify the Owner in writing of the Council's findings.
- 4.5 Where the Council's assessment is agreed by the Owner then the Owner shall update the Affordable Housing Programme accordingly and submit the updated Affordable Housing Programme to the Council for approval within ten Working Days of the date on which it receives the Council's notice pursuant to paragraph 3.4 of Part 1 of Schedule 5.
- 4.6 In the event that the Owner disagrees with the Council's assessment the Parties shall have 30 (thirty) Working Days to seek resolution and thereafter either Party shall have the ability to refer the matter to dispute resolution pursuant to clause 12 of the Agreement.
- 4.7 The updated Affordable Housing Programme referred to in paragraph 3.5 of Part 1 of this Schedule 5 shall reflect the amount of Affordable Housing Units the Development will deliver taking into account the agreed Additional Affordable Housing Amount.

4.8 The Owner shall pay to the Council the Viability Review Fee within 20 (twenty) Working Days of receipt of a written request for payment such request to be supported by written evidence to demonstrate such expenditure or anticipated expenditure.

5 **Early Stage Review – Delivery of Amended Affordable Housing Programme**

Where it is agreed or determined pursuant to this Part 1 of Schedule 5 that there shall be Additional Affordable Housing Units then the Owner covenants to submit the Affordable Housing Programme and to deliver the Additional Affordable Housing Units in accordance with the Affordable Housing Programme as approved by the Council in writing under this Part 1.

## **Part 2 – Development Programme Review**

### **1 Development Programme**

- 1.1 The Owner shall submit the Development Programme to the Council for its written approval prior to Commencement of the Development.
- 1.2 The Owner shall not Commence or permit Commencement until the Council has approved the Development Programme in writing PROVIDED THAT the Council can only withhold its approval of the Development Programme if it considers (acting reasonably) that the Development Programme Objections will not be met by the Development Programme.

### **2 Development Programme Trigger**

- 2.1 Following the Commencement Date until Practical Completion, the Owner shall update the Council at least quarterly per annum confirming progress against the Development Programme approved pursuant to paragraph 1 of Part 2 of this Schedule.
- 2.2 The Owners shall provide the Council on written request with full documentary evidence on an open book basis to enable the Council to independently assess whether there has been a material delay to the Development Programme.
- 2.3 The Owner shall afford the Council access to the Application Site to inspect and assess progress against the the Development Programme approved pursuant to paragraph 1 of Part 2 of this Schedule **provided always that** the Council shall:
- 2.3.1 provide the Owner with reasonable 10 working days written notice of its intention to carry out such an inspection;
  - 2.3.2 comply with relevant health and safety legislation; and
  - 2.3.3 at all times comply with the Owner's reasonable requirements.
- 2.4 Subject to paragraph 2.5 of Part 2 of this Schedule, in the event that the Council considers that the Development can no longer be constructed in accordance with the Development Programme approved pursuant to paragraph 1 of Part 2 of this Schedule and that the Development Programme Objectives will not be achieved, it may anytime prior to Occupation of 70% of the Dwellings notify the Owner in writing that a Development Programme Review must be undertaken in accordance with Part 2 of this Schedule (the **“Development Programme Review Notice”**) and the provisions of paragraphs 3-5 (inclusive) of this Part 2 shall apply.
- 2.5 The Council shall specify within the notice served pursuant to paragraph 2.4 of Part 2 of this Schedule the date or trigger for undertaking the Development Programme Review PROVIDED THAT the Council must provide at 20 Working Days notice and that no such review shall be required to be undertaken where a Viability Review has been Concluded pursuant to the terms of this Schedule within 6 months prior to the Council serving the Development Programme Reviewing Notice or a Viability Review has been triggered pursuant to the terms of this Schedule within 6 months following the anticipated Conclusion of this Development Programme Review and the provisions of paragraphs 3-5 (inclusive) of this Part 2 shall not apply. .

