

DATED 23 MARCH 2021

- (1) WREXHAM COUNTY BOROUGH COUNCIL
- (2) DAFYDD RHYS JONES AND HUW RHYS JONES
- (3) LOW CARBON FARMING 2 LTD
- (4) HSBC UK BANK PLC

AGREEMENT

Pursuant to section 106 Town and Country Planning Act 1990
relating to land west of Sesswick Way, Marchwiel, Wrexham

THIS AGREEMENT is made as a DEED the 23rd day of March 2021

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of 16 Lord Street, Wrexham, LL11 1LG (the Council);
- (2) **DAFYDD RHYS JONES** and **HUW RHYS JONES** of Five Fords Farm, Cefn Road, Marchwiel, Wrexham LL13 0PA and of Llwyn Ucha, Abenbury, Wrexham LL13 0NY and the Old Farmhouse, Old Llwyn Onn Farm, Abenbury, Wrexham LL13 0NY (the **Owner**); and
- (3) **LOW CARBON FARMING 2 LIMITED** (Company no. 11093216) of 8-9 Ship Street, Brighton, BN1 1AD (the **Developer**); and
- (4) **HSBC UK BANK PLC** (Company no. 9928412) of Securities Processing Centre, PO Box 6304, Coventry CV3 9JY (the **Mortgagee**).

INTRODUCTION:

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated.
- (B) The Owner is the registered proprietor of the Land with freehold title absolute registered at the Land Registry.
- (C) The Developer submitted the Application to the Council and which was refused by the Council on 25 September 2020. The Application sought planning permission for the Development on the Land.
- (D) The Developer has submitted the Appeal and this Deed is to be considered as part of the Appeal.
- (E) The Mortgagee has a charge over the Land.
- (F) The Owner and Developer enter into this Deed with the intention that the obligations contained within it may be enforced by the Council against the Owner and their respective successors in title.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby prescribed to them:

The Act

the Town and Country Planning Act 1990 as amended;

Application

the application for the Development submitted under reference P/2020/0363;

Appeal

The appeal submitted by the Developer to the Welsh Ministers pursuant to section 78 of the Act against the refusal of the Application and allocated reference APP/H6955/A/21/3271810;

Commencement of Development;

the carrying out within the red line boundary for the Planning Permission or any part thereof by any party any Material Operation pursuant to the Planning Permission and the words Commence and "Commenced" shall be construed accordingly;

Commencement Date

the date Development Commences;

Development

The development of the Land as set out in the Application

Expert

an independent person appointed in accordance with the provisions of clause 13 to determine a dispute;

Inspector

the Inspector appointed by the Welsh Ministers to determine the Appeal;

Land

the land shown hatched black on Plan 1 and being land registered at HM Land Registry under title number CYM337640;

Management Company

a registered company limited by guarantee that has been formed for the purposes of maintaining the Mitigation Areas and for complying with and carrying out the requirements of the MA Scheme;

Material Operation

a material operation as defined in Section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission;

MA Scheme

means the scheme relating to the implementation and management of the Mitigation Areas submitted to and approved in writing by the Council pursuant to the Application;

MA Transfer

a transfer of the Mitigation Areas to the Management Company;

Mitigation Areas

Mitigation Area 1, Mitigation Area 2, Mitigation Area 3 and Mitigation Area 4 each as identified on Plan 2;

Plan 1

the plan marked Plan 1 attached hereto;

Plan 2

the plan marked Plan 2 attached hereto showing the Mitigation Areas;

Planning Permission

the planning permission that may be granted for the Development pursuant to the Application;

Working Day

any day apart from Saturday, Sunday, Christmas Day, Good Friday and any statutory bank holiday or other day during the Christmas period on which the Council's offices are closed to the public and Working Days shall be construed accordingly.

2. INTERPRETATION

Unless the context otherwise requires:

- 2.1 Words incorporating the singular include the plural and vice versa and words importing any gender include every gender
- 2.2 References to natural persons are to include corporations and vice versa
- 2.3 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.4 References in this Deed to statutes shall include any statute amending re-enacting or made pursuant to the same as current and enforced from time to time.

- 2.5 If any provisions of this Deed shall be held to be invalid illegal or unenforceable, the validity legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected impaired or called into question.
- 2.6 References to "the parties" shall mean the parties to the Deed and reference to "party" shall mean any one of the parties.
- 2.7 The Interpretation Act 1978 shall apply to this Deed.
- 2.8 The clause and paragraph headings and the recitals are purely to aid interpretation, are for reference purposes only, and have no binding legal effect.
- 2.9 Where in this Deed a party includes more than one person any obligations of that party shall be joint and several.
- 2.10 The expressions "the Owner", "the Mortgagee" and "the Council" shall include their respective successors in title and assigns.
- 2.11 The Developer acknowledges that on acquiring the Land from the Owner it shall become bound by this Deed as a successor in title to the Owner.

