Draft Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

relating to 16 Lord Street, Wrexham, LL11 1LG

Dated

WREXHAM COUNTY BOROUGH COUNCIL (1)
and
Wrexham Property Holdings Limited (2)

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PARTIES

(1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("Council")

(2) **Wrexham Property Holdings Limited (“**the Owner")

INTRODUCTION

(1) The Council is the local planning authority for the purposes of this Deed and the Town & Country Planning Act 1990 (as amended) for the area within which the property described in the First Schedule here to is situate and is the local planning authority by whom a planning obligation is enforceable

(2) The Owner is the registered proprietor of the Site

(3) The Owner has submitted the Application to the Council and the parties have agreed to enter into this deed in order to secure the planning obligations contained in this Deed.

(4) The Council resolved on the xxx via delegated authority to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

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

“Act”	the Town and Country Planning Act 1990
"Affordable Housing"	subsidised housing which will be available to Eligible Persons
"Affordable Housing Contribution"	{the Market Value of a Dwelling erected on Site x 10%) x xx. to be paid by the Owner to the Council and expended by the Council in accordance with the provisions of the Second Schedule. For example:

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	If Market Value of Dwelling is £200,000, then ((£200,000 X 10%) X £20,000) £xx X xx £xxx
"Application"	the application for full planning permission dated xxx submitted to the Council for the Development and allocated reference number xxx
"Commencement of Development"	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 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.
"Development"	the development of the Site consisting as set out in the Application
"Dwelling"	means a residential unit (including houses, flats or maisonettes) constructed on the Site pursuant to the Planning Permission
"Eligible person"	means a Person in housing need identified from the low cost homes ownership register or the Council's housing waiting list
"Interest"	interest at 5 per cent above the base lending rate of the Barclays Bank Pie from time to time.
"Market value"	the price at which the relevant Dwelling might reasonably be expected to be sold at arm's length by a willing seller to a willing buyer with vacant possession on the open market
"Occupation"	the physical use of a Dwelling for a residential purpose as permitted by the Planning Permission but not including occupation by personnel engaged in construction or fitting out, or occupation for marketing and display, or occupation in relation to security operations and Occupy, Occupied and Occupier shall be construed accordingly.

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"Plan A"	the Plan A attached to this Deed
"Planning permission"	the draft full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the 5th Schedule.
"Site"	the site in question

2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed 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 Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

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.

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 against each individually unless there is an express provision otherwise.

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

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orders, plans regulations, permIssIons and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development;

save for the provisions of Clauses 5.2, 7.1, 13 and 14 (commencement of development, legal costs, jurisdiction and delivery) fees and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council as set out in the Second and Third Schedule.

5.2 The Owner shall serve on the Council a notice of Commencement of Development not less than two days before Commencement of Development.

6 THE COUNCIL'S COVENANTS

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

7 MISCELLANEOUS

7.1 The Owner shall pay the Council on completion of this deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed to a maximum sum of £1500.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner

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from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Chief Officer Economy and Planning

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at Wrexham County Borough Council and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party in this case being Chief Officer Economy and Planning at Wrexham County Borough Council, Lambpit Street, Wrexham LL1AR.

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6 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 provisions of this Deed.

7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if:-

7.7.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure;

7.7.2 the Planning Permission shall expire prior to the Commencement of Development; or

7.7.3 the Site is developed under a new planning permission (other than one issued under Section 73 of the Act for variation or discharge of a condition of the Planning Permission) granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development.

7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site.

7.9 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 them.

7.10 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.

8 WAIVER

No waiver (whether expressed or implied) by the Council or Owner 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 or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate 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 give details of the transferee's full name and registered office (if a company or usual address if not)

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together with the area of the Site or unit of occupation purchased by reference to a plan.

10 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

11 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12 JURISDICTION

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

13 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

14 SECTION 73 VARIATION

For the avoidance of doubt in the event that the Council shall at any time hereafter grant a planning permission pursuant to an application under section 73 of the Act in respect of conditions on the Planning Permission, save and in so far as this Deed has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Deed to the Application and the Planning Permission shall be deemed to include any subsequent section 73 applications and planning permissions as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

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FIRST SCHEDULE

DESCRIPTION OF THE

SITE

xxx

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SECOND SCHEDULE

Owner's Covenants - Affordable Housing Contribution

Prior to the Occupation of the xx Dwelling within the Development the Owner shall pay the Affordable Housing Contribution to the Council which shall be used by the Council to build extend and improve Affordable Housing within the County Borough.

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THIRD SCHEDULE

Council's Covenants - Discharge of obligations

1. The Council covenants with the Owner to use the Affordable Housing Contribution ("the Contributions") received from the Owner under the terms of this Deed for the purpose specified in this Deed for which they are paid

2. The Council covenants with the Owner that it will repay the Owner such amount of any of the Contributions made by the Owner to the Council under this Deed which have not been expended in accordance with the provisions of this Deed within 5 years of the date of receipt by the Council

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