

**PLANNING OBLIGATION BY**

**DEED OF AGREEMENT**

**Of the**

**TOWN AND COUNTRY PLANNING ACT 1990**

RELATING TO LAND OFF MOLD ROAD, GWERSYLLT,

WREXHAM, LL11 4AE LR No: CYM 517237

Dated 15<sup>TH</sup> August 2018

Dated 15<sup>th</sup> August

2018

## **PARTIES**

**(1) WREXHAM COUNTY BOROUGH COUNCIL**

**(2) ASC REAL ESTATE INVESTMENTS LIMITED (Owner)**

**(3) DB HOLDING HOUSING LIMITED (Owner)**

## **INTRODUCTION**

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

(2) The owners are the registered proprietors of the Site

(3) The Owners have 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  
To grant the Planning Permission subject to prior  
completion of this Deed

NOW THIS DEED WITNESSETH AS FOLLOWS:

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"              | means subsidised housing which will be available to Eligible Persons including (without limitation) Intermediate Rented Housing, Shared Equity Housing, Shared Ownership Housing and Social Rented Housing which shall comprise 25% of the Dwellings to be built on Site (rounded down to the nearest Whole number) |
| "Affordable Housing Disposal"     | means a transfer or lease of one or more of the Affordable Housing Units by the Owner to an RSL                                                                                                                                                                                                                     |
| "Affordable Housing Contribution" | means the sum calculated in accordance with Part 8 of the Third Schedule and due to the Council                                                                                                                                                                                                                     |
| "Affordable Housing Unit"         | the dwellings provided as Affordable Housing as part of the Development in accordance with the Third Schedule                                                                                                                                                                                                       |
| "Application"                     | The application for outline planning permission dated                                                                                                                                                                                                                                                               |

16th November 2017, submitted to the Council for the Development and allocated reference number P/2017/0927 and Appeal reference APP/H6955/A/18/3207621

“CDM Regulations” means the Construction (Design and Management) Regulations 2015 including any modification extension or re-enactment of them or any other regulations of a similar nature in force at any time during the course of the Development

“Close Family Association” means members of family as described in Section 113 of the Housing Act 1985

“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 display of site notices or advertisements and “Commence Development” shall be construed accordingly

“Contributions” means the Education Contribution, and “Contribution” shall be construed accordingly

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| “Development”              | the development of the Site consisting as set out in the Application                                                                                                                                                                                                                                                                                                                                                                                                                           |
| “Dwelling”                 | means any residential unit (including a house flat or maisonette) constructed on the Site pursuant to the Planning Permission                                                                                                                                                                                                                                                                                                                                                                  |
| “Educational Contribution” | means the sum to be paid by the Owners to the Council in accordance with the provisions of the Second Schedule being the Secondary Education Contributions as determined in accordance with the provisions of the Second Schedule                                                                                                                                                                                                                                                              |
| “Eligible Person”          | means a person as defined in Part 7 of the Third Schedule hereto                                                                                                                                                                                                                                                                                                                                                                                                                               |
| “Equity Price”             | means 80% of the Market Value of a Shared Equity Unit                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| “First Charge”             | means a legal charge entered into between a Shared Equity Owner and a Mortgagee and which shall secure against a Shared Equity Unit any Mortgagees lending (of up to the Equity Price) together with any interest of the debt owed to any Mortgagee by the Shared Equity Owner at the time that any Mortgagee shall enter into possession together with the costs of enforcing the First Charge and the reasonable costs of marketing and disposal of the Shared Equity Units by any Mortgagee |
| “Freeholder RSL”           | means the RSL that owns the freehold of a Shared Ownership Unit                                                                                                                                                                                                                                                                                                                                                                                                                                |

“Intermediate Rented

Housing”

means housing unit let by an RSL at a rent equal to or less than 80% of the open market rental (being the rent which that unit would secure in the open market as between a willing lessor and a willing lessee acting at arm’s length) or the maximum amount of Local Housing Allowance which would be payable for such a unit.

“Index”

All items Index of Retail Prices issued by the Office for National Statistics

“Interest”

interest at 4 per cent above the base lending rate of the Barclays Bank plc from time to time

“Low Cost Home

Ownership Register”

means the register maintained by the Council or its nominated agent for the purpose of providing access to properties at less than market value for persons who cannot afford to buy housing generally on the open market.