### **3 Development Programme Review – Submission of Information**

- 3.1 The Owner shall submit a Viability Review to Council by the date specified within the notice served pursuant paragraph 2.4 of Part 2 of this Schedule, which shall include the following information:
- 3.1.1 the Development Viability Information in relation to the Development as is available at the date on which the Viability Review is undertaken; and
  - 3.1.2 a written statement that applies the applicable Development Viability Information to the Original Viability Appraisal thereby confirming whether in the Owner's view any Additional Affordable Housing Amount is due and, if so, how much; and
  - 3.1.3 where such written statement confirms that an Additional Affordable Housing Amount is due an updated Affordable Housing Programme which includes the Additional Affordable Housing Amount for the Development.

### **4 Development Programme Review – Assessment**

- 4.1 The Council shall assess the Development Viability Information submitted pursuant to paragraph 3 of Part 2 of this Schedule 5 and assess whether in its view 60% of any Surplus Profit is available to provide an Additional Affordable Housing Amount or whether the level of Affordable Housing provision for the Development shall remain as set out in Schedule 1 of this Agreement or as stated in the most up-to-date version of the Affordable Housing Programme (as applicable).
- 4.2 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 3 of Part 2 of this Schedule 5.
- 4.3 In the event that the Council and/or an External Consultant requires further Development Viability Information or further supporting evidence then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 (ten) Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether Additional Affordable Housing Amount is due.
- 4.4 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 3 of Part 2 of Schedule 5, the Council shall notify the Owner in writing of its assessment.
- 4.5 Where the Council's assessment is agreed by the Owner, then the Owner shall update the Affordable Housing Programme accordingly and submit the updated Affordable Housing Programme to the Council for approval within 10 (ten) Working Days of the date on which it receives the Council's notice pursuant to paragraph [4.4] of Part 2 of this Schedule 5.
- 4.6 In the event that the Owner disagrees with the Council's assessment the Parties shall have 30 Working Days to seek resolution thereafter either Party shall have the ability to refer the matter to dispute resolution pursuant to clause 12 of this Agreement.

4.7 In the event that the Development Programme Review determines that a Surplus Profit has been made then 60% (sixty per cent) of such Surplus Profit is to be used towards the provision of Additional Affordable Housing in the Affordable Housing Programme, subject to the Affordable Housing Cap, unless the Council (acting reasonably) otherwise agrees in writing to accept payment of the Development Programme Review Contribution in lieu of Additional Affordable Housing and in coming to its decision the Council shall have regard to the stage of construction and/or Occupation of the Development, whether any Market Dwellings remain un-Sold and, in the case of Change in Tenure Unit, if a contract has been entered into for the Affordable Housing Units with a RPSH in accordance with Schedule 1 and if a RPSH is likely to accept a transfer of any Additional Housing Units and/or any Change in Tenure Units..

4.8 The updated Affordable Housing Programme shall reflect the amount of Affordable Housing Units the Development will deliver taking into account the agreed Additional Affordable Housing Amount due as a result of all Viability Reviews carried out up to the date of any such update.

4.9 The Owner shall pay to the Council the relevant Viability Review Fee within 20 (twenty) Working Days of receipt of a written request for payment.

**5 Development Programme Review – Delivery of Amended Affordable Housing Programme**

5.1 Where it is agreed or determined pursuant to this Part 2 of Schedule 5 that there shall be Additional Affordable Housing Units then the Owner covenants to submit the Affordable Housing Programme and to deliver the Additional Affordable Housing Units in accordance with the Affordable Housing Programme as approved by the Council in writing under this Part 2.

5.2 In the event that that the Council's agrees that a Development Programme Review Contribution is due in lieu of Additional Affordable Housing within the Development then:

5.2.1 such Development Programme Review Contribution shall be paid to the Council within 20 (twenty) Working Days of the date on which such notice is received by the Owner from the Council setting out the exact sum due; and

5.2.2 no more than 75% (seventy five percent)] of the Dwellings in the Development shall be Occupied until the Development Review Contribution has been paid in full to the Council.

