

DATED 12 December 2023

GOWER HOMES LIMITED

-to-

WREXHAM COUNTY BOROUGH COUNCIL

UNILATERAL UNDERTAKING PURSUANT TO S106 TOWN & COUNTRY PLANNING ACT

-relating to proposed development at-

Former Air Products site, Llangollen Road,
Acrefair, Wrexham LL12 9RB

Allington Hughes
Chester

THIS UNILATERAL UNDERTAKING AND DEED is given on 12 December 2023 by
GOWER HOMES LIMITED (CRN 13467729) whose registered office is at 8 Temple Row, Wrexham LL13
8LY (the Developer)

TO

WREXHAM COUNTY BOROUGH COUNCIL of Guildhall, Wrexham LL11 1AY (the Council).

Recitals

- (A) The Council is the local planning authority for the purposes of section 106 of the 1990 Act for the area in which the Development Land is situated.
- (B) The Developer is the freehold owner of the Development Land and intends to develop the Development Land pursuant to the Planning Permission.
- (C) The Developer has submitted the Planning Application to the Council and the Council has approved the grant of the Planning Permission subject to completion of this Undertaking.
- (D) The Developer has agreed that the Development, including the management of common parts of the Development, shall be carried out in accordance with (inter alia) the obligations set out in this deed.

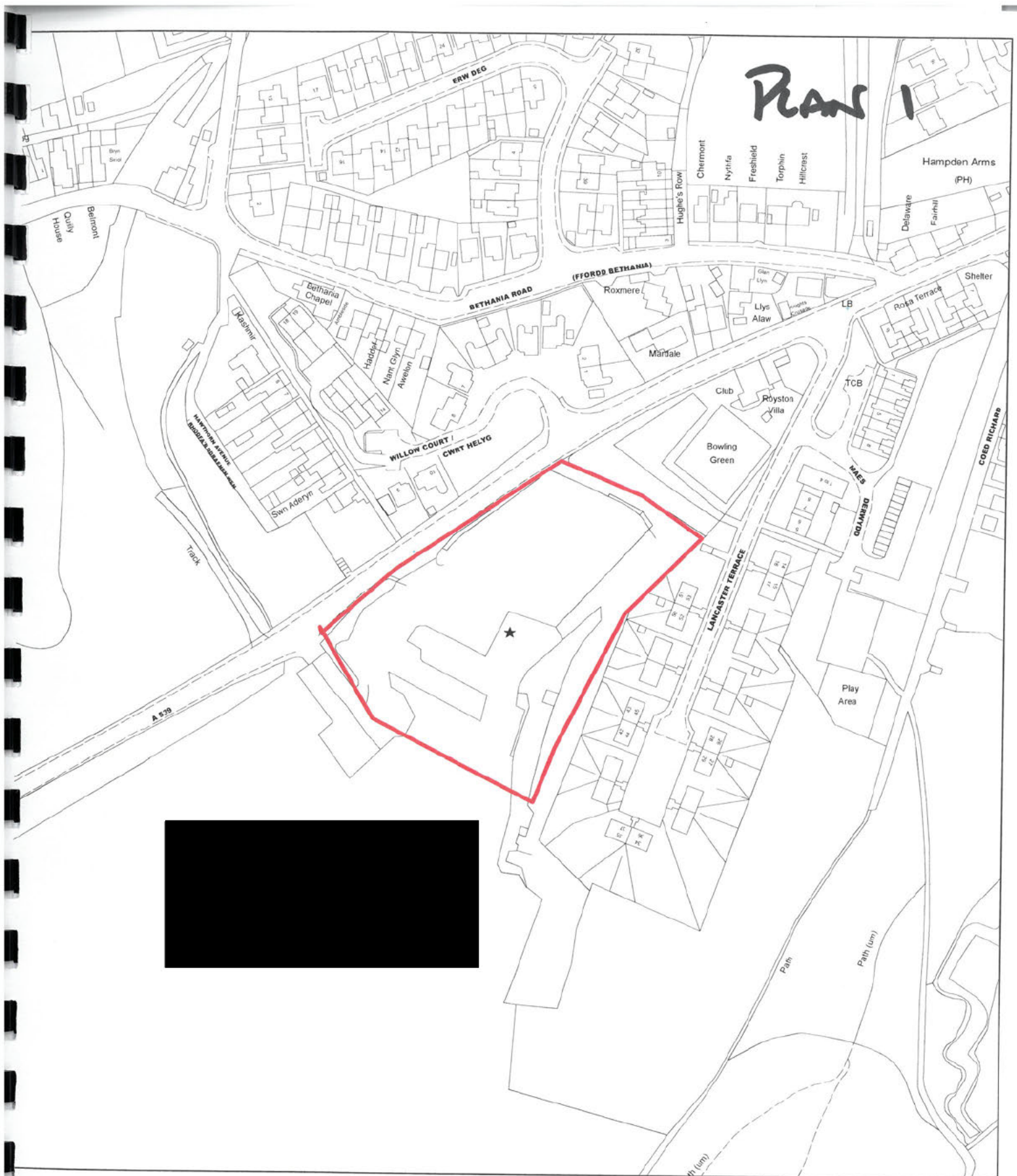
It is agreed as follows:

1 Interpretation

- 1.1 In this deed, unless the context otherwise requires, the following terms shall have the following meanings:

1990 Act	means the Town and Country Planning Act 1990 (as amended).
Application	means
Commencement of Development	means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the 1990 Act on the Development Land and Commenced and Commences shall be construed accordingly.
Commencement Date	means the date of Commencement of Development.
Common Parts	means those parts of the Development which are intended to be used and enjoyed in common by the occupiers of the Dwellings, including (without limitation) the POS and other landscaped areas, the SuDS Drainage System and other infrastructure, estate roads and footways and lighting (but not those which are or will be maintainable at the public expense).

Contribution Schools	means the following primary schools for which the Council is the Education Authority (a) St. Mary's Church in Wales Voluntary Aided School, Ruabon; (b) Ysgol Acrefair, Acrefair; (c) Rhosymedre Primary School, Rhosymedre; and (d) Ysgol Min y Ddol, Cefn Mawr.
Development	means the development of the Development Land by the erection of 21 detached and semi-detached Dwellings and as described in the Planning Application and the Plan.
Development Land	means the land and property comprising the former Air Products site at Llangollen Road, Acrefair, Wrexham LL14 3HW, title to which is registered at HM Land Registry under title number WA354423 and which is shown edged in red in Plan 1.
Dwellings	means the residential units permitted as part of the Development and 'Dwelling' means one of them.
Primary Education Contribution	means the sum to be paid by the Developer to the Council as the Developer's primary schools' contribution to the Contribution Schools in accordance with the provisions of the Schedule to this deed totalling £70,971.00.
Interest	means interest at the rate of 3% above the base lending rate of Barclays Bank PLC current from time to time.
Management Company	means the residents' management company limited by guarantee to be formed to assume responsibility for the maintenance in perpetuity of the Common Parts.
Owner	means the owner or the owners for the time being of a Dwelling.
Plan 1	means the plan marked 'Plan 1' attached to this deed.
Plan 2	means the plan marked 'Plan 2' attached to this deed.
Planning Application	means an application for planning permission for the Development registered by the Council on 17 th August 2021 under reference number P/2021/0793.