3. STATUTORY AUTHORITY AND LEGAL EFFECT

- 3.1 This Deed is made pursuant to section 106 of the Act and all other powers enabling which may be relevant for the purpose of giving validity to this Deed.
- 3.2 The obligations of the Owner in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council as local planning authority.
- 3.3 Subject to clause 3.4, the Owner covenants with the Council to the intent that this Deed shall be enforceable without limits of time (other than as expressly provided in this Deed) against the Owner in respect of the Land and any person deriving title through or under the Owner to the Land or any part or parts of the Land as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 3.4 No person shall be bound by any obligations rights and duties contained in this Deed and/or be liable for any breach of a covenant and /or obligation contained in this Deed after they shall have parted with all interest in the Land or that part in respect of which that obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.
- 3.5 If the Planning Permission expires (within the meanings of sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Deed shall forthwith determine and cease to have effect.
- 3.6 Nothing in this Deed shall prohibit limit or apply to any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission or a section 73 variation of the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 3.7 Nothing in this Deed shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or under any other Act or any statutory instrument, order or bye-law in the exercise of its functions as a local authority.
- 3.8 No obligation shall be construed as binding on any statutory undertakers in relation to any part or parts of the Land owned by them for their purposes or for electricity sub-stations, gas governor stations or pumping stations or against anyone whose only interest in the Land or any part of it is in the nature of an easement or covenant.

4. POWER OF INSPECTOR ON APPEAL

- 4.1 In the event that the Inspector makes a finding and expressly states in the Appeal decision that any of the obligations in this Deed (or part of a planning obligation) are unnecessary to make the Development acceptable in planning terms and/or do not meet the tests in Circular 13/97 and/or are not in accordance with the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) then such obligation(s) (or part of such obligations) herein as is so identified by the Inspector shall be deemed to have

been revoked and be of no legal effect notwithstanding the remaining provision of this Deed which (for the avoidance of doubt) shall remain in effect and enforceable.

5. **CONDITION PRECEDENT**

- 5.1 The obligations contained in this Deed shall not be enforceable by the Council until the grant of the Planning Permission other than the provisions of clause 6.1.

6. **COSTS**

- 6.1 The Developer agrees to pay to the Council on the signing of this Deed its reasonable costs of and incidental to the preparation and execution of this Deed amounting to £ 500.00.

7. **OBLIGATIONS**

- 7.1 The Owner covenants, agrees and declares in respect of the Land as set out in Schedule 1.

8. **MORTGAGEE'S CONSENT**

- 8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land subject to its mortgage shall be bound by the obligations contained in this Deed and that the security of its mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 9.1 For the purposes of the Contract (Rights of Third Parties) Act 1999 nothing in this Deed shall confer on any third party any right to enforce any benefit or any terms of this Deed PROVIDED THAT this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law.

10. **LOCAL LAND CHARGES**

- 10.1 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and may be registered as such against the Land.
- 10.2 If the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the Council shall cancel the registration.

11. **NOTICES**

- 11.1 Any notice consent or approval given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or special delivery to the recipient at the address stated in this Deed or such other address for service as a party to be served may have previously notified in writing.
- 11.2 In the case of the Council, the address for service shall be upon the Council's Solicitor at the address aforesaid or such other person or such other address for service as shall have been previously notified by the Council to the Owner.
- 11.3 Each notice served in accordance with this clause shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter 48 hours after posting.

