

Dated

5th May

2016

JOHN SHEARER PATON (1)
RUABON SALES LIMITED (2)
HSBC BANK PLC (3)
GLADMAN DEVELOPMENTS LIMITED (4)

and

GLADMAN DEVELOPMENTS LIMITED (4)
Planning obligation by deed of undertaking under the Town and Country
Planning Act 1990 section 106

relating to

Land lying to the north of Bangor Road
and land at Hafod Road
Ruabon
Wrexham



Gladman House
Alexandria Way
Congleton Business Park
Congleton, Cheshire
CW12 1LB
Tel: 01260 288800
Fax: 01260 288861

THIS UNILATERAL UNDERTAKING is given the *5th* day of *may* 2016
BY:

- 1) JOHN SHEARER PATON of the Clock House Main Road Betley Crewe Cheshire CW3 9BH ('the First Owner')
- 2) RUABON SALES LIMITED (company registration number 6464193) care of Additions Group Queen Insurance Buildings 7 Queen Avenue Liverpool L2 4TZ ("the Second Owner")
- 3) HSBC BANK PLC (company registration number 14259) 40-41-42 of Mortgage Service Centre PO Box 6308 Coventry CV3 9LB ("the Mortgagee")

TO:

- 4) WREXHAM COUNTY BOROUGH COUNCIL of 16 Lord Street Wrexham LL11 1LG ('the Council')

WITH THE CONSENT OF:

- 5) GLADMAN DEVELOPMENTS LIMITED (company registration number 3341567) 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 the 1990 Act for the area in which the Site is situated.
- 2) The Council is also the local highway authority and the education authority for the area in which the Site is situated.
- 3) The Owner is the freehold owner of the Site as set out in Schedule 1.
- 4) Part of the Site is subject to a mortgage dated 15 June 2010 between the Second Owner (1) and the Mortgagee (2) ("the Mortgage")

- 5) The Mortgagee is mortgagee pursuant to the Mortgage in respect of title WA825898
- 6) The Promoter submitted the Application to the Council on 30 July 2013 and has no interest in the Site.
- 7) The Council resolved on 16 June 2015 to refuse planning permission in respect of the Application and the Promoter has submitted the Appeal for determination by the Welsh Ministers.
- 8) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates 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:

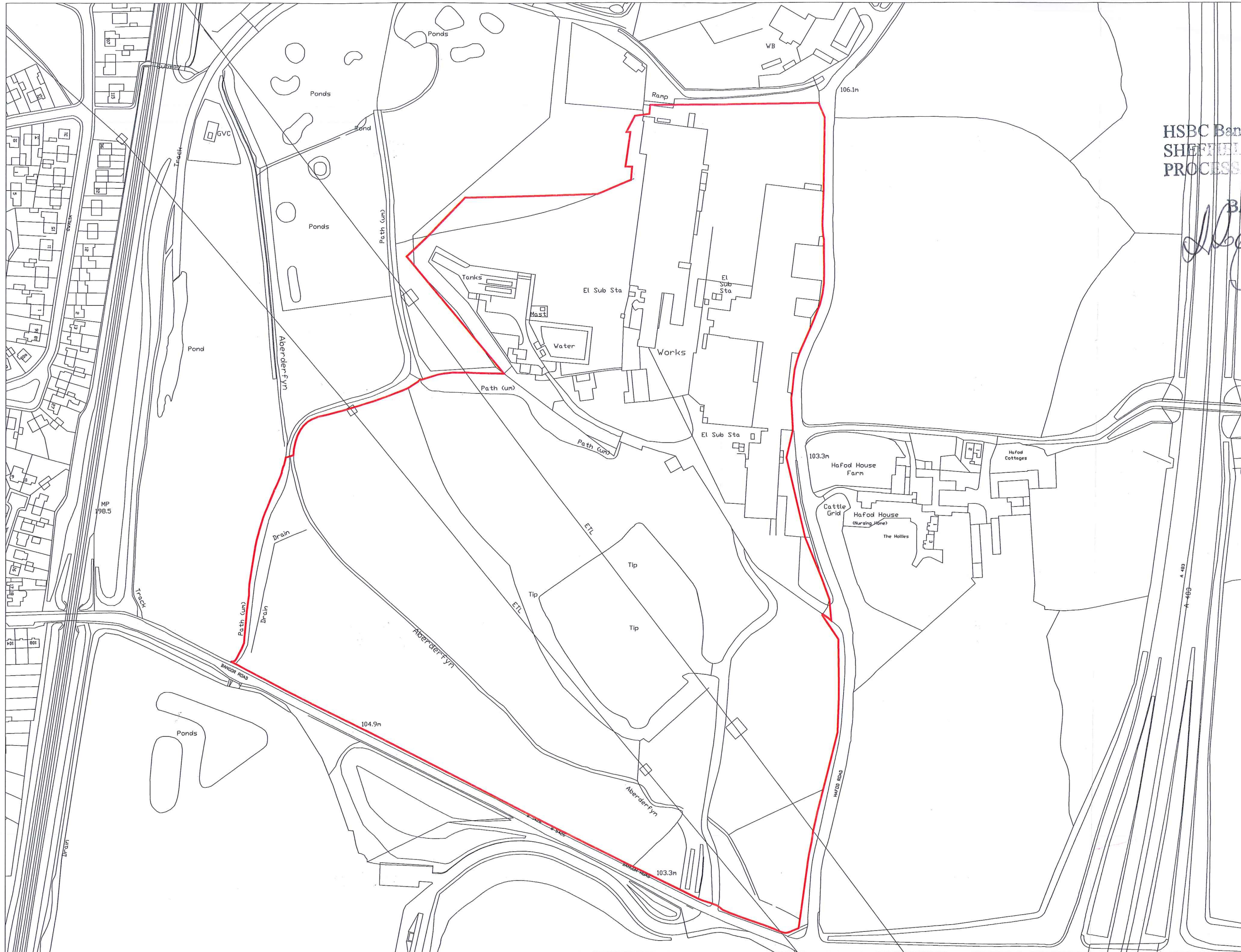
- 1.1.1 'the 1980 Act' means the Highways Act 1980
- 1.1.2 'the 1990 Act' means the Town and Country Planning Act 1990 (as amended)
- 1.1.3 'the Appeal' means the appeal to the Welsh Ministers following the refusal of the Application by the Council given appeal reference APP/H5955/A/15/3135730
- 1.1.4 'the Application' means the application for outline planning permission for the Development dated 30 July 2013 submitted to the Council and allocated reference number ESC/P/2013/0545
- 1.1.5 'Bedroom' means a room in a Dwelling designed as a bedroom or study/bedroom and
 - 1 Bedroomed Unit means a Dwelling with one Bedroom
 - 2 Bedroomed Unit means a Dwelling with two Bedrooms
 - 3 Bedroomed Unit means a Dwelling with three Bedrooms
 - 4 Bedroomed Unit means a Dwelling with four or more Bedrooms
- 1.1.6 'Charging Schedule' means a charging schedule as detailed in Regulation 2(1) of the CIL Regulations
- 1.1.7 'CIL Date' means the date upon which the first Charging Schedule comes into effect in the area in which the Development is situated

- 1.1.8 'CIL Liability' means the amount imposed as 'CIL' (as that acronym is defined in the CIL Regulations) including where applicable the combined CIL for each Phase of Development
- 1.1.9 'CIL Regulations' means the Community Infrastructure Levy Regulations 2010 (as amended)
- 1.1.10 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act section 56(4)) 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 Development' shall be construed accordingly
- 1.1.11 'the Composition of the Development' means the aggregate number of Dwellings comprised in the Development and the number of each Dwelling type classified by reference to the number of Bedrooms in the Dwelling
- 1.1.12 'the Date of Practical Completion' means the date of issue of a certificate of practical completion by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect
- 1.1.13 'Decision Letter' means the decision letter issued by the Planning Inspector or the Welsh Ministers confirming whether or not the Appeal is allowed
- 1.1.14 'the Development' means the development of the Site with redevelopment of land at Haford Tileries for proposed mixed use development of up to 300 (Use Class C3) residential dwellings 465 sqm (Use Class B1, B2 and B8) business, industrial and distribution units, 235 sqm (Use Class A1) retail, ecological enhancement, landscape, open space, highway improvements and associated works pursuant to the Planning Permission
- 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 'the Education Contribution' means the sum calculated by applying the Matrix to the Composition of the Development payable towards the costs of improving or extending Johnstown Primary School Bangor Road Johnstown
- 1.1.17 'the Index' means the All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation

- 1.1.18 'Infrastructure' has the meaning ascribed in Section 216(2) of the Planning Act 2008
- 1.1.19 'Interest' means interest at 5% above the base lending rate of National Westminster Bank plc from time to time
- 1.1.20 'Management Company' means a private limited company which is incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space
- 1.1.21 'Management Plan' means a scheme to be submitted to and approved in writing by the Council, which identifies:
- (i) the future management and maintenance requirements of the Open Space
 - (ii) the proposed ongoing maintenance operations for the Open Space, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space
 - (iii) the proposed means of funding the ongoing maintenance and management of the Open Space in accordance with the Management Plan by the Owner and where one is formed pursuant to the provisions of this deed the Management Company
 - (iv) a mechanism for the periodic review with the Council and where necessary amendment of the Management Plan
- 1.1.22 'the Matrix' means the formula

$$£(A \times W) + (B \times X) + (C \times Y) + (D \times Z)$$
when
A means the number of 1 Bedroomed Units
B means the number of 2 Bedroomed Units
C means the number of 3 Bedroomed Units
D means the number of 4 or more Bedroomed Units
and
W X Y and Z are as set out in Appendix 1
- 1.1.23 '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

- 1.1.24 'the Open Space means the informal open space and landscaping including the Play Area and ecological management area for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification
- 1.1.25 'the Open Space Works Specification' means a specification for the laying out of the Open Space to be agreed in writing between the Owner and the Council before the Commencement of Development
- 1.1.26 'Owner' means the First Owner and the Second Owner together
- 1.1.27 'Party' means any of the parties to the deed
- 1.1.28 'Phase of Development' means a phase of development which shall be in accordance with the planning conditions to which the Planning Permission is subject
- 1.1.29 'Planning Inspector' means the inspector appointed to preside over the public inquiry in relation to the Appeal
- 1.1.30 'the Play Area' means a local equipped area for play for use by the general public to be provided on the Site in accordance with the Planning Permission
- 1.1.31 'the Plan' means the plan attached to this deed
- 1.1.32 'the Planning Permission' means any planning permission issued by the Planning Inspector or the Welsh Ministers in determining the Appeal
- 1.1.33 'the Public Transport Contribution' means the sum of £200,000 (two hundred thousand pounds) payable in accordance with paragraph 2.5 of Schedule 2 towards the costs of extending the number 6 bus service into the Site for a period of 5 (five) years
- 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 and 'Relevant Agreements shall be construed accordingly
- 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) of the CIL Regulations
- 1.1.36 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1
- 1.1.37 'Welsh Ministers' means the Welsh Ministers for the time being entitled to exercise the powers in Wales given under sections 77 and 78 of the 1990 Act by Section 319B of the 1990 Act



HSBC Bank plc
SHEFFIELD SECURITIES
PROCESSING CENTRE

BANK OFFICIAL

[Handwritten signatures]

A	Apr 11	Boundary Amended	*
Rev	Date	Revision notes	By
DO NOT SCALE			
Status			
Planning			
Project			
Bangor Road Johnstown			
Title			
Location Plan			
			
GLADMAN Gladman House Alexandria Way Congleton Business Park Congleton Cheshire CW12 1LB Tel: 01250 288500 Fax: 01250 288501 www.gladman.co.uk			
Drawn By		Publish Date	Scale(s)
dmf		24.06.10	1:1250
Project no.		Drawing no.	Revision
2010-002		100	A

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.
- 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 and the County Council the successors to their respective 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 the 1990 Act section 106 Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011
- 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

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 6, Provisions of Immediate Effect, and save in respect of any obligations in this deed expressly requiring compliance prior to the Commencement of Development, which shall come into effect immediately upon completion of this deed.

