

Dated

10th June

2020.

WREXHAM COUNTY BOROUGH COUNCIL

- and -

ANWYL CONSTRUCTION COMPANY LIMITED

-and-

BELLWAY HOMES LIMITED

A G R E E M E N T
under
Section 278 Highways Act 1980

relating to Highway Works at Straight Mile, Llay in the County Borough of Wrexham

Sioned Wyn Davies
Chief Officer Governance & Customer
Wrexham County Borough Council
Guildhall
Wrexham
LL11 1AY

Ref: MR/WCBC036749

SECTION 278 AGREEMENT

Dated:

10th June

2020

Parties:

- 1 **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("the Council")
- 2 **ANWYL COSTRUCTION COMPANY LIMITED** whose registered office is situate at Anwyl House, St Davids Park, Ewloe, Deeside, Flintshire, CH5 3DT(company registration number 00435323) ("the Developer")
- 3 **BELLWAY HOMES LIMITED** whose registered office is situate at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle Upon Tyne, NE13 6BE (company registration number 00670176) ("the Developer")

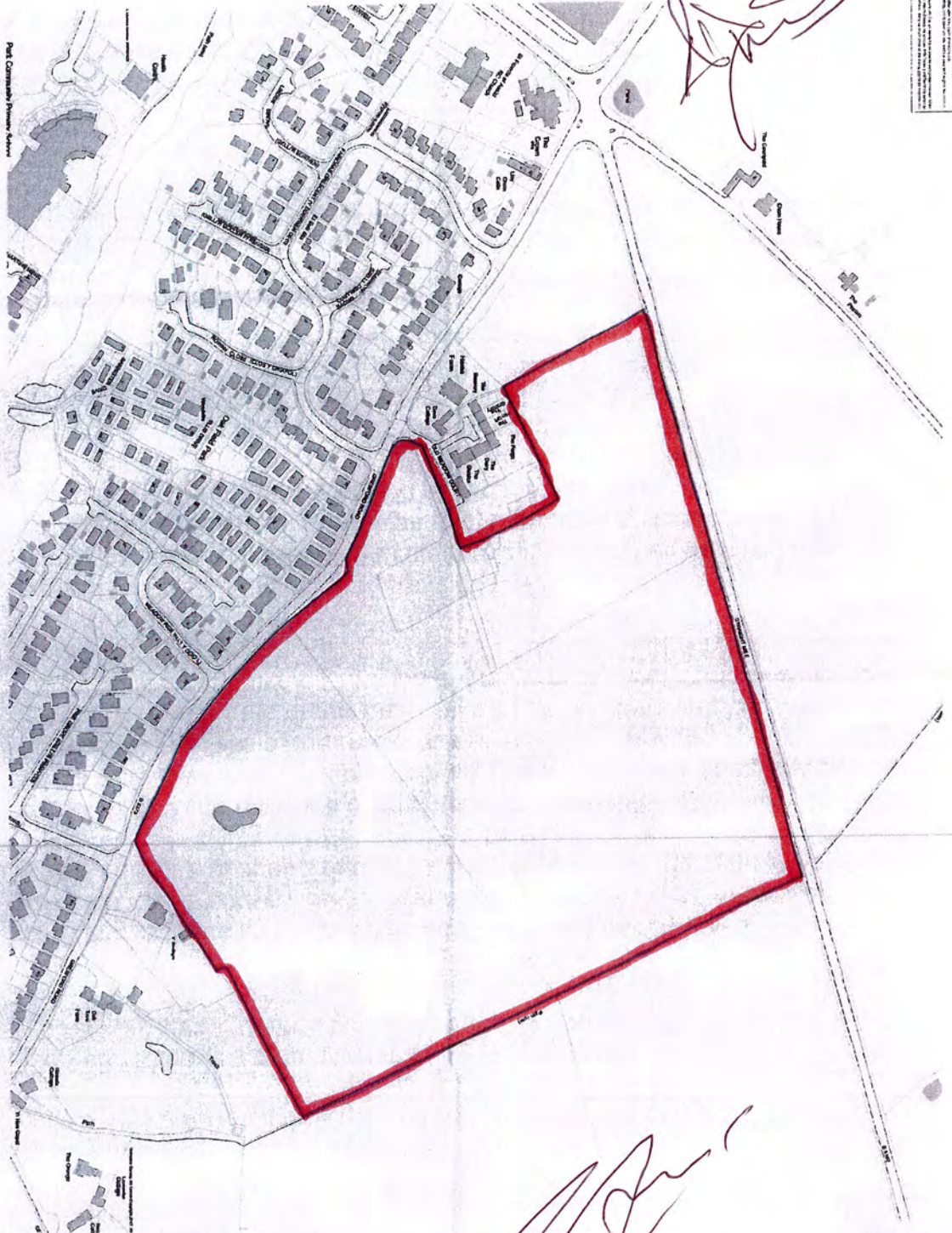
DEFINITIONS:

- the Plan** : means the plan annexed to this Agreement
- the Drawing** : means the two Drawings No. 065665 – CUR -22 – ZZ – XX – DR – 9501 – C03 and LP01 B annexed to this Agreement
- Chief Officer Environment & Technical** : is the Council's Chief Officer Environment & Technical for the time being or any duly appointed member of his staff
- the Council's Solicitor** : is the Council's Chief Officer Governance & Customer
- the Development** : Home Farm, Straight Mile, Llay, Wrexham
- the Highway** : the highway adopted by the Council as a highway maintainable at public expense known as Straight Mile, Llay, in the County Borough of Wrexham shown on the Drawing annexed to this Agreement
- the Adjoining Land** : the land forming part of the development land shown on the Drawing annexed to this Agreement
- the Highway Works** : are the works upon the Highway and Adjoining Land referred to in paragraph 1.1 of this Agreement
- the Assessed Cost** : the sum of £148,905.02 representing the sum estimated by the Network &

THIS PLAN IS THE PROPERTY OF THE CITY OF ANIMYL. IT IS TO BE USED FOR THE PURPOSES OF THE CITY OF ANIMYL. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE CITY OF ANIMYL.

Handwritten signatures in blue and red ink.

1
LOCATION PLAN
Scale: 1:250



Handwritten signature in red ink.



ANIMYL Belway Local 14 Road		1:250 1" = 250' 0' 10' 20' 30' 40'
OVERSEEN ROAD LAY LOCATION PLAN		12 MAY 2015
ANIMYL 12005 LP01 B	12 MAY 2015	12 MAY 2015



S278 Works

GENERAL NOTES:

1. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT ARCHITECTS AND ENGINEERS DRAWINGS AND SPECIFICATIONS.
2. DO NOT SCALE THIS DRAWING. ANY AMBIGUITIES, OMISSIONS AND ERRORS, ON DRAWINGS SHALL BE BROUGHT TO THE ENGINEERS ATTENTION IMMEDIATELY. ALL DIMENSIONS MUST BE CHECKED / VERIFIED ON SITE.
3. ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
4. FOR GENERAL NOTES REFER TO DRAWING.

[Handwritten signatures and initials]