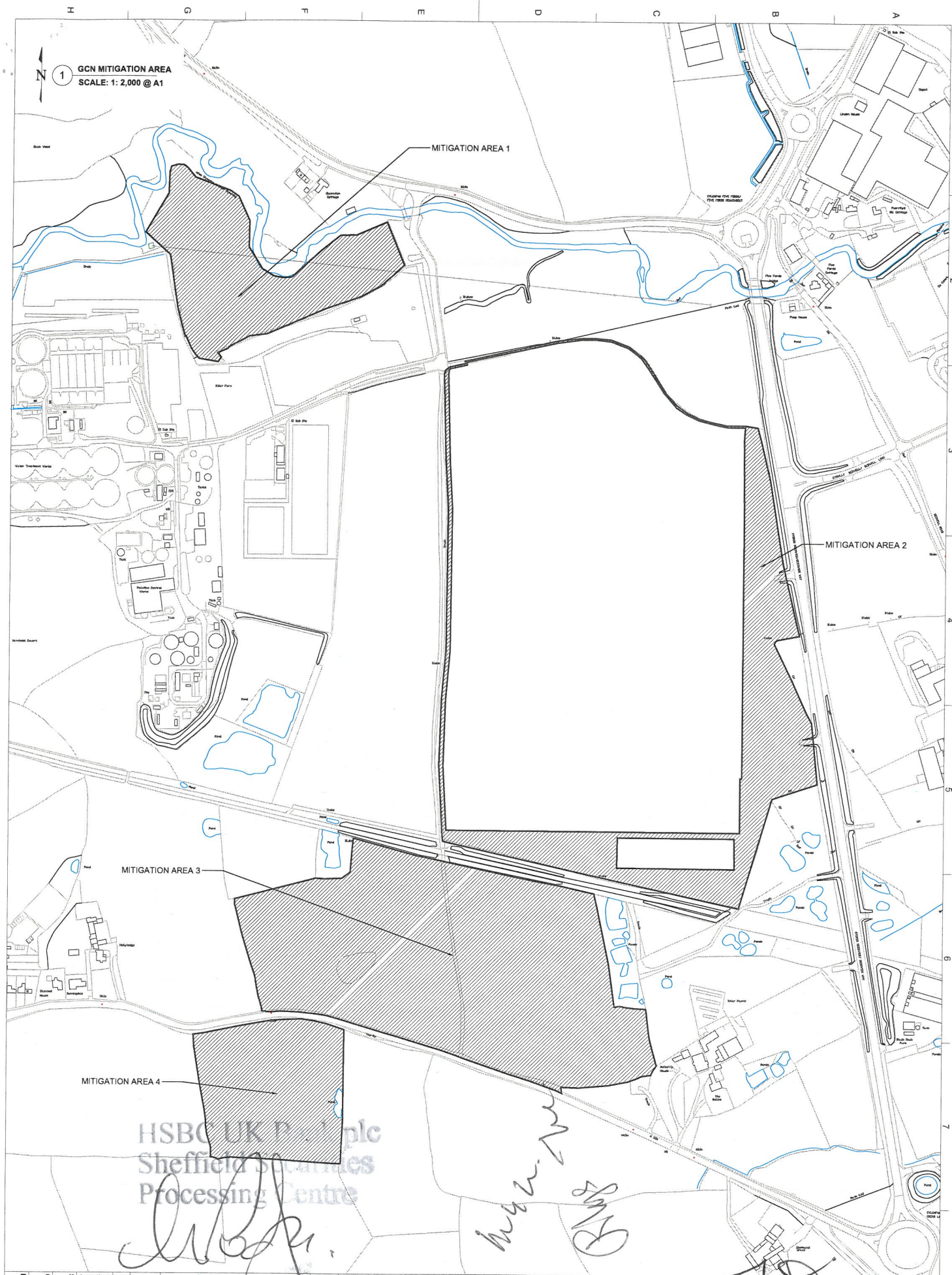
12. **JURISDICTION**

- 12.1 This Deed is governed by and interpreted in accordance with the laws of Wales.

13. **RESOLUTION OF DISPUTE**

- 13.1 In the event of any dispute arising between the parties, the parties will attempt to resolve that dispute amicably including holding a meeting attended by at least one representative from each party.
- 13.2 If the parties are unable to resolve the dispute amicably pursuant to clause 13.1, one party may by serving notice on all the other parties (the **Notice**) refer the dispute to an Expert for determination.

- 13.3 The Notice must specify:
- 13.3.1 the nature basis and brief description of the dispute;
 - 13.3.2 the clause of paragraph of this Deed pursuant to which the dispute has arisen;
and
 - 13.3.3 the name and address of the proposed Expert.
- 13.4 In the event that the parties are unable to agree whom should be appointed as an Expert within 10 Working Days after the date of the Notice then either party may request to the President of the Law Society to nominate the Expert at their joint expense.
- 13.5 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the dispute in equal shares.
- 13.6 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not later than 28 Working Days from the date of his appointment to act.
- 13.7 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material.
14. **CHANGE IN OWNERSHIP**
- 14.1 The Owner agrees with the Council to give the Council written notice of any change in ownership of the interest of the Owner in the Land such change in ownership 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) together with the area of the land transferred by reference to a plan.
15. **SECTION 73 VARIATION**
- 15.1 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.
16. **VAT**
- 16.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable. If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.



