

Dated 16th September 2016

PATRICK BIRCHLEY and JACINTA MARY BIRCHLEY
and

GLADMAN DEVELOPMENTS LIMITED

UNILATERAL UNDERTAKING

Under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to the development of land on the South side of the road leading from Madley to
Clehonger

THIS UNILATERAL UNDERTAKING is given the 16th day of September

2016

BY:

- (1) **PATRICK BIRCHLEY and JACINTA MARY BIRCHLEY** both of Applebank House 24 Spital Aberdeen AB24 3HS ("the Owner")

TO:

- (2) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane Offices, Plough Lane, Hereford, HR4 0LE ("the Council")

WITH THE CONSENT OF:

- (3) **GLADMAN DEVELOPMENTS LIMITED** (company number 03341567) whose registered office is at Gladman House, Alexandria Way, Congleton Business Park, Congleton, CW12 1LB ("the Promoter")

RECITALS

1. The Council is the local planning authority for the purposes of Section 106 of the 1990 Act for the area in which the Site is situated.
2. The Owner is the freehold owner of the Site as set out in Schedule 1.
3. The Owner and the Promoter have entered into the Promotion Agreement
4. The Promoter submitted the Application to the Council.
5. The Council failed to determine the Application within the statutory time period and the Promoter has submitted the Appeal for determination by the Planning Inspector or the Secretary of State.
6. The Owner is prepared to enter into this deed in order to secure the planning obligations contained in it in the event that Planning Permission is granted pursuant to the Appeal.

NOW THIS DEED WITNESSES as follows:

1. Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

- 1.1.1 'the 1990 Act' means the Town and Country Planning Act 1990 (as amended)
- 1.1.2 'Affordable Housing' means affordable housing of a type or types specified in the NPPF provided on the Site in accordance with the Planning Permission provided to eligible households whose needs are not met by the market, where eligibility is determined with regard to local incomes and local house prices and which remains at an affordable price for future eligible households
- 1.1.3 'the Appeal' means the appeal to the Secretary of State following the non-determination of the Application by the Council and allocated reference number APP/W1850/W/15/3140016
- 1.1.4 'the Application' means the application for outline planning permission for the Development submitted to the Council and registered on 3 July 2014 with reference number P141964/0
- 1.1.5 'Approval (Reserved Matters)' means the reserved matters approval or approvals which are obtained in respect of the Planning Permission PROVIDED THAT where more than one reserved matters approval is obtained in respect of the Development for the purposes of calculating the liability for the contributions comprising planning obligations in this Deed it shall mean the reserved matters approval or approvals that is or are implemented for the purposes of Section 56(4) of the 1990 Act
- 1.1.6 'Bedroom' means a room in a Dwelling designed as a bedroom or study/bedroom and 'Bedrooms' shall be construed accordingly
- 1.1.7 'Charging Schedule' has the meaning ascribed in the CIL Regulations
- 1.1.8 'CIL Date' means the date upon which the first Charging Schedule comes into effect in the

area in which the Development is situated

- 1.1.9 'CIL Liability' means the amount imposed on the Development as 'CIL' (as that acronym is defined in the CIL Regulations) including where applicable the combined CIL for each Phase of Development
- 1.1.10 'CIL Regulations' means the Community Infrastructure Levy Regulations 2010 (as amended)
- 1.1.11 'the Commencement of Development' means the commencement of any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence the Development' shall be construed accordingly
- 1.1.12 'Contributions' means the contributions as set out in Schedule 2 to this deed and 'Contribution' shall mean one of them
- 1.1.13 'the Decision Letter' means the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed
- 1.1.14 'the Development' means the development of the Site for residential development of up to 90 (ninety) dwellings, with access, parking, public open space with play facilities and landscaping as more particularly described in the Application
- 1.1.15 'a Dwelling' means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly
- 1.1.16 'Education Contribution' means a sum payable for the Education Purposes in accordance

with paragraph 4 of Schedule 2 which is generated by applying the formula:

$$£ (A \times D) + (B \times E) + (C \times F)$$

where:

A means the aggregate number of Market Dwellings referred to in the Approval (Reserved Matters) which are apartments or flats or maisonettes having 2 (two) Bedrooms;

B means the aggregate number of Market Dwellings referred to in the Approval (Reserved Matters) which are houses or bungalows having 2 (two) or 3 (three) Bedrooms or which are apartments or flats or maisonettes having 3 bedrooms;

C means the aggregate number of Market Dwellings referred to in the Approval (Reserved Matters) having 4 or more Bedrooms;

D means £1,201 (one thousand two hundred and one pounds)

E means £2,143 (two thousand one hundred and forty three pounds)

F means £3,471 (three thousand four hundred and seventy one pounds)

- 1.1.17 'Education Purposes' means enhanced educational infrastructure at Clehonger Primary School
- 1.1.18 'the Index' means the All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation
- 1.1.19 'Interest' means interest at 4% (four per cent) above the base lending rate of National Westminster Bank plc from time to time
- 1.1.20 'Management Company' means a private limited company incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects permit it to maintain and renew the Open Space in perpetuity or until the Development is demolished
- 1.1.21 'Management Plan' means a scheme agreed in writing between the Council and the

Owner prior to the Commencement of Development which sets out the future management and maintenance of the Open Space, that identifies the maintenance requirements for the Open Space including all ongoing maintenance operations, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space, to include hard and soft landscaping, surfacing materials, furniture, play equipment, refuse or other storage units, signs, lighting, boundary treatments, trees, shrubs and hedge plants and details of who is to undertake the on-going future maintenance of the Open Space

- 1.1.22 'Market Dwelling' means a Dwelling which is general market housing for sale on the open market and which is not Affordable Housing and 'Market Dwellings' shall be construed accordingly
- 1.1.23 'NPPF' means the National Planning Policy Framework issued by the Department for Communities and Local Government and dated March 2012
- 1.1.24 'to Occupy' means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupation' and 'Occupied' shall be construed accordingly
- 1.1.25 'the Open Space' means the part of the Site intended for amenity use by the general public being not less than 2.15 hectares in size of open space and structured landscape including informal open space (which shall include the Play Area and any attenuation basins required for drainage and a community orchard)
- 1.1.26 'the Open Space Works' means works to be carried out under Schedule 2 paragraph 2 in accordance with the Open Space Works Specification
- 1.1.27 'the Open Space Works Specification' means a specification for the carrying out of the Open Space Works and the maintenance of them to be agreed in writing between the