“LPG 27”

means the Council’s Local Planning Guidance Note No 27

“Developer Contributions to Schools” a copy of which is annexed to this Agreement and any replacement policy thereto valid at the date of signing this Agreement

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| "LPG 28"               | means the Council's Local Planning Guidance Note No 28                                                                                                                                                                                                                                   |
| "Affordable Housing"   | a copy of which is annexed to this Agreement and any replacement policy thereto valid at the Date of signing this Agreement                                                                                                                                                              |
| "Market Housing Units" | those dwellings which are general market housing for sale on the open market and which are not Affordable Housing                                                                                                                                                                        |
| "Market Value"         | means (in respect of any Affordable Housing Units other than Social Rented Housing and Intermediate Rented Housing) the price at which the Affordable Housing Unit might reasonably be expected to be sold at arm's length by a willing seller to a willing buyer with vacant possession |
| "Material Operation"   | means a material operation as defined in Section 56 subsection 4(a) to(e) of the 1990 Act to implement the Planning Permission                                                                                                                                                           |
| "Nomination Rights"    | means the right to nominate- 100% of all initial occupiers of the Affordable Housing Units- and after that 75% of the vacancies arising in the Units for second occupiers and 50% thereafter                                                                                             |
| "Nominated RSL"        | means an RSL that holds a Second Charge                                                                                                                                                                                                                                                  |
| "Occupation"           | means use of a Dwelling for residential use but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or                                                                                                        |

occupation in relation to security operations and "Occupied" shall be construed accordingly

"Original s106 Agreement"      The s106 Agreement dated 19<sup>th</sup> March 2016 which forms Part of planning permission P/2014/0931

"Person in Housing Need"      means a person who cannot afford to rent or buy a home suitable for their needs on the open market.

"Plan"      the Plan attached to this Deed

"Planning Permission"      the draft full planning permission subject to conditions to be granted by the Planning Inspectorate pursuant to the Application as set out in the Fifth Schedule

"Practical Completion"      issue of a certificate of practical completion by NHBC or by LABC or other method of certifying Completion

"RSL"      means a registered social landlord as defined in Part 1 of the Housing Act 1996.

"Second Charge"      means a legal charge to be entered into by the Shared Equity Owner for the time being in favour of the Council or a Nominated RSL in respect of up to 20% of the Market Value of a Shared Equity Unit, subject always to the Second Charge ranking second in priority to any First Charge

"Secondary Education

Contribution"      such sums to be utilised in accordance with the Second Schedule

"Shared Equity Disposal"      means a disposal to an Eligible Person by a freehold transfer or by a lease for a term of not less than 125 years

|                             |                                                                                                                                                                                                                       |
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|                             | ( or an assignment thereof) of the Shared Equity Unit                                                                                                                                                                 |
| “Shared Equity Housing”     | means a form of affordable housing whereby the purchaser acquires a 100% equity share in an Affordable Housing Unit subject to a Second Charge and with a restriction in perpetuity upon the further sale price of it |
| “Shared Equity Owner”       | means a freeholder or a leaseholder (as appropriate) of a Shared Equity Unit                                                                                                                                          |
| “Shared Equity Unit”        | means an Affordable Housing Unit sold or available for sale as Shared Equity Housing on the Development                                                                                                               |
| “Shared Ownership Disposal” | means a disposal by the RSL by way of:-<br><br>(i) lease for a term of not less than 125 years; or<br><br>(ii) transfer or assignment of a Shared Ownership Unit                                                      |
| “Shared Ownership Housing”  | means a form of Affordable Housing which is provided by an RSL on the basis of part rent and part sale                                                                                                                |
| “Shared Owner”              | means a leaseholder of a Shared Ownership Unit                                                                                                                                                                        |
| “Shared Ownership Unit”     | means an Affordable Housing Unit sold or available for sale as Shared Ownership Housing                                                                                                                               |
| “Site”                      | the land subject to this Deed as shown edged red on the Plan and more particularly described in the First Schedule                                                                                                    |
| “Social Rented Housing”     | means housing units let by a registered social landlord to and to be occupied by persons identified in accordance with the Local Lettings Policy at a rental level which complies                                     |