DRAWING NO: 00165-20-138 Rev02 SCALE: AS SHOWN ORIGINAL SIZE: ISO A1	LATITUDE: 53.025° LONGITUDE: -2.841°	<table><tr><th>REV</th><th>DATE</th><th>DESCRIPTION</th></tr><tr><td>01</td><td>11/05/21</td><td>GCN MITIGATION AREA</td></tr><tr><td>02</td><td>13/05/21</td><td>ANNOTATION UPDATE</td></tr></table>	REV	DATE	DESCRIPTION	01	11/05/21	GCN MITIGATION AREA	02	13/05/21	ANNOTATION UPDATE	<table><tr><th>DWN</th><th>CHKD</th></tr><tr><td>RR</td><td>AA</td></tr><tr><td>RR</td><td>AA</td></tr></table>	DWN	CHKD	RR	AA	RR	AA	PLAN 2 GCN MITIGATION EXTENTS	Low Carbon Farming - Five Fords Wrexham	 LOW CARBON FARMING
		REV	DATE	DESCRIPTION																	
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DWN	CHKD																				
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SCHEDULE 1

Owner's Covenants

The Owner covenants with the Council as follows:

Management Company and Mitigation Areas

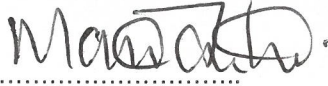
1. Not to carry out any Material Operation on the Land pursuant to the Planning Permission until:-
 - 1.1 the Management Company has been incorporated; and
 - 1.2 a copy of the proposed Articles of Association of the Management Company has been submitted to and approved in writing by the Council.
2. To submit to the Council the Articles of Association and Certificate of Incorporation of the Management Company within 4 weeks of its incorporation.
3. Before the Commencement Date to submit to the Council's Chief Officer for Planning and Regulatory the MA Scheme for its approval.
4. To comply with the MA Scheme and to maintain and manage the Mitigation Areas in accordance with the MA Scheme the Planning Permission and this Agreement until such time as the MA Transfer has been completed.
5. To pay any outgoings of the Management Company incurred in complying with the relevant obligations of this Schedule until such time as the MA Transfer has been completed.
6. To provide in the MA Transfer a covenant in the following terms:

"The Transferee hereby covenants in fee simple to observe and perform the covenants agreements obligations and stipulations contained or referred to in the First Schedule of an Agreement dated 23 MARCH 2021 made between Wrexham County Borough Council (1) Dafydd Rhys Jones and Huw Rhys Jones (2) Low Carbon Farming 2 Ltd (3) and HSBC UK Bank PLC (4) AND to observe and perform the requirements of the MA Scheme referred to therein".
7. The Owner of the Mitigation Areas shall observe and perform the provisions of the MA Scheme and monitor and review it at least every 5 years and to obtain the approval of the Council to any amendments thereto so as to ensure that they remain appropriate and relevant over time.
8. The MA Scheme shall remain in force for either the duration of the Development on the Land or a period of not more than 25 years from the Commencement of Development, whichever period is the shorter.
9. Not to use the Mitigation Areas for any purpose whatsoever other than as Mitigation Areas for the benefit of the Development.

IN WITNESS whereof the Council, the Owner, the Developer and the Mortgagee have executed this Deed the day and year first before written

THE COMMON SEAL of
WREXHAM COUNTY BOROUGH COUNCIL

was hereunto affixed in the
presence of:



Authorised signatory

Head of Service, Legal Democratic & Registration



58/22

Executed as a deed by

Lisa Maria Rodgers

(insert name of Attorney)

As Attorney of

HSBC UK BANK PLC



Attorney

in the presence of:

Signature of Witness



Print full name

Richard James Etches

Address

HSBC UK Bank plc
Sheffield Securities
Processing Centre

Occupation

Bank Official

EXECUTED as a **DEED**

LOW CARBON FARMING 2 LIMITED

acting by: *ONE DIRECTOR.*

IN THE PRESENCE OF

Director

JULIE DIANA TRIMBOR

Director/Secretary

HOOPER BURROWES LEGAL
11 Yeomanry Road
Battlefield Enterprise Park
Shrewsbury
SY1 3EH

HOOPER BURROWES LEGAL
11 Yeomanry Road
Battlefield Enterprise Park
Shrewsbury
SY1 3EH

UB
Gwyn
EXECUTED as a **DEED** by
DAFYDD RHYS JONES and **HUW**
RHYS JONES
in the presence of:

Witness signature

JULIE DIANA TRIMBOR

Witness name (in BLOCK CAPITALS)

HOOPER BURROWES LEGAL
11 Yeomanry Road
Battlefield Enterprise Park
Shrewsbury
SY1 3EH

Southern

)
)
)
Andrew Allen
ANDREW ALLEN

Mark Jones
MARK JONES

Rhys Jones
RHYS JONES