3.2 CIL Regulations

3.2.1 If in determining the Appeal the Welsh Ministers or the Planning Inspector expressly states in the Decision Letter that any Planning Obligation contained in this deed:

3.2.1.1 is not a material planning consideration; or

3.2.1.2 can be given no or little weight in determining the Appeal; or

3.2.1.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations; or

3.2.1.4 requires funding or provision towards a project or towards a type of Infrastructure where the Council [and /or the County Council] [has/have] following the Relevant Date 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 9.2 of this Deed such Planning Obligation 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

3.2.2 In the event that the Welsh Ministers or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission a Charging Schedule has been approved by the Council and has come into effect any contribution payable under the terms of this deed which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable

3.3 Duration

3.3.1 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.

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

3.4 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.

3.5 Non-enforcement

- 3.5.1 This deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants or their mortgagees.
- 3.5.2 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, telecommunications services or public transport services

4. Owner's covenants

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

5. The Mortgagee

- 5.1 The Mortgagee acknowledges and declares (to the extent only of that part of the Site that is subject to the Mortgage) 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.
- 5.2 Any mortgagee shall be liable only for any breach of the provisions of this deed during such period as he is a mortgagee in possession of the Site

6. Provisions of immediate effect

- 6.1 On completion of this deed the Promoter shall (if requested) pay to the Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £100
- 6.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999
- 6.3 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.

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 Owner at the addresses shown above, or such other address as shall be notified in writing to the Council from time to time, marked for the attention of John Shearer Paton, and
 - 7.3.2 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 David Gladman.
 - 7.3.3 on the Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of the chief legal officer
 - 7.3.4 on the Mortgagee at the address set out above or such other address as shall be notified in writing to the Council from time to time

8. Local land charge

This deed shall be 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.

SCHEDULE 2

The Owner's Covenants with the Council

1. Progress of development

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. Payment of contributions

- 2.1 The Owner shall pay the Education Contribution to the Council in the following instalments:
 - 2.1.1 33% prior to the first Occupation of any of the Dwellings
 - 2.1.2 33% prior to the first Occupation of 33% of the Dwellings; and
 - 2.1.3 the balance prior to the first Occupation of 66% of the Dwellings
- 2.2 The Owner shall not Occupy nor permit the Occupation of any of the Dwellings until the payment referred to at paragraph 2.1.1 above has been made
- 2.3 The Owner shall not Occupy nor permit the Occupation of more than 33% of the Dwellings until the payment referred to at paragraph 2.1.2 above has been made
- 2.4 The Owner shall not Occupy nor permit the Occupation of more than 66% of the Dwellings until the payment referred to at paragraph 2.1.3 above has been made
- 2.5 The Owner shall pay the Public Transport Contribution to the Council in the following instalments:
 - 2.5.1 20% prior to the first Occupation of the 120th Dwelling
 - 2.5.2 20% on the first anniversary of the date of the payment made pursuant to paragraph 2.5.1 above
 - 2.5.3 20% on the second anniversary of the date of the payment made pursuant to paragraph 2.5.1 above

- 2.5.4 20% on the third anniversary of the date of the payment made pursuant to paragraph 2.5.1 above
- 2.5.5 20% on the fourth anniversary of the date of the payment made pursuant to paragraph 2.5.1 above
- 2.6 The Owner shall not Occupy nor permit to the Occupation of the 120th Dwelling until the payment referred to at paragraph 2.5.1 above has been made
- 3. Open space transfer and works**
- 3.1 Prior to Commencement of Development to submit to the Council for approval the Open Space Works Specification and the Management Plan
- 3.2 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
- 3.3 Not to permit or allow the Occupation of more than seventy-five percent 75% of the Dwellings on any Phase of Development until any Open Space to be located on that Phase of Development has been provided and/or constructed (as appropriate) in complete accordance with the Open Space Works Specification
- 3.4 Not to permit the Occupation of more than ninety-five percent (95%) 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 Schedule 3
- 3.5 To procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space in accordance with the Management Plan; and
 - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.5 (i) and 3.5 (ii) of Schedule 2

- 3.6 Not to amend the Management Plan without the Council's written consent
- 3.7 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 have otherwise first agreed in writing