|                |                                                                                                                                                                                                                                                                                              |
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|                | with the rent bench marking guidance (from time to time) published by the Welsh Government                                                                                                                                                                                                   |
| “Staircase”    | means in respect of Shared Ownership Housing to acquire pursuant to the provisions of the Shared Ownership Disposal a share of the equity in the relevant Shared Ownership Unit in addition to the Shared Owner’s Shared Ownership Interest and “Staircasing” shall be construed accordingly |
| “Units”        | means the residential units comprised in the Development                                                                                                                                                                                                                                     |
| “Working Days” | means any day falling between Monday and Friday (both days inclusive) upon which the clearing banks in the City of London are open for normal business which is not a Good Friday or a statutory bank holiday                                                                                |

## 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 all instruments 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 6.2, 8.1, 14 and 15 (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. RELEASE**

5.1 If and only if Commencement of Development occurs in relation to the Planning Permission, and in consideration of the Owners covenants set out herein, the Council in its capacity as Local Planning Authority **HEREBY RELEASES** the Site from the original S106 Agreement

## **6. THE OWNERS COVENANTS**

6.1 The Owners covenant with the Council as set out in the Second and Third Schedules

6.2 The owners shall serve on the Council a notice of Commencement of Development not less than two days before Commencement of Development

## **7. THE COUNCIL'S COVENANTS**

7.1 The Council covenants with the Owners as set out in the Fourth Schedule

## **8. MISCELLANEOUS**

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

8.2 This Deed shall be registerable as a local land charge by the Council.

8.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owners 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 Head of Environment and Planning 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.

8.4 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.

8.5 In so far 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.

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

8.6.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owners) is modified by statutory procedure

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

8.7.3 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 Planning Permission) granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development

8.7 No person shall be liable for any breach of any planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.8 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.

8.9 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.

## **9. WAIVER**

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

## **10. CHANGE IN OWNERSHIP**

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

## **11. INDEXATION**

Any sum referred to in the Second Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable

## **12. 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.

## **13. VAT**

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

#### **14. JURISDICTION**

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

#### **15. 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.

## **FIRST SCHEDULE**

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### **DESCRIPTION OF THE SITE**

The land off Mold Road, Gwersyllt, Wrexham, LL11 4AE

which is registered at HM Land Registry in the name of the Owners with title absolute under

Title number **CYM 517237**

And shown edged in red on the Plan ANNEXED AND ATTACHED hereto

## **SECOND SCHEDULE**

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### **OWNERS PROVISIONS FOR THE EDUCATION CONTRIBUTION TO THE COUNCIL**

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1. The Contribution is specifically for the provision of an extra classroom at Bryn Alyn Secondary School, and the payment is calculated on housing units of 2 or more bedrooms.

2. In respect of the Secondary Education Contribution to:

2.1 Notify the Council's Head of Environmental and Planning prior to the Occupation of the First Dwelling in order that the Council can ascertain secondary school capacity in the Bryn Alyn Secondary School Community catchment area

2.2 The Council has confirmed there to be a capacity need at the point of Occupation of the First Dwelling, to pay prior to that first Occupation the Secondary Education Contribution to the Council in accordance with the Local Planning Guide Number 27 "Developer's Contribution to Schools" and in accordance with the formula therein produced and the said LPG 27 as relevant at the date of this Deed is ANNEXED hereto. In the event of LPG 27 being reviewed then this Schedule would apply to any subsequent LPG 27 and/or any replacement policy thereto applicable at the time of the signing of this Agreement

### THIRD SCHEDULE

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#### **OWNERS PLANNING OBLIGATIONS AGREED WITH REGARD TO THE PROVISION AND DEFINITION OF AFFORDABLE HOUSING- PART 1**