EXTENT OF CARRIAGEWAY WIDENING 167.41m

PEDESTRIAN REFUGES TO BE ADDED

NARROW WIDENING ROAD CONSTRUCTION

EXISTING KERB TO BE REMOVED ALONG THE WIDENING

PROPOSED NEW KERB LINE

NEW FULL CARRIAGEWAY CONSTRUCTION TO WREXHAM COUNCIL STANDARDS

SPEED LIMIT REDUCED TO 40 MPH

PEDESTRIAN REFUGES TO BE ADDED

S278 BOUNDARY

TIE IN CONSTRUCTION

NEW FOOTPATH CONSTRUCTION

PROPOSED NEW FOOTWAY CONSTRUCTION TO BE TIED INTO EXISTING

EXISTING GULLIES TO BE RELOCATED TO SUIT THE CARRIAGEWAY WIDENING

NARROW WIDENING ROAD CONSTRUCTION

C03	PED REFUGES ADDED	18/12/19	MF	RM
C02	AMENDED TO SUIT COMMENTS	17/01/19	MF	RM
C01	ISSUED FOR S278 APPROVAL	29/11/18	MF	RM
Rev	Description	Date	By	Chkd



Merchandise Exchange, 17-19 Whitworth Street West, Manchester, M1 5WG
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Civils & Structural - Transport Planning - Environmental - Infrastructure - Geotechnical - Conservation & Heritage - Thermal Design -
Birmingham - Bristol - Cambridge - Cardiff - Glasgow - London - Manchester - Newcastle - Nottingham - Oxford -
Sheffield - Southampton - Swansea - Wolverhampton

STATUS

ISSUED FOR CONSTRUCTION APPROVAL **S4**

Project GRESFORD ROAD LLAY

Drp Title

STRAIGHT MILE GIRT GENERAL ARRANGEMENT

Size A1 Date 11/10/2018 Drawn By MF Designed By MF Checked By RM

Scale 1:250

Project No 065665 - CUR - ZZ - XX - DR - D - 9501 - C03

		Infrastructure Manager to be the reasonable cost of carrying out the Highway Works
the Inspection Fee	:	the sum of £13,401.45 being 9% of the Assessed Costs
the Provisional Certificate	:	is the Certificate issued pursuant to Clause 9 of this Agreement
the Final Certificate	:	is the Certificate issued pursuant to Clause 10 of this Agreement
the Maintenance Period	:	is the period of twelve months from the date of issue of the Provisional Certificate
the Prohibited Working Periods	:	are Saturdays, Sundays, Bank Holidays or on any other day earlier than 0800 hours or later than 1800 hours
the CDM Regulations	:	the Construction (Design and Management) Regulations 2015 (SI2015/51)

RECITALS:

- (A) The Developers are the Registered Proprietor of the Development Land under Title No.CYM726078.
- (B) The Developer is desirous of carrying out the Development on the Development Land.
- (C) The Developer has applied to Wrexham County Borough Council for permission to carry out the Development.
- (D) The Council is the Local Highway Authority for the County Borough of Wrexham including the Highway.
- (E) The Council considers that the Highway Works should be carried out as a condition precedent to the Development.
- (F) The Developer accepts that the Development necessitates the carrying out of the Highway Works to and has agreed with the Council to carry them out in accordance with the covenants and the conditions which follow.
- (G) The Council is satisfied that the Highway Works are of benefit to the public.

OPERATIVE PROVISIONS:

NOW THEREFORE in pursuance of Section 278 of the Highways Act 1980 and of all other enabling powers **IT IS AGREED AND DECLARED** as follows:-

- 1 The Developer as agent for the Council hereby covenants with the Council:-
 - 1.1 At its expense to have carried out by a person or Company to be approved by the Chief Officer Environment & Technical consisting of:-
 - 1.1.1 The works described generally in the Schedule hereto and indicated in outline on the Drawing.
 - 1.1.2 Such other ancillary works as the Chief Officer Environment & Technical may reasonably require and where such works have been agreed by the Developer **provided that** such agreement is not unreasonably withheld or delayed.
 - 1.1.3 Any accommodation works.
 - 1.1.4 Works which may as a consequence of any of the above necessary to accommodate statutory undertakers' and telecommunications apparatus and all other equipment under in or over the highway.
 - 1.2 Before commencing any part of the Highway Works to submit to the Chief Officer Environment & Technical for approval **provided that** such approval is not unreasonably withheld or delayed:-
 - 1.2.1 Such detailed drawings, plans and specifications as the Chief Officer Environment & Technical may require.
 - 1.2.2 A plan showing existing/additional highways including the route of any drains.
 - 1.2.3 The name and address of the person or Company whom the Developer proposes to employ for carrying out the Highway Works.
 - 1.2.4 A programme for carrying out the Highway Works.
 - 1.2.5 A detailed traffic management plan.

and not to commence any part of the Highway Works until the Chief Officer Environment & Technical has notified his approval of all such matters in writing to the Developer.

