

THIS AGREEMENT dated 26th day of June 2020 is made between:

1. **WELWYN HATFIELD BOROUGH COUNCIL** of Council Offices, The Campus, Welwyn Garden City, Hertfordshire ("the Borough Council")
2. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Pegs Lane Hertford Hertfordshire SG13 8DE ("the County Council")

WHEREAS:

- (1) The County Council and the Borough Council enter into this Deed as local planning authorities pursuant to Section 1 of the Act for the purposes of Section 106 of the Act
- (2) The Borough Council is the relevant administrative authority for housing, green spaces, play facilities, sports facilities, waste collection and recycling for the area within which the Land is situated
- (3) The County Council is the Highway Authority the Education Authority the Libraries Authority the Social Services Authority and the Fire and Rescue Authority for Hertfordshire
- (4) The Borough Council is the principal council for the purposes of the Local Government Act 1972
- (5) The County Council is the registered freehold owner of the Land as recited in the Principal Agreement as the "Application Site") and in order to obtain planning permission for the Development has entered into the Principal Agreement as landowner containing amongst other things the Planning Obligations solely enforceable by the Borough Council as the local planning authority
- (6) The County Council has specified herein below at Clause 5 the prescribed standards to which the Borough Council shall adhere in discharging the

functions pursuant to this Deed unless in any particular case it is otherwise agreed in writing by the Borough Council and the County Council

IT IS NOW AGREED as follows:

1. Definitions Interpretation and General

1.1 In this Deed the following terms shall have the following meanings:-

"Act"	means the Town and Country Planning Act 1990 as amended
"Contributions"	means collectively the Library Contribution, the Primary Education Contribution, the Secondary Education Contribution, the Sustainable Transport Contribution and the Youth Contribution as defined in the Principal Agreement and payable pursuant to the Second Schedule to the Principal Agreement
"Development"	means the development authorised by the Planning Permission under reference number 6/2019/2162/OUTLINE as defined in the Principal Agreement
"Land"	means the land known as land south-west of Filbert Close, Hatfield, AL10 9SH registered at the Land Registry with Title Absolute under the Title Number HD502837 which for identification purposes only is shown edged red on the plan annexed hereto

"Payment Period"	means 28 days from receipt of cleared funds
"Planning Obligations"	means the planning obligations in relation to the Contributions secured pursuant to the Principal Agreement under Schedule 2 and Schedule 4 together with all associated contractual obligations covenants and stipulations necessary to give effect to the Principal Obligation
"Principal Agreement"	means an agreement of even date pursuant, inter alia, to section 106 of the Act and made between the Borough Council (1) and the County Council (2) in respect of the Development

2. Where the context provides:

- 2.1 any reference to any statute or any section of a statute includes any statutory re-enactment or modification
- 2.2 any reference to clauses and schedules are references to clauses and schedules to this Deed
- 2.3 headings in the Deed shall not form part of or affect its construction
- 2.4 where a party is required to give consent or approval by any specific provision of this Deed such approval shall not be unreasonably withheld or delayed
- 2.5 any provision of this Deed which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Deed

2.6 references in this Deed to the Borough Council and the County Council shall include any successor statutory authority

It is hereby agreed as follows:

3. This Agreement is entered into pursuant to Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers enabling the County Council and Borough Council thereunto
4. The Borough Council shall be the sole enforcing authority for the Planning Obligations and shall subject to any express terms or provisions in this Deed and without prejudice to its statutory discretion use reasonable endeavours to commence as soon as reasonably possible all such necessary action including the institution of legal proceedings to enforce the Planning Obligations
5. In respect of the Planning Obligations the Borough Council hereby undertakes with the County Council that it shall :-
 - i) hold the Contributions in an identifiable interest-bearing account and shall at all times maintain a proper record of all payments received
 - ii) as soon as possible and in any event prior to the expiry of the Payment Period it shall forward to the County Council all sums received in respect of the Contributions together with notice in writing of the date when such monies were received
 - iii) where the Contributions (or any part thereof) are not received by the County Council within the Payment Period in accordance with clause 5(ii) above then such payment shall be made with interest from the end of the Payment Period to the date of payment to the County Council and such interest

shall be calculated at the rate from time to time prescribed under section 32 of the Land Compensation Act 1961

- iv) upon written request from the County Council it shall submit to the County Council a list of all Planning Obligations that were due to the Borough Council including the dates on which they were due the dates on which they were performed and the dates on which any monetary payments due to the Borough Council were transferred to the County Council
- v) upon written request from the County Council submit to the County Council a list of the Planning Obligations that were due to the Borough Council but not performed by the by the interested parties of the Land to whom the Principal Agreement is enforceable against with a written explanation as to the steps being taken by the Borough Council in securing performance of the same together with copies of all correspondence relating to the same
- vi) it shall provide to the County Council written notice of any breaches of the Planning Obligations within twenty eight (28) days of becoming aware of such breaches together with written notice of any enforcement action including but not limited to any legal proceedings that the Borough Council intends to commence
- vii) it shall consult with the County Council on any issue of non-compliance of the Planning Obligations and shall not unreasonably refuse any request by the County Council for the enforcement by the Borough Council of any non-compliance of the Planning Obligations including but not limited to the appointment of the County Council at its cost as agent for the Borough Council for the purposes of such enforcement or the payment by the County Council of the Borough Council's costs of such enforcement