1. To design and construct the Affordable Housing Units in accordance with the Planning Permission and LPG28
2. Not to dispose of the Affordable Housing Units other than to an RSL by way of Affordable Housing Disposal or to the Council or an Eligible Person by way of Shared Ownership Disposal or a Shared Equity Disposal **PROVIDED THAT** the Council and the owners of the Affordable Housing Units may by agreement prescribe terms for the disposal of different types of Affordable Housing not detailed in this Deed (both parties acting reasonably and without delay in agreeing such terms) provided that such agreement is legally secured by way of a supplemental agreement made under Section 106 of the Act
3. Give to the Council notice in writing of a disposal of its interest in any Affordable Housing Unit and its interest in any part of the Development (excluding Market Housing Units) occurring before all the obligations in this Deed have been discharged such notice to be given within 10 Working Days of such transfer and giving details of the transferee's full name and usual address (registered office if a company) together with a plan showing the area of the Development transferred
4. Prior to Commencement of Development of any dwelling phase to provide the Council's Head of Housing and Economy and Housing Development Project Manager the following details in so far as they are known for each Affordable Housing Unit.
  - 4.1 postal address
  - 4.2 gross and net internal floor area
  - 4.3 anticipated practical completion date (subject to market conditions)
  - 4.4 plans indicating location, elevations and internal layout
5. Following receipt of the decision notice confirming the grant of the Planning Permission to approach an RSL as soon as reasonably practicable and to pursue negotiations with all due diligence in order to comply with the obligations contained in this Deed and to offer the Affordable Housing Units (other than those designated as Shared Equity Units) for sale to an RSL on terms that have due regard to the restrictions affecting such Affordable Housing Units contained in this Deed

6. Following a written request from the Council, to provide the Council such information concerning the progress of negotiations for Affordable Housing Disposals with an RSL or Shared Equity Disposals for Eligible Persons (as appropriate) as shall reasonably be required by the Council.

7. Not to use any part of the Development on which the Affordable Housing Units are to be constructed for any purpose other than the provision of Affordable Housing in accordance with this Deed

8. Not to use the Affordable Housing Units for any purpose other than for the provision of Social Rented Housing Shared Ownership Housing, Shared Equity Housing, Discounted Sale Housing and Intermediate Rented Housing and to respond to any written request from the Council for information as to the tenure of each Affordable Housing Unit within 10 Working Days such request to be made on no more frequent a basis than once every 6 months.

9. To keep such full and proper records as are reasonably required to demonstrate to the Council strict compliance with the affordable housing obligations contained in this Deed and any supplementary agreement thereto

10. Not to allow the Occupation of more than 50% (fifty per cent) of the Market Housing Units until 50% (fifty per cent) of the Affordable Housing Units have been constructed, and not to allow the Occupation of more than 80% (eighty per cent) of the Market Housing Units until 100% (one hundred per cent) of the Affordable Housing Units have been constructed, are ready for Occupation and have been disposed of (or evidence has been provided to the Council that the Owner is actively marketing and has used reasonable endeavours to procure such disposals) by way of an Affordable Housing Disposal to an RSL and/or Shared Equity Disposals to Eligible Persons

11. To enter a restriction on the title register of each of the Affordable Housing Units at HM Land Registry in the following terms:-

“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 conveyance that the provisions of the Fourth Schedule of the Agreement dated August 2018 between Wrexham County Borough Council(1) and ASC Real Estate Investments Limited (2) and DB Holding Housing Limited (3) have been complied with”

12. To permit the Council to exercise the Nomination Rights

13. It is proposed that of the total number of Affordable Housing Units will meet the Council's housing standards criteria to enable purchase grant funded by the Welsh Assembly Government and, in the event that the Council decides not to pursue the funding then the Council agrees that the Affordable Housing Units proposed will revert back to Market Housing Units and the Owner is free to market the Units as such

## **SOCIAL RENTED HOUSING- PART 2**

1. Not to dispose of the Affordable Housing Units which are Social Rented Housing Units other than by way of an Affordable Housing Disposal in accordance with the provisions of this Part of the Schedule

2. No Social Rented Housing Unit shall be:

2.1 let to or Occupied by persons other than Eligible Persons; and

2.2 let other than as Social Rented Housing by way of an assured or assured shorthold tenancy (or such statutory form of tenancy as may replace such forms of tenancies from time to time)

## **INTERMEDIATE RENTED HOUSING- PART 3**

1. Not to dispose of any Affordable Housing Units which are provided as Intermediate Rented Housing other than by way of Affordable Housing Disposal in accordance with the provisions of this Part of the Schedule