- 1.3 Not to commence any part of the Development until the Provisional Certificate has been issued by the Chief Officer Environment & Technical.

1.4 Not to permit any building constructed on the Development Land to be occupied for or used for trading until the Highway Works have been completed and the Provisional Certificate has been issued.

1.5 Not to permit any vehicular traffic to enter or leave the Development Land other than by way of the Highway Works save only that during construction of the Highway Works an alternative route agreed with the Chief Officer Environment & Technical Manager may be used.

1.6 To ensure that all construction traffic approaches the Development Land by way of the Highway.

1.7 To complete the Highway Works in accordance with the plans, drawings and specifications approved under Sub-clause 1.2.1 and any amendments that have been agreed in accordance with Clause 1.1.2 and any instructions as to the materials or method of working given by the Chief Officer Environment & Regulatory to the Chief Officer Environment & Technical's satisfaction and to obtain the Provisional Certificate no later than the date set by the Chief Officer Environment & Technical under Clause 3 save only that if completion by that date becomes impossible by reason of circumstances beyond the control of the Developer the date for completion shall be such later date as the Chief Officer Environment & Technical may agree having regard to the circumstances provided that such approval is not unreasonable withheld or delayed.

1.8 To employ the contractor approved under Sub-clause 1.2.3 for carrying out the Highway Works **provided that** the Developer shall be at liberty by giving fourteen (14) working days prior written notice to the Chief Officer Environment & Technical to substitute the approved contractor for some other contractor to be approved by the Chief Officer Environment & Technical to undertake the Highway Works and where such approval is not unreasonable withheld or delayed.

1.9 If required by the Chief Officer Environment & Technical so to do to provide wheel-cleaning facilities of a nature approved by the Chief officer Environment & Technical on the Development Land before commencing any part of the Highway Works and to ensure that during the period from the commencement of the Highway Works until the issue of the Provisional Certificate or such later date as the Chief Officer Environment & Technical shall notify in writing to the Developer before leaving the Development Land, the wheels of all vehicles are sufficiently cleaned to prevent mud from the Development Land being deposited on the highway **Provided That** any later date notified by the Chief Officer Environment & Technical as aforesaid shall not be later than such date as the Chief Officer Environment & Technical considers that a stage of development on the Development Land will have been reached when there will no longer be a risk of mud being deposited on

the highway in consequence of construction work being carried out on the Development Land.

- 1.10 If required by the Chief Officer Environment & Technical so to do to provide temporary traffic signal controls, such controls to be of a type which meet Department of Transport requirements.
- 1.11 To construct the Highway Works in accordance with the Department of Transport's Specification for Highway Works.
- 1.12 To construct all surface water drains and sewers to an adoptable standard.
- 1.13 To comply with all other terms and conditions of this Agreement.