SCHEDULE 3

Provisions relating to the transfer of the Open Space

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. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space
- vii. 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 in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space
- viii. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Council together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. declare that boundary structures shall belong to and be maintained by the owners of the Residential Dwellings which adjoin the Open Space
- x. not require consideration in excess of one pound (£1)
- xi. contain a covenant for the benefit of the Council to manage and maintain the Open Space in accordance with the approved Management Plan

APPENDIX 1

Matrix

Education Multiplier

1 Bed	2 Bed	3 Bed	4+ Bed
W = £0.00	X = £1,960	Y = £1,960	Z = £2,352

SIGNED AS A DEED by
JOHN SHEARER PATON
In the presence of;

Witness name:

Claire Morris

CLAIRE MORRIS

Witness address:

BERMANS

EXCHANGE STATION

TITHEBARN ST

LIVERPOOL

Occupation:

SOLICITOR

Berman

SIGNED AS A DEED by
a director of

RUABON SALES LIMITED

In the presence of;

Claire Morris

CLAIRE MORRIS

BERMANS

EXCHANGE STATION

TITHEBARN ST.

LIVERPOOL

L2 2QP

SOLICITOR.

Director

Director/Secretary

IN WITNESS WHEREOF this document which is intended to take effect as a deed has
been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day
and year first above written.

SIGNED AND DELIVERED

by

Lisa Maria Rodgers

Attorney of
HSBC Bank plc

in the presence of:

A. Braddock

Witness:

ANNETTE JUNE BRADDOCK

Address:

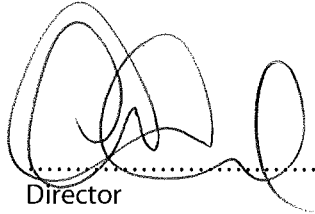
HSBC Bank plc
SHEFFIELD SECURITIES
PROCESSING CENTRE

Occupation

BANK OFFICIAL

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

BY THIS POWER OF ATTORNEY given the fifteenth day of December two thousand and fifteen HSBC Bank plc ('the Bank') incorporated in England with registered number 14259 and having its Registered Office at 8 Canada Square, London E14 5HQ appoints **LISA MARIA RODGERS** to be the attorney of the Bank in the name of the Bank and on its behalf to do or execute as the act and deed of the Bank or otherwise to execute any deed or sign any document:

1. required to discharge, release, surrender, convey, re-convey, transfer, re-transfer, assign, re-assign, postpone or defer or otherwise regulate the priority of, firstly, any mortgage, charge, standard security or other security vested in the Bank of any heritable or moveable or real or personal property comprised therein and, secondly, any bond, guarantee, undertaking or indemnity or any other similar engagement in favour of the Bank, and thirdly, any indebtedness secured by any of the foregoing;
2. required to convey assign or transfer any heritable or moveable or real or personal property pursuant to any powers contained in any mortgage or charge held by the Bank;
3. required to create, grant, release or vary or to confirm or consent to the creation, granting, release or variation of any right, privilege, estate or interest in any heritable or moveable or real or personal property the subject of any mortgage, charge, standard security or other security vested in the Bank;
4. being a bond, guarantee, undertaking or indemnity or any other similar engagement by the Bank;

and generally for all or any of these purposes to act as the Bank's attorney and declares that each of the powers granted by this Power shall be read separately and in no way to be limited by reference to any other of such powers.

This Power of Attorney will expire twelve months from the date hereof unless previously revoked by the Bank.

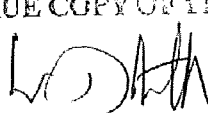
IN WITNESS WHEREOF HSBC Bank plc has caused its common seal to be affixed to this deed the day and year first above written.

The COMMON SEAL of HSBC BANK plc was hereunto affixed in the presence of:

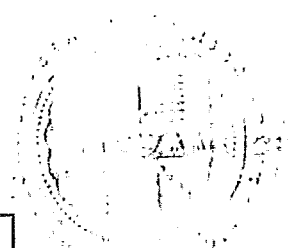

.....
Authorised Signatory


.....
Authorised Counter Signatory

WE CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL



HSBC Bank plc



032227