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HEAD OF ECONOMY AND PLANNING
PLANNING DEPARTMENT
LAMPIT STREET
WREXHAM
LL11 1AR

27 NOVEMBER 2023
SCALE 1: 2000
SJ2843

Town and Country Planning Act 1990 Section 106 Obligation



P/2021/0793
FORMER AIR PRODUCTS SITE,
LLANGOLLEN ROAD
WREXHAM

Planning Permission	means the planning permission to be granted pursuant to the Planning Application, including approvals of any reserved matters.
POS	means the public open spaces within the Development comprising: (a) the SuDS Drainage Scheme attenuation installation area shown edged with a solid blue line in Plan 2; and (b) the landscaped and habitation area shown edged in part with a solid blue line and in part with a broken blue line.
POS Scheme	means the scheme relating to the implementation and management of the POS submitted to and approved in writing by the Council pursuant to the Planning Application and relevant conditions of the Planning Permission.
POS Transfer	means a transfer of the POS to the Management Company.
SuDS Drainage System	means the sustainable drainage system to be installed at the Development in accordance with and subject to the approval by the Council as SuDS Approving Body determined on 1 st September 2023 under reference SAB/FUL/2021/1202.
Working Day	means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Wales.

2 Interpretation

- 2.1 Clause headings shall not affect the interpretation of this deed.
- 2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.5 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 2.6 A reference to the Council shall include the successors to its respective statutory functions.
- 2.7 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 2.8 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.9 A reference to writing or written excludes faxes.
- 2.10 References to clauses are to the clauses of this deed.
- 2.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.12 Where 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.

3 Statutory powers and legal effect

- 3.1 This deed constitutes a planning obligation for the purposes of section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and any other enabling powers.
- 3.2 The obligations contained in clauses 4 and 5 of this deed are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Developer with the intention that they bind the interests held by the Developer in the Development Land and its respective successors and assigns.
- 3.3 This deed shall come into effect on the later of the following:
- (a) the date of grant of the Planning Permission; and
 - (b) the Commencement Date.
- 3.4 The obligations contained in clauses 4 and 5 of this deed are enforceable by the Council in accordance with section 106 of the 1990 Act.
- 3.5 The obligations contained in clauses 4 and 5 of this deed shall, unless varied by a deed of variation, apply to and be fully enforceable by the Council in respect of future planning permissions granted by the Council in respect of the Development Land pursuant to s73 of the 1990 Act and references in this deed to the Planning Permission include to such s73 of the 1990 Act permissions.

4 Covenants in respect of the Education Contribution

- 4.1 The Developer covenants with the Council:
- (a) to give written notice to the Council of the Commencement Date on Commencement of Development;
 - (b) to pay the Primary Education Contribution to the Council by three equal instalments, the instalments to be paid on legal completion of the sale of the 6th Dwelling, the 12th Dwelling and the 18th Dwelling respectively;
 - (c) before occupation of any Dwelling, to establish the Management Company.
- 4.2 The Developer acknowledges that its obligation to pay the Primary Education Contribution on the due dates for payment is not conditional upon receiving any demand, request, invoice, or other communication from the Council.

- 4.3 The Council covenants with the Developer that the Council will apply the Primary Education Contribution towards the provision of additional school places which may be required at any or all of the Contribution Schools as a consequence of the Development.
- 4.4 The Council also covenants with the Developer that if the whole or any part of the Primary Education Contribution remains unspent on the provision of additional school places as specified in clause 4.3 at the expiration of ten years from and including the date of this deed, the Council will refund such unspent amount to the Developer (or to the payer of the Primary Education Contribution if not the Developer).

5 Covenants in respect of the POS

The Developer also covenants with the Council as follows:

- 5.1 Not to permit the occupation of any Dwelling until:-
- (a) a copy of the proposed articles of association of the Management Company has been submitted to and approved in writing by the Council, such approval not to be unreasonably withheld or delayed;
 - (b) subject to 5.1(a) the Management Company has been incorporated; and
 - (c) a copy of the POS Scheme has been submitted to the Council
- 5.2 To submit to the Council the articles of association and certificate of incorporation of the Management Company within 4 weeks of its incorporation
- 5.3 In the transfer of each Dwelling:
- (a) to require the first Owner and their successors in title to apply for membership of the Management Company and to accept office as directors of the Management Company with the view and with the intention that they will influence and contribute to compliance by the Management Company of (inter alia) its obligations under this clause 5;
 - (b) to apply for the registration of a restriction against the first Owner's title, in substantially the following form:
"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that (inter alia) the provisions of clause 5.3(a) of a Unilateral Undertaking dated 12 December 2023 given by Gower Homes Limited to Wrexham County Borough Council have been complied with"
 - (c) to require each Owner and their successors in title to pay to the Management Company a fair and equal proportion of the costs incurred by the Management Company (inter alia) in complying with the relevant obligations of this Schedule;
 - (d) to include a covenant by the first Owner that the first Owner and their successors in title will observe and perform the covenants and stipulations contained in clauses 5.5, 5.6 and 5.8 of a Unilateral Undertaking dated 12 December 2023 given by Gower Homes Limited to Wrexham County Borough Council.
- 5.4 To plant lay out and construct, and provide play equipment on, the POS in accordance with the POS Scheme and the Planning Permission.
- 5.5 To observe and perform the provisions of the POS Scheme, to monitor and review it at least every 5 years and to obtain the approval of the Council to any proposed amendments thereto so as to ensure that they remain appropriate and relevant over time.

- 5.6 To maintain and manage in perpetuity the POS and any play equipment erected thereon in accordance with the POS Scheme the Planning Permission and this deed.
- 5.7 As soon as practicable following completion of the sale of the last Dwelling on the Development to transfer the Common Parts to the Management Company and, promptly following completion of such transfer, to provide a certified copy of the instrument of transfer and of the Management Company's board enabling minute and resolution.
- 5.8 Not to use the POS for any purpose whatsoever other than for recreation and children's play for the benefit of the Development, nor cause or permit:
- (a) any structures to be erected on the POS other than play equipment authorised by the POS Scheme and the Planning Permission ;
 - (b) any obstruction of the POS; nor
 - (c) alter ground levels nor deposit any waste or light fires within the POS.

6 Release

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Development Land, except in respect of any breach subsisting prior to parting with such interest.

7 Determination of deed

This deed shall be determined and have no further effect if the Planning Permission:

- 7.1 expires before the Commencement of Development;
- 7.2 is varied or revoked other than at the request of the Developer; or
- 7.3 is quashed following a successful legal challenge.

8 Local land charge

This deed is a local land charge and shall be registered as such by the Council.

9 Interest on late payment

If the Primary Education Contribution has not been paid to the Council prior to or on the date specified in clause 4.1(c), the Developer shall pay the Council interest on the Contribution at the Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date of payment to and including the actual date of payment.

10 Council's costs

The Developer shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with:

- 10.1 the acceptance and registration of this deed; and
- 10.2 monitoring the implementation of this deed.

11 Ownership

- 11.1 The Developer warrants that no persons other than the Developer have any legal or equitable interest in the Development Land.

11.3 Until the obligations in clauses 4.1 and 5.7 have been complied with the Developer will give to the Council within 10 Working Days of request, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Development Land

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

11 Notices

The rules as to service of notices in section 196, Law of Property Act 1925 (as amended) apply to any notice given by this deed.

12 Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

13 Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The schedule

Formula for calculation of Primary Education Contribution
(per the Council's Guidelines, updated December 2018)

Where:

- A = no of apartments with one bedroom x 0 (There is no sum payable in respect of one bedroom apartments)
- B = no of apartments two or more bedroom x £858.00
- C = no of houses with 2 bedrooms x £1,471.00
- D = no of houses with 3 bedrooms x £2,819.00
- E = No of houses with four or more bedrooms x £3,800.00

Total Primary Education Contribution = the total of A + B + C + D + E

EXECUTED as a deed by GOWER HOMES
LIMITED acting by MICHAEL WILLIAM
FORGRAVE a director in the presence of

)
)
)

Witness sign

Witness name (print)

Address