2 Before any part of the Highway Works are begun the Developer shall:-

- 2.1 Serve on the Chief Officer Environment & Technical not less than four (4) weeks' notice of its intention to commence the Highway Works.
- 2.2 Enter into and complete a Bond not later than the date for commencement of the Highway Works for securing the performance of its obligations hereunder, such Bond to be in a form and with a Bondsman approved by the Council and in a sum equal to the Assessed Costs exclusive of VAT, such Bond to be cancelled when the Highway Works have become maintainable at the public expense in accordance with Clause 10.
- 2.3 Pay to the Council's Solicitor prior to the completion of the Agreement the sum Inspection Fees of £13,401.45 towards the administrative and technical expenses incurred by the Chief Officer Environment & Technical, including the cost of supervising and inspecting the Highway Works as they proceed and the issue of the Provisional Certificate and the Final Certificates together with the Council's legal fees for the preparation, sealing and completion of this Agreement in the sum of £1,000.00
- 2.4 Make all necessary arrangements for carrying out the Highway Works, including the service of any necessary notices, in particular in relation to statutory undertakers' and telecommunications apparatus and all other equipment over or under the Highway and for enabling it to comply with the provisions of this Agreement.

3 The Highway Works will be completed within twelve (12) months of this Agreement.

- 4 The Developer shall, throughout the period from the commencement of the Highway Works until the issue of the Provisional Certificate or such later date as the Chief Officer Environment & Technical shall notify in writing to the Developer, ensure that:-
- 4.1 Adequate warning signs, lights and cones are provided and maintained in good working order in accordance with Chapter 8 of the Traffic Signs Manual published by Her Majesty's Stationery Office.
 - 4.2 Any mud from the Development or the Highway works which may be deposited on the highway maintainable at the public expense by vehicles leaving the Development Land or the Highway Works is removed immediately.
 - 4.3 Any temporary traffic signal controls required by the Chief Officer Environment & Technical under Clause 1.11 are maintained in proper working order.
- 5
- 5.1 If at any time during the period specified in Clause 4 the Developer fails to provide adequate warning signs, lights or cones or any such provided are not in good working order or mud is deposited on any highway maintainable at the public expense and not immediately removed, the Chief Officer Environment & Technical may take such action as he considers necessary to remedy the failure and shall deduct the full cost of so doing, including materials, plant transport and labour, from the sum deposited by the Developer.
 - 5.2 On each and every occasion when the Chief Officer Environment & Technical takes action as provided in Sub-clause 5.1, he shall be entitled to deduct from the Assessed Costs deposited under Clause 18.2 the sum of £200.00 Two Hundred Pounds or 6 per cent of the cost of the action taken whichever is the greater in respect of his administrative costs, in addition to the cost of any action taken in remedying the failure.
 - 5.3 If any deduction which shall be made under Sub-clauses 5.1 and 5.2 exceed the sum deposited or any balance thereof the Developer shall pay to the Council the shortfall within 21 days of the Chief Officer Environment & Technical serving notice of the amount due.
 - 5.4 In the event that the Council is required to take action in accordance with Clause 5.1 then the Developer shall pay to the Council within 21 days of the Chief Officer Environment & Technical serving notice of the amount due a sum equivalent to the costs incurred by the Council together with the reasonable administration costs.
- 6 The Developer shall not, without the written consent of the Chief Officer Environment & Technical, carry out or permit to be carried out during any of the Prohibited Working Periods any of the Highway Works on any part of the

Highway or any other works which will necessitate the movement of plant or equipment on any part of the Highway.

7 The Developer hereby grants to the Council, its servants agents:-

7.1 Free access to every part of the Highway Works for the purposes of inspecting the same as they proceed and inspecting and testing all materials used or intended to be used therein and the cost of reasonable analysis and test in connection therewith shall be at the expense of the Developer.

7.2 The right to enter upon such parts of the Development Land as it is necessary so to do for the purposes of this Agreement.

8 The Council hereby licences the Developer to enter upon such part of the Highway as is reasonably required and do such works to the Highway as are necessary in carrying out the terms of this Agreement.

9 When the Highway Works have been completed in accordance with Clause 1.1 hereof the Chief Officer Environment & Technical will issue his Provisional Certificate and thereafter the Developer shall continue to maintain the Highway Works until the Final Certificate is issued.