Owner and the Council prior to the Commencement of Development

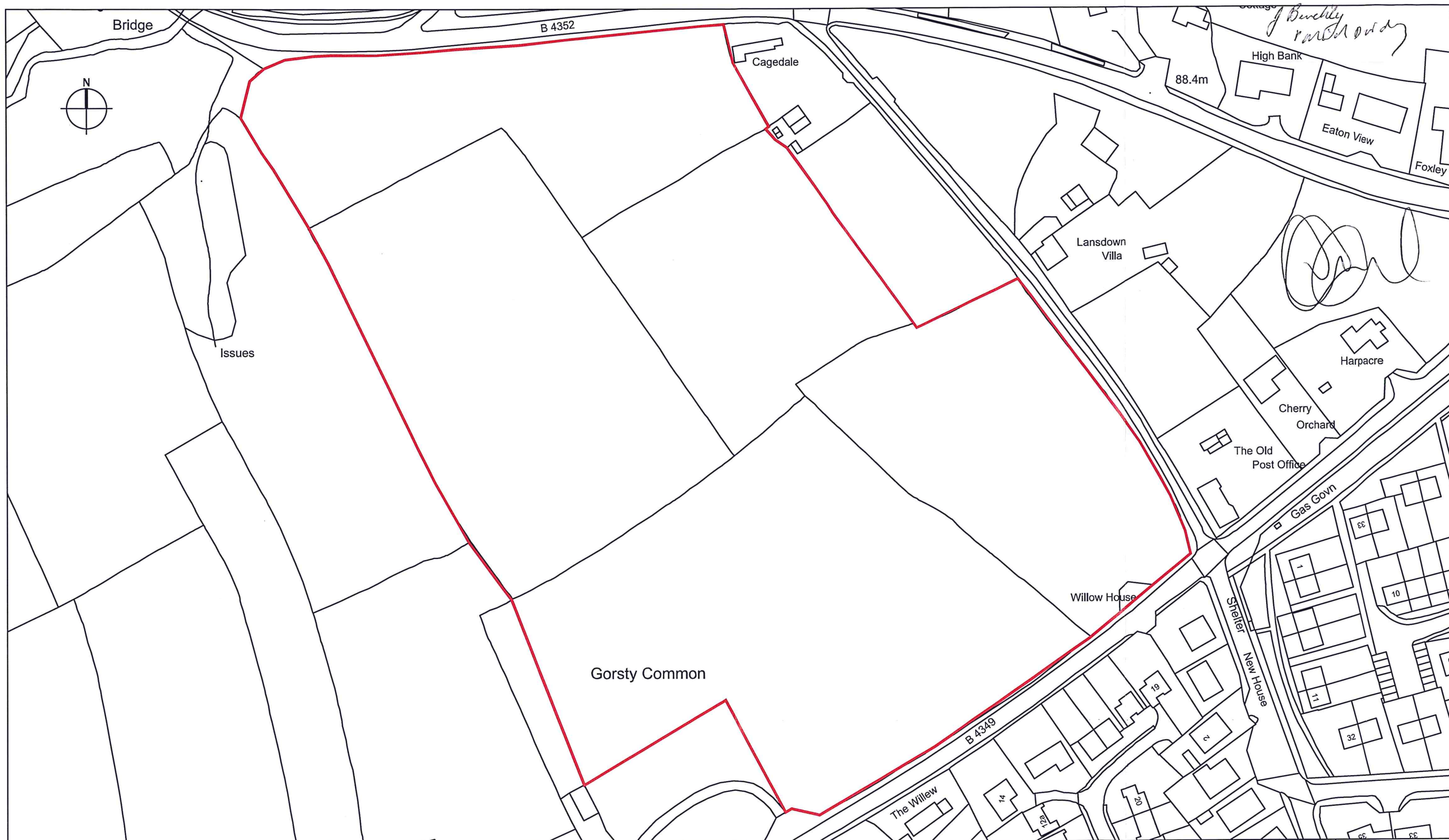
- 1.1.28 'the Plan' means the plan attached to this deed
- 1.1.29 'Planning Inspector' means the Inspector appointed by the Secretary of State to preside over the inquiry in relation to the Appeal
- 1.1.30 'the Planning Permission' means the outline planning permission subject to conditions granted pursuant to the Appeal and any subsequent Approval (Reserved Matters) subject to conditions granted by the Council
- 1.1.31 'the Play Area' means the local equipped area for play forming part of the Open Space for use by the general public to be provided on the Site in accordance with the Planning Permission and the Play Area Specification
- 1.1.32 'the Play Area Specification' means a specification for the construction of the Play Area and the maintenance of it agreed in writing between the Council and the Owner prior to the Commencement of Development
- 1.1.33 'the Promotion Agreement' means an agreement in respect of the promotion and disposal of the Site dated 14 April 2014 and made between (1) the Owner and (2) the Promoter
- 1.1.34 'Relevant Agreement' means an agreement to secure planning obligations under Section 106 of the 1990 Act and which relates to planning permission granted for development where such agreement has been entered into on or after 6 April 2010
- 1.1.35 'Relevant Date' means the date prescribed by paragraph (b) of the definition of 'relevant determination' in Regulation 123(4) of the CIL Regulations in respect of a determination of an application for planning permission being 6 April 2015 or any other date as may be prescribed in Regulation 123(4) or by the Secretary of State as the case may be
- 1.1.36 'Secretary of State' means the Secretary of State for Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given