2. No Intermediate Rented Housing shall be:

2.1 let to or occupied by persons other than Eligible Persons; and

2.2 let other than as Intermediate Rented Housing; and

2.3 let other than by way of an assured or assured shorthold tenancy (or such statutory form of tenancy as may replace such forms of tenancies from time to time)

## **SHARED OWNERSHIP HOUSING- PART4**

1. Not to dispose of any Affordable Housing Unit which is provided as Shared Ownership Housing other than by way of Shared Ownership Disposal to an Eligible Person

2. To procure that each Shared Ownership Disposal shall incorporate the following terms;

2.1 A right of pre-emption in favour of the Freeholder RSL and Council

2.2 A covenant whereby a Shared Owner who wishes to dispose of their interest in the Shared Ownership Unit (and where the Freeholder RSL or Council does not wish to exercise the right of pre-emption referred to in paragraph 2.1 of this Part) shall be prevented from disposing or their interest in the Shared Ownership Unit other than to an Eligible Person at no more than the Market Value of their Shared Ownership Interest.

3. Not to sub-let or let (other than in accordance with this Part of the Schedule) any Shared Ownership Unit

4. Shared Owners wishing to dispose of their interest in a Shared Ownership Unit shall comply with any reasonable procedure adopted by the Council (or its nominated agent) from time to time for arranging and administering the disposal to Eligible Persons of interests in affordable housing units such as Shared Ownership Units

5. In the event that a Shared Owner wishes to dispose of their interest in a Shared Ownership Unit and such unit has been actively marketed for sale for a period of 16 weeks and no Eligible Person has exchanged unconditional contracts for the purchase of the said unit within that period **PROVIDED THAT**

(a) such unit has been offered for sale pursuant to paragraph 2.1 above and to an RSL or RSLs nominated by the Council and such RSLs or the Council have not exchanged unconditional contracts to buy such unit within such 16 week period and

(b) the price at which the Shared Ownership Unit has been offered for sale to Eligible Persons is no greater than the Market Value of the Shared Ownership Interest ascertained by agreement between the Shared Owner, any mortgagee of the Shared Owner, and the Freeholder RSL (the "Parties") or failing agreement at the expense of the Shared Owner by an independent qualified valuer appointed by agreement between the Parties or failing agreement by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors on the application of any party and the decision of such valuer shall be final and

(c) the Shared Owner has reasonably demonstrated to the Council and the Freeholder RSL that it has acted in good faith in considering any offers from Eligible Persons

Then the Shared Ownership Unit may be sold in the open market at Market Value (provided the Freeholder RSL consents to such a sale) free from affordable housing restrictions contained in this Deed **PROVIDED FURTHER THAT** where an Eligible Person or RSL or Council has been identified as a potential purchaser of the Shared Ownership Unit within the 16 week period the Shared Owner shall use reasonable endeavours to progress such sale and shall not dispose of the Shared Ownership Unit in the open market unless such potential sale becomes abortive

6. Following the sale of a Shared Ownership Unit on the open market pursuant to paragraph 5 above, the Council consents to the Shared Owner removing the restriction set out at paragraph 11 of Part 1 above from the title of the Shared Ownership Unit at the Land Registry