10 The Final Certificate shall be issued by the Chief Officer Environment & Technical when the following conditions have been satisfied:-

10.1 The Maintenance Period has elapsed.

10.2 All defects that may have become apparent during the maintenance period have been remedied and made good by the Developer at its own expense and to the satisfaction of the Chief Officer Environment & Technical, such defects to include damage or excessive wear caused to the Highway Works during the maintenance period.

10.3 The cleansing of all sewers, gullies, catchpits and manholes and the sweeping of the carriageway and footpaths and the cutting of grass to the reasonable satisfaction of the Chief Officer Environment & Technical.

10.4 The Highway Works have been directly connected to a carriageway which is a highway maintainable at the public expense.

10.5 The Highway Works have been provided with proper traffic signs, road markings and street name plates and furniture to the reasonable satisfaction of the Chief Officer Environment & Technical.

10.6 Where the surface water sewers other than gullies and connections draining the Highway Works are to be vested in and under the control of the Council or Water Authority or other appropriate authority in accordance with the provisions of the Water Industry Act 1991, written

confirmation has been received by the Council that the sewers are subject to a S104 Agreement under the provisions of the Water Industry Act 1991 dated 28th February 2019.

- 10.7 Before the issue of the Provisional Certificate the Developer shall, without cost to the Council, execute or procure the execution by all necessary parties of such deeds as are, in the opinion of the Council, necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the road or roads as are situate outside the limits of the road or roads and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds.
- 10.8 If once the Final Certificate has been issued pursuant to this Clause the surface water sewers (other than gullies and connections) draining the highway are not vested in and under the control of the local authority or sewerage undertaker in accordance with the provisions of the Water Industry Act 1991 or if a local authority or sewerage undertaker do not accept responsibility for future maintenance thereof, the Developer will forever after maintain at its own expense the said sewers (other than gullies and connections) and any sewer to which they connect to the approved point of discharge to any existing watercourse or an adopted sewer in good repair and ensure that the said sewers have sufficient capacity to drain the highway adequately until such sewers may be so vested or maintained by the local authority or sewerage undertaker.
- .11 The Council shall from the date of the Final Certificate maintain that part of the Highway Works which constitute alterations and additions to the existing, publicly maintainable highway and adopt the remaining Highway Works as part of the highway maintainable at the public expense.
- 12.1 Without prejudice to any other remedy of the Council in the event of any default by the Developer in preparing for or carrying out the Highway Works or any failure by the Developer to comply with any requirement of the Council in relation to such works, the Council may do all such things, including the preparation of plans, drawings and specifications and the carrying out of or remedying defects in works as it may deem necessary to secure proper construction and administrative costs **Provided Always** that before taking any such action the Council shall give to the Developer written notice of the matters in default and shall take no action until twenty-eight days from the date of such notice shall have elapsed without the Developer or its successors in title remedying fully the matters in default.
- 12.2 The Council shall recover the full cost of carrying out or completing the Highway Works including on each occasion the Council exercises its powers in default under clause 12.1 administration costs of £350 (three hundred and fifty pounds) or 6 per cent of the cost of the works whichever is the greater as certified by the Chief Officer Environment & Technical by deduction from the

sum deposited in accordance with clause 2.2 and any shortfall shall be payable by the Developer within 21 days of the Chief Officer Environment & Technical serving notice of the amount due on the Developer.

- 13 This Agreement does not authorise interference with statutory undertakers' apparatus or works without their consent nor the installation or use of telecommunication apparatus without the consent of British Telecommunications Plc nor entry upon nor doing works to or on any land other than the highway and the Developer shall comply with the provisions of Sections 83 and 84 of the New Roads and Street Works Act 1991 in relation to all such street apparatus and shall indemnify the Council against all costs, claims, demands or other expenses relating to or arising from any failure to comply with Section 83 and 84.
- 14 The Developer hereby agrees to give up and dedicate all that part of the Highway Works carried out on the Adjoining Land which is not within the existing publicly maintainable highway to the public for highway purposes to the intent that the same shall be added to and form part of the public highway from the date of the Final Certificate.
- 15 The Developer hereby undertakes and agrees with the Council that in the event of any claim for compensation or otherwise or costs or charges arising in connection with or incidental to or in consequence of the carrying out of the Highway Works, including any such, whether mandatory or discretionary, which may be incurred by virtue of any enactment or statutory instrument and not otherwise hereby provided it will hold the Council fully indemnified from and against all claims, charges, costs and expenses in connection therewith or arising therefrom.
- 16 **VAT**
 - 16.1 All sums paid or to be paid in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax ("VAT")
 - 16.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then, to the extent that VAT had not previously been charged in respect of that supply, the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015