## **Part 3 – Late Stage Review**

### **1 Late Stage Review -Trigger**

The Owner shall notify the Council in writing of the anticipated Late Stage Review Date not less than 20 (twenty) Working Days in advance of that date.

### **2 Late Stage Review – Submission of Information**

2.1 No later than 20 (twenty) Working Days after the Late Stage Review Date notified to the Council pursuant to paragraph 1 of Part 3 of Schedule 5, the Owner shall submit a Viability Review to Council which shall include the following information:

2.1.1 the Development Viability Information in relation to the Development as is available at the date on which the Viability Review is undertaken; and

2.1.2 a written statement that applies the applicable Development Viability Information to the Original Viability Appraisal thereby confirming whether in the Owner's view any Late Stage Review Contribution is due and if so how much.

### **3 Late Stage Review – Assessment**

3.1 The Council shall assess the Development Viability Information submitted pursuant to paragraph 2 of Part 3 of this Schedule 5 and assess whether in its view a Late Stage Review Contribution is due.

3.2 The Council may appoint an External Consultant to assess the information submitted pursuant to paragraph 2 of Part 3 of this Schedule 5.

3.3 In the event that the Council and/or an External Consultant requires further Development Viability Information or further supporting evidence then the Owner shall provide any reasonably required information to the Council or the External Consultant (as applicable and with copies to the other parties) within 10 (ten) Working Days of receiving the relevant request and this process may be repeated until the Council and/or the External Consultant (as applicable) has all the information it reasonably requires to assess whether in its view a Late Stage Review Contribution is due subject to the Affordable Housing Cap.

3.4 If the Council and/or External Consultant determines following receipt of the information submitted pursuant to paragraph 2 of Part 3 of this Schedule 5 that the Late Stage Review Date has not occurred, the Council may require the Owner to promptly submit additional information pursuant to paragraph 3.3 of Part 3 of this Schedule 5 or to re-submit the information required under paragraph 3.3 of Part 3 of this Schedule 5 upon the occurrence of the Late Stage Review Date (as determined by the Council).

3.5 When the Council or its External Consultant has completed its assessment of the information submitted pursuant to paragraph 2 of Part 3 of this Schedule 5, the Council shall notify the Owner in writing of its assessment confirming whether or not a Late Stage Review Contribution is due or not and if such a payment is due the amount of the Late Stage Review Contribution.

- 3.6 In the event that the Owner disagrees with the Council's assessment the Parties shall have 30 (thirty) Working Days to seek resolution and thereafter either Party shall have the ability to refer the matter to dispute resolution pursuant to clause 12 of the Agreement.
- 3.7 In the event that that the Council's assessment determines that a Late Stage Review Contribution is due in respect of the Development then:
- 3.7.1 such Late Stage Review Contribution shall be paid to the Council within 20 (twenty) Working Days of the date on which such notice is received by the Owner from the Council setting out the exact sum due; and
- 3.7.2 no more than 80 % (eightypercent) of the Dwellings in the Development shall be Occupied until the Late Stage Review Contribution has been paid in full to the Council.
- 3.8 The Owner shall pay to the Council the relevant Viability Review Fee within 20 (twenty) Working Days of receipt of a written request for payment.



#### **Part 4 – Special Viability Provisions**

- 1 Notwithstanding the provisions within this Schedule 5, the Council and the Owner hereby acknowledged and agree:
  - 1.1 Unless otherwise agreed by the Parties each Viability Review shall be carried out in accordance with RICS approved guidance;
  - 1.2 In the event that the Inspector or Secretary of State determines pursuant to clause [3.3] of this Agreement that no Affordable Housing shall be provided pursuant to Schedule 1 of this Agreement, then the defined terms within Schedule 1 which are referred to within this Schedule 5 shall remain in the event any Additional Affordable Housing Units are to be provided and for the purposes of any Viability Review (as necessary);
  - 1.3 Any notice or requests for further information from the Council under this Schedule 5 shall be accompanied with written reasons explaining the decision reached within any such notice or explaining why further information is required (as applicable) and where the Council is required to conclude if any Additional Affordable Housing Amount is to be delivered and/or any Development Programme Review Contribution and/or any Late Stage Viability Review Contribution is to be paid, it shall give reasons (in writing) for its conclusions; and
  - 1.4 Where the Council's approval is required pursuant to this Schedule then, unless otherwise stated, the Council shall respond within 20 Working Days following receipt of all of the required information from the Owner to confirm whether or not it gives its approval and, for the avoidance of doubt, in the event that the Council reasonable requires further information, then the 20 Working Day period shall not commence until such information has been provided.