under Sections 77, 78 and 79 of the 1990 Act

- 1.1.37 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1
- 1.1.38 'Sustainable Transport Contribution' means the sum of £72,100 (seventy two thousand one hundred pounds) payable for the Sustainable Transport Facilities in accordance with paragraph 5 of Schedule 2
- 1.1.39 "Sustainable Transport Facilities" mean any or all of the following sustainable transport facilities at the Council's discretion:
- a) new cantilever bus shelter with potential for real time information and DDA compliant raised kerbs at Birch Hill Road and Gosmore Road;
 - b) extension to footway along Croft Road on the western side (including moving of street lighting columns and connections);
 - c) extension of the cycleway/footway to Gosmore Road.

1.2 Interpretation

- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 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 interchangeable in that manner.



<div><div>GLADMAN Gladman House, Alexandria Way Congleton Business Park Congleton, Cheshire CW12 1LB Tel: 01260 288800 Fax: 01260 288801 www.gladman.co.uk</div></div>					Project	LAND OFF B4349 CLEHONGER	Drawn by TM	Issue date 22.1.2013
	*	*	*	*	Rev Date By Revision notes		Title Location Plan	Scale(s) 1:1250 @ A3
	STATUS					Drawing No 2014/015/001		

- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually 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 shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successors to its statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2 Legal basis

- 2.1 This deed is made pursuant to Section 106 of the 1990 Act.
- 2.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority, highway authority and education authority.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

- 3.1.1 the grant of the Planning Permission; and
- 3.1.2 the Commencement of Development

save for the provisions of clause 3.5, CIL Regulations, clause 6, Provisions of Immediate Effect, clause 8, Local Land Charge, clause 9.1, Jurisdiction and clause 11, Indemnity ,

which shall come into effect immediately upon completion of this deed and paragraphs 2.1 and 3.1 of Schedule 2 which shall come into effect upon the grant of Planning Permission

3.2 Duration

3.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Site, but without prejudice to liability for any subsisting breach arising before parting with that interest.

3.3 Other development

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

3.4 Non-enforcement

This deed shall not be enforceable against:

3.4.1 owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against their respective mortgagees or those deriving title from any of them

3.4.2 the obligations contained in this deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services.

3.5 CIL Regulations

- 3.5.1 In the event that any competent authority finds (which includes for the avoidance of doubt and without limitation the Planning Inspector or the Secretary of State finding in the Decision Letter) that any planning obligation covenant or term or condition contained in this deed
- 3.5.1.1 is not a material planning consideration; or
 - 3.5.1.2 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended); or
 - 3.5.1.3 following the Relevant Date or the CIL Date (whichever the earlier) if any Contribution contained in this deed requires funding or provision towards a project or towards a type of infrastructure where the Council has entered into five (5) or more Relevant Agreements which provide for the funding or provision towards the same project or towards that type of infrastructure
- then subject to clause 3.2.1 of this deed such planning obligation covenant or term or condition shall not be enforceable pursuant to this deed and shall cease to have effect within this deed save as set out in the Decision Letter
- 3.5.2 Where a CIL Liability affects the Development then notwithstanding any other provision of this deed:
- 3.5.2.1 none of the Contributions due pursuant to this deed (or any then remaining part or parts) shall become due for payment until the whole of the amount of that CIL Liability is determined and made known to the Owner and a liability notice within Regulation 65 of the CIL Regulations or the final liability notice in a service of such liability notices has been issued for the CIL Liability; and
 - 3.5.2.2 the Contributions (or any remaining part or parts) shall be reduced by the amount of the CIL Liability until either all the Contributions are extinguished or the amount of the CIL Liability is entirely off-set.