- viii) it shall forward to the County Council within twenty eight (28) days of receipt any notices received as required pursuant to the Principal Agreement including but not limited to notices of commencement, completion and occupation of the Development
 - ix) if the Contributions or any part thereof is paid to the Borough Council under the terms of the Principal Agreement and is not released to the County Council within the Payment Period and as such the Contributions have to be returned to the payer of the Contributions as it cannot reasonably be expended for the purpose for which it was secured within the time specified in the Principal Agreement then it shall pay to the County Council the sums to be returned to the payer of the Contributions PROVIDED THAT the County Council shall on receipt of the returned sums pay the landowner the returned sum such payment not to be unreasonably withheld or delayed.
6. The County Council shall on receipt of the Contributions acknowledge receipt of such payments in writing to the Borough Council and hold the Contributions in an identifiable interest-bearing account and shall at all times maintain a proper record of all payments received;
7. The County Council shall only spend the received Contributions and any accrued interest for the purposes specified in the Principal Agreement and shall upon written request from the Borough Council provide within twenty eight (28) days a detailed record of the spending of the Contributions including but not limited to the date, amount and purpose for which it was spent;
8. If any part of the sums received in respect of the Contributions and paid to the County Council under the terms of this Deed have not been spent within the period specified pursuant to clause 6.2.2 of the Principal Agreement then County Council shall repay any such unexpended sum with any accrued interest to the Borough Council for payment to the

payer of the Contributions in accordance with clause 6.2.2 of the Principal Agreement

9. The County Council covenants with the Borough Council that it shall defray all such expenses as may be incurred by the Borough Council in discharging its obligations as the sole enforcing authority of the Planning Obligations provided the County Council is notified in writing of the anticipated costs prior to them being incurred and including any costs arising from and in relation to enforcement proceedings but which must be separately agreed as enforcement proceedings arise and shall indemnify the Borough Council against any claims whatsoever made against the Borough Council in respect of any wilful act or default or negligent act or omission on the part of the County Council its servants or agents in discharging its obligations pursuant to this Deed unless any such act or omission results from written instructions whether specific or general issued by the Borough Council or its officers or servants
10. This Agreement shall be deemed to have become operative as from the date of the Principal Agreement and shall remain in full force and effect until the earlier of:
 - (a) 3 months notice in writing given by the County Council;
 - (b) full and complete performance of the obligations on the part of the Borough Council and County Council contained in this Deed;
 - (c) in the event the Planning Obligations are discharged in accordance with section 106A of the Act; or
 - (d) if the Principal Obligation shall be deemed void or cease to have effect in accordance with its relevant provisions.
11. (a) The County Council and the Borough Council will attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Deed and if the matter is not resolved by negotiation the parties shall refer the dispute to mediation in accordance with the Centre for Dispute Resolution procedures

- (b) Notwithstanding the provision of clause 9 (a) above the County Council and the Borough Council shall reserve all their respective rights in the event that no agreed resolution shall be reached in the mediation and no party shall be deemed to be precluded from taking such interim formal steps as may be considered necessary to protect such party's position while the mediation or other procedure is pending or continuing
12. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a statutory successor to such a party
13. The County Council and the Borough Council hereby agree that any term not specifically defined in this Deed shall have the meaning ascribed to it under the Principal Obligation
14. Insofar as any clause or clauses of this Deed 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 provision of this Deed.
15. No waiver whether express or implied by the Borough Council or County Council of any breach or default by the other party in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or the County Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
16. Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the County Council or Borough Council or any officer of the County Council or Borough Council is required for any purpose under or in connection with the terms of this Deed such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed

17. This Deed is governed by and interpreted in accordance with the law of England

IN WITNESS whereof the County Council and the Borough Council have caused their respective Common Seals to be hereunto affixed but not delivered until the day and year first before written

The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

Daniel Stevens
Principal Solicitor



Chief Legal Officer / Assistant Chief Legal Officer

18/5/2020



EXECUTED under the Common Seal of
WELWYN HATFIELD BOROUGH COUNCIL
in the presence of:



Authorised Officer

29/1/55



Date 26 June 2020

HERTFORDSHIRE COUNTY COUNCIL

- and -

WELWYN HATFIELD BOROUGH
COUNCIL

Agreement relating to Planning Obligations
relating to the land south-west of Filbert
Close, Hatfield, AL10 9SH (ref:
6/2019/2162/OUTLINE)

QUENTIN BAKER
Chief Legal Officer
County Hall
Hertford
SG13 8DE

Ref:- 013429