## SHARED EQUITY INITIAL SALES-PART 5

1. Not to dispose of the Affordable Housing Units provided as Shared Equity Housing other than by way of a Shared Equity Disposal to an Eligible Person at a price no greater than the Equity Price
2. No Shared Equity Disposal shall be completed without the new Shared Equity Owner simultaneously entering into a Second Charge
3. That upon first acquiring an interest in Shared Equity Housing Unit the Shared Equity Owner shall not borrow from any Mortgage nor charge a Shared Equity Housing Unit under a First Charge for a sum in excess of 80% of the Market Value of the Shared Equity Housing Unit without the consent of the Council or the nominated RSL (as appropriate) providing that nothing in this paragraph shall prevent or prohibit a Shared Equity Owner from later increasing its borrowings from any Mortgagee in order to discharge and secure release from the Second Charge
- 4 Each Shared Equity Disposal shall contain a restriction whereby the Shared Equity Owner who wishes to dispose of their interest in the Shared Equity Housing Unit shall be prevented from making that disposition with Part 6 of this Schedule
5. In the event that the Shared Equity Housing Unit is sold by a mortgagee in possession without the provisions of this Deed binding upon it, the Mortgagee shall, in so far as is able to from the proceeds of sale of the Shared Equity Housing Unit and in any event only after deduction of any monies owing to the Mortgagee pursuant to the First Charge, pay to the Council or Nominated RSL as the Council may determine, the Redemption Money within one week of completion of the sale of the Shared Equity Housing Unit and provide the Council's Head of Housing and Economy (or such other officer undertaking the duties of a chief housing officer) with an account of the amount due pursuant to this paragraph.
6. Not to let (other than by way of a Shared Equity Disposal) or sub-let the Shared Equity Housing Unit (unless by agreement with the RSL to let the Shared Equity Housing Unit at an intermediate rate on a temporary basis, using RSL lettings agency until a buyer can be found)
7. The provisions of this Part of the Schedule shall only apply to the initial sale of Shared Equity Housing which means the first disposal of the Shared Equity Housing Unit
8. In the event that a Shared Equity Unit has been actively marketed for sale for a period of 16 weeks and no Eligible Person has exchanged unconditional contracts for the Shared Equity Unit within that period AND no RSL or the Council has unconditionally contracted to buy such units within such period then the Shared Equity Unit may be sold in the open market at Market Value free from the affordable housing restrictions contained in this Schedule of this Deed **PROVIDED THAT** within two working days of legal completion of such

sale, a payment of 20% of the sale proceeds ("Commuted Sum") is paid to the Council by the Owners to be used for the provision of Affordable Housing within the Wrexham County Borough Council administrative area within five years of receipt **PROVIDED FURTHER THAT** where an Eligible Person or RSL or the Council has been identified as a potential purchaser of the Shared Equity Unit within the said six weeks period the Owners shall use reasonable endeavours to progress such sale and shall not dispose of the Shared Equity Unit in the open market unless such potential sale becomes abortive

9. If at any time after the fifth anniversary of the receipt by the Council of the Commuted Sum the Owners request then the Council will provide (subject to the Owners paying the Council's reasonable and proper expenses in connection with providing the same) written confirmation as to whether the whole or any part of the Commuted Sum has been expended or committed for expenditure in accordance with paragraph 8 above and in the event that the Council fails within 3 calendar months of such request to provide written confirmation that the whole of the Commuted Sum paid by the Owners to the Council pursuant to paragraph 8 above has been expended by the Council or committed towards the designated purposes within 5 years from the receipt by the Council of the Commuted Sum then the Council shall repay all or part of the Commuted Sum for which that written confirmation has not been given to the person or persons who actually paid the Commuted Sum together with all interest accrued thereon

#### **SHARED EQUITY HOUSING SUBSEQUENT SALE-PART 6**

1. Not to dispose of the Affordable Housing Units provided as Shared Equity Housing other than by way of a Shared Equity Housing other than by way of a Shared Equity Disposal to an Eligible Person at a price no greater than the Equity Price
2. That no Shared Equity Disposal shall be completed without the new Shared Equity Owner simultaneously entering into a Second Charge
3. That upon first acquiring an interest in a Shared Equity Housing Unit the Shared Equity Owner shall not borrow from any Mortgagee nor charge a Shared Equity Housing Unit under a First Charge for a sum in excess of 80% of the Market Value of the Shared Equity Housing Unit without the consent of the Council or the Nominated RSL (as appropriate) providing that nothing in this paragraph shall prevent or prohibit a Shared Equity Owner from later increasing its borrowings from any Mortgagee in order to discharge and secure release from the Second Charge
4. No Shared Equity Owner shall transfer the Shared Equity Housing Unit without first having notified the Council or its Nominated RSL (as appropriate) in writing of their intention to dispose of the Shared Equity Housing Unit.
5. In the event that the Shared Equity Housing Unit is sold by a mortgagee in possession without the provisions of this Deed being binding upon it (pursuant to clause 5.8 hereof),

the Mortgagee shall, in so far as it is able to from the proceeds of sale of the Shared Equity Housing Unit and in any event only after the deduction of any monies owing to the Mortgagee pursuant to the First Charge, pay to the Council or Nominated RSL (as appropriate), the Redemption Money within one week of completion of the sale of the Shared Equity Housing Unit and provide the Council's Head of Housing and Public Protection (or such other officer undertaking the duties of chief housing officer) with an account of the amount due pursuant to this paragraph.