4 Owner's covenants

The Owner covenants with the Council as set out in Schedule 2.

5 The Promoter

5.1 The Promoter acknowledges and declares that:

- 5.1.1 this deed has been entered into by the Owner with its consent; and
- 5.1.2 the Site shall be bound by the obligations contained in this deed.

6 Provisions of immediate effect

- 6.1 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 6.2 The Owner agrees with the Council to give the Council prompt written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.
- 6.3 On or before the date of this deed the Promoter shall pay to the Council its reasonable and proper costs in the approval of this deed up to a maximum of £1,500 (one thousand five hundred pounds)

7 Notices

- 7.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served

or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

7.2 The address for any notice or other written communication shall be within the United Kingdom.

7.3 A notice or communication shall be served or given:

7.3.1 on the Council FAO the 'Planning Obligations Manager,' Development Management Team, Herefordshire Council, Blue School House, Blue School Street, Hereford HR1 2ZB quoting reference P141964/O;

7.3.2 on the Owner at the address set out above or such other address as shall be notified in writing to the Council from time to time;

7.3.3 on the Promoter at its registered office from time to time or such other address as shall be notified in writing to the Council from time to time, marked for the attention of Gladman Legal Department.

8 Local land charge

This deed is registerable as a local land charge.

9 Jurisdiction and legal effect

9.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.

9.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.

9.3 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or

conditions or from acting upon any subsequent breach or default.

- 9.4 The provisions of this deed (other than this clause 9.4 which shall be effective in any event) shall be of no effect until this deed has been dated.

10 Indexation, interest and VAT

- 10.1 Any sum to be paid to the Council under Schedule 2 shall be increased by an amount equivalent to the increase in the Index from the date of this deed until the date on which such sum is paid.
- 10.2 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.
- 10.3 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.

11 Indemnity

The Promoter shall (to the extent that the Owner has not been released from the planning obligations set out in this deed pursuant to clause 3.2.2) indemnify and keep indemnified during the term of the Promotion Agreement the Owner namely Patrick Birchley and Jacinta Mary Birchley against all or any actions, judgements, penalties, damages, losses, costs, claims, expenses, liabilities and demands arising from the obligations of the Owner under this deed and any breach or non-performance of those obligations including breach of non-performance of the planning obligations PROVIDED THAT this clause shall not be for the benefit of any successor in title to the Owner pursuant to a Disposal as defined in the Promotion Agreement.

IN WITNESS of which the Owner and the Promoter have executed this Unilateral Undertaking as a deed and delivered it upon dating it the day and year first before written.

SCHEDULE 1

The Owner's Title and Site Description

TITLE NUMBER	DESCRIPTION	REGISTERED PROPRIETOR
HW149243	Land on the south side of the road leading from Madley to Clehonger	Patrick Birchley and Jacinta Mary Birchley

SCHEDULE 2

The Owner's Covenants with the Council

The Owner Covenants with the Council as follows:

1 Progress of development

That the Owner shall notify the Council:

- 1.1 upon the Commencement of Development and
- 1.2 upon Occupation of any part of the Development

2 Open space

- 2.1 Prior to Commencement of Development to submit to the Council for approval the Open Space Works Specification, the Play Area Specification and the Management Plan.
- 2.2 Not to permit nor allow the Occupation of more than 75% (seventy five per cent) of the Dwellings on the Development until the Open Space to be located on the Development has been provided and/or constructed (as appropriate) in complete accordance with the Open Space Works Specification and the Play Area Specification.
- 2.3 Not to permit nor allow the use of the Play Area until a Royal Society for the Prevention of Accidents (or any successor body or organisation) post installation inspection written report, and evidence of manufacturers' warranties of at least 5 (five) years' duration from the date of installation of equipment in relation to the Play Area has been provided to the Council.
- 2.4 To maintain the Open Space in accordance with the Management Plan approved by the Council at all times from Occupation of the Development to the reasonable satisfaction of the Council.
- 2.5 Not to amend the Management Plan without the Council's written consent.
- 2.6 To keep those parts of the Open Space comprising public open space, the Play Area, and structured landscape open, unbuilt upon (save for permitted play equipment) and available for public recreational use in perpetuity or until the Development is demolished.