## Schedule 6

### Open Space

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;

**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 5 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);

**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 subject to Permitted Closures in accordance with this Agreement;
  - 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.

2.10.3 It is 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.

## 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 Appendix 6 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.

### 2 Car Park Management

The Owner covenants with 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

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 change to 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 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.

### 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

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

**SUDS** means the 'drainage system' and 'sustainable drainage' (as defined in paragraphs 1 and 2 respectively of Schedule 3 to the Flood and Water Management Act 2010) to be provided as part of the Development in accordance with conditions contained within the Planning Permission;

**SUDS Management Company** means a private limited company established or appointed for inter alia the purpose of managing the SUDS in accordance with this Schedule 10; and

**SUDS Plan** means the plan for the management and maintenance of the SUDS approved pursuant to the Planning Permission or the Planning Permission as amended by any application made pursuant to Section 73 and/or Section 96A of the Act as the case may be.

#### 2 **SUDS Covenants**

2.1 The Owner covenants with the Council and the County:

2.1.1 to construct the SUDS in accordance with the SUDS Plan and to thereafter manage and maintain the SUDS in accordance with the SUDS Plan until the SUDS have been transferred to the SUDS Management Company in accordance with this Schedule 8;

2.1.2 on or prior to Occupation the Owner is to transfer the SUDS to a SUDS Management Company for a consideration of £1 (one pound) with full title guarantee and on such reasonable terms as the Council and the SUDS Management Company may reasonably require (such terms to include full cleansing maintenance repair and renewal requirements) and the Owner shall pay the reasonable and properly incurred legal costs in connection with such transfer and thereafter the SUDS shall be maintained and managed in perpetuity in accordance with the approved SUDS Plan and the terms of this Agreement by the SUDS Management Company;

2.1.3 not to Occupy the Development unless and until the SUDS are transferred to a SUDS Management Company in accordance with the provisions of paragraph 2.1.2 of this Schedule 10;

2.1.4 to include in the transfer of the SUDS as appropriate to the SUDS Management Company:

(a) a covenant by the SUDS Management Company to maintain the SUDS in perpetuity in accordance with the Planning Permission and SUDS Plan at all times;

(b) a covenant by the SUDS Management Company not to transfer the SUDS into the individual ownership of the owners of the Dwellings; and



(c) an obligation on the SUDS Management Company that should the Council and/or County so require for the SUDS Management Company to enter into a direct covenant with the Council and County to perform the obligations set out in paragraphs 2.1.4 of this Schedule 10;

2.1.5 to provide the Council and County with a copy of the completed transfer of the SUDS and to inform the Council and County in writing of the contact details of the SUDS Management Company;

2.1.6 to:

a) include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the SUDS Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the SUDS Management Company to discharge its obligations under this Agreement; and

b) procure that the buyer or lessee of each Dwelling upon any subsequent sale or letting of such Dwelling will procure that the incoming buyer or lessee shall enter into direct covenants with the SUDS Management Company in the form of paragraph 2.1.6(a) and (b) of this Schedule.

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**

<b>Payment Type</b>	<b>Amount</b>	<b>Interim Indexation</b>	<b>Final Indexation</b>	<b>Total</b>	<b>Payable to</b>
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**  
**Affordable Housing Plan**

## Appendix 4

### Block Plan



**Appendix 5**  
**Open Space Land**

**Appendix 6**  
**Car Park Management Strategy**