- 17.1 The Developer and the Council hereby further agree that the Developer is the Agent of the Council for the purposes of the Construction (Design and Management) Regulations 2015 (SI2015/51).
- 17.2 The Developer agrees to undertake all the obligations of a client and to use all reasonable endeavours to ensure that the Highway Works are carried out in accordance with the CDM Regulations.

17.3 The Developer shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.

17.4 The Developer warrants it has taken or shall take all reasonable steps to be satisfied that all contractors engaged on the Highway Works are suitable and competent having regard to their responsibilities in relation to the Highway Works and the CDM Regulations.

17.5 The Developer shall indemnify and keep the Council indemnified against any breach of the Developer's obligations under this clause.

18 The Developer shall pay to the Council:-

18.1 Upon the completion of this Agreement the costs of the Council in connection with the preparation and completion of this Agreement.

18.2 Before any part of the Highway Works are begun the Assessed Costs (only if a Bond is not being provided in accordance with clause 2.2)

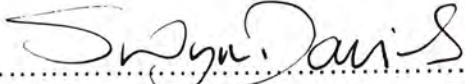
18.3 The Council's full legal and administrative costs incurred in the preparation and/or making of any Traffic Regulation Orders, whether implemented or not, to regulate traffic entering or leaving the Development Land or otherwise occasioned or necessitated by the Development and the full cost of such traffic signs and markings (including labour costs) as the Chief Officer Environment & Technical shall deem necessary to give effect to the same as and when any costs have been incurred and within twenty eight (28) days of receipt by the Developer from the Council of invoices therefore.

IN WITNESS whereof the Developer and the Council have executed this Agreement as a Deed the day and year first before written.

THE SCHEDULE
(Brief description of Highway Works)

Improvement to highway on Straight Mile, Llay, Wrexham and construction of new footway and pedestrian refuges.

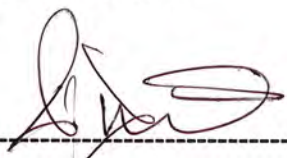
EXECUTED as a **DEED** by affixing
THE COMMON SEAL of **WREXHAM**
COUNTY BOROUGH COUNCIL
in the presence of:

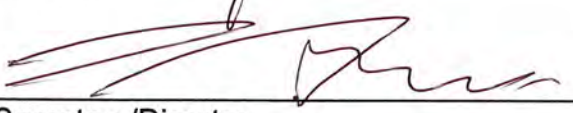

.....
Chief Officer Governance & Customer



128/20(b)

EXECUTED as a DEED
by **ANWYL CONSTRUCTION**
COMPANY LIMITED and
signed by a Director and the
Secretary or two Directors


.....
Director


.....
Secretary/Director

EXECUTED as a DEED by

DAVID WILLIAMS
.....
Attorney Name


.....
Attorney Signature

as the attorneys for and on behalf of
BELLWAY HOMES LIMITED
as per the Power of Attorney dated 13 May 2020

in the presence of:-

Witness Signature... 

Witness Name... PAUL DAMEEN WILLIAMS

Witness Address... 140 OVERSEA DRIVE

..... HOWLANDS DESIDE CWS 3AS

Witness Occupation... TECHNICAL DIRECTOR