3 Management Company

- 3.1 Prior to Commencement of Development to submit to the Council evidence of the formation of a Management Company for the purpose of managing and maintaining the Open Space.
- 3.2 Not to permit the Occupation of more than 95% (ninety five per cent) of the Dwellings that form part of the Development until the Open Space has been transferred to the Management Company in accordance with the details approved by the Council under the Management Plan and on the terms set out in paragraph 3.4 below.
- 3.3 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council has otherwise first agreed in writing.
- 3.4 The transfer of the Open Space to the Management Company shall:
- i. be a transfer of the entire freehold interest of the Open Space;
 - ii. be free from any pre-emption or option agreement;
 - iii. be free from any mortgage, charge, lien or other such incumbrance;
 - iv. include all usual and necessary rights of way with or without vehicles;
 - v. be subject to rights of reasonable access to the public;
 - vi. reserve in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services and to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same;
 - vii. declare that boundary structures shall belong to and be maintained by adjoining owners;
 - viii. not require consideration in excess of £1 (one pound);
 - ix. be subject to a covenant which prohibits the use of those parts of the Open Space comprising public open space, the Play Area, and landscaping for any purpose other than public recreation and amenity; and
 - x. contain covenants by the Management Company in favour of the Council and pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 to the effect that the Management Company shall maintain, repair, replace as necessary and generally manage the Open Space in strict accordance with the Management Plan and the principles of good estate management to the intent that the Open Space remains fit for purpose and

available for safe use by the public at all times during which any part of the Development is Occupied.

4 Education Contribution

To pay the Education Contribution to the Council as to 50% (fifty per cent) on the first Occupation of the 30th (thirtieth) Dwelling to be Occupied and as to the remaining 50% (fifty per cent) on the first Occupation of the 60th (sixtieth) Dwelling to be Occupied

5 Sustainable Transport Contribution

To pay the Sustainable Transport Contribution to the Council as to 50% (fifty per cent) on the first Occupation of the 30th (thirtieth) Dwelling to be Occupied and as to the remaining 50% (fifty per cent) on the first Occupation of the 60th (sixtieth) Dwelling to be Occupied

SIGNED AS A DEED by

PATRICK BIRCHLEY

in the presence of

Witness name
Witness address
Occupation

Witness name

Witness address

Occupation

Ronald Leith
X *Ronald Leith* X
RONALD LEITH
23 KINGS CRESCENT
ABERDEEN
AB24 3HP
MUSICIAN

SIGNED AS A DEED by

JACINTA MARY BIRCHLEY

in the presence of

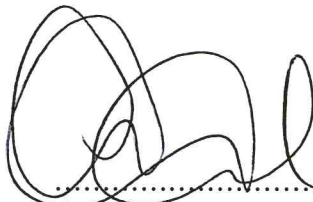
Witness name

Witness address

Occupation

Jacinta Birchley
Ronald Leith
RONALD LEITH
23 KINGS CRESCENT
ABERDEEN
AB24 3HP
MUSICIAN

EXECUTED as a deed by **GLADMAN DEVELOPMENTS LIMITED** acting by a Director


.....
Director

in the presence of:

Signature of Witness *Rachel Goddard*

Name of Witness

Address of Witness

Occupation of Witness *Solicitor*

Name RACHEL GODDARD

Gladman Legal Department
Gladman House Alexandria Way
Congleton Cheshire CW12 1LB