6. Not to let (other than by way of a Shared Equity Disposal) or sub-let the Shared Equity Housing Unit

7. In the event that a Shared Equity Housing Unit has been actively marketed for a period of 16 weeks and no Eligible Person has exchanged unconditional contracts for the purchase of the Shared Equity Housing Unit within that period, **PROVIDED THAT**

(a) the price at which the Shared Equity Housing Unit has been offered for sale to Eligible Persons is no greater than its Market Value ascertained by agreement between the Shared Owner, any mortgagee of the Shared Owner, and the Nominated RSL (the "Parties") or failing agreement at the expense of the Shared Owner by an independent qualified valuer appointed by agreement between the Parties or failing agreement by or on behalf of the president for the time being of the Royal Institute of Chartered Surveyors on the application of any party and the decision of such valuer shall be final and

(b) the Shared Equity Owner has reasonably demonstrated to the Council that it has acted in good faith in considering any offers from Eligible Persons and

(c) such unit has also been offered for sale to the Council or the Nominated RSL and any other RSL or RSLs put forward by the Council, and that such RSL(s) or the Council have not exchanged unconditional contracts to buy such unit within such period then the Shared Equity Housing Unit may be sold in the open market at Market Value free from the affordable housing restrictions contained in this Deed **PROVIDED FURTHER THAT** where an Eligible Person, the Council or RSL has been identified as a potential purchaser of the Shared Equity Housing Unit within the said 16 week period the Shared Equity Owner shall use reasonable endeavours to progress such sale and shall not dispose of the Shared Equity Housing Unit in the open market unless such potential sale becomes abortive

8. In the event that the Shared Equity Housing Unit is sold on the open market pursuant to paragraph 7 the Shared Equity Owner shall pay the Redemption Money to the Council or the Nominated RSL (as appropriate) to redeem the Second Charge within two days of legal completion **PROVIDED THAT** such funds received by the Council or the Nominated RSL (as appropriate) shall be used for the provision of Affordable Housing within the Wrexham County Borough Council administrative area as agreed between the Council and the nominated RSL within five years of receipt

9. Following receipt by the Council or Nominated RSL of the Redemption Money in the circumstances set out in paragraphs 5,7 or 10 hereof the Council consents to the owner of the Shared Equity Housing Unit removing the restriction set out at paragraph 11 of Part 1 above from the title of the Shared Equity Housing Unit at the Land Registry

10. Nothing in this Part shall prevent or prohibit a Shared Equity Owner from paying the Redemption Money to the Council or the Nominated RSL (as appropriate) in order to discharge the Second Charge **PROVIDED THAT** the Redemption Money received by the Council or the Nominated RSL (as appropriate) shall be applied for the provision of Affordable Housing within the administrative area of Wrexham County Borough Council as agreed between the Council and the nominated RSL within five years of receipt

11. It is acknowledged that where a Shared Equity Owner disposes of a Shared Equity Housing Unit to an RSL pursuant to paragraph 7 above the RSL shall not be required to enter into a Second Charge and may use or dispose of such unit (as appropriate) to provide Affordable Housing in accordance with any of the methods of doing so permitted by this Deed

12. The provisions of this Part of this Schedule shall only apply to the sale of Shared Equity Housing after the initial sale

#### **DEFINITION OF AN "ELIGIBLE PERSON"-PART 7**

1. An Eligible Person means a Person in Housing Need identified from the Low Cost Home Ownership Register or the Council's housing waiting list (as appropriate) who:-

1.1 has resided personally or who has had a Close Family Association in the Gwersyllt Community Council Area for a continuous period of six months immediately preceding the proposed Occupation of an Affordable Housing Unit; or

1.2 is in permanent full time employment at a location within the Gwersyllt Community Council Area and has been in such employment for a period of six months immediately preceding the proposed occupation of an Affordable Housing Unit; or

1.3 has previously resided in the Gwersyllt Community Council Area for a continuous period of five years; or

1.4 has previously had a Close Family Association in the Gwersyllt Community Council Area for a continuous period of five years

1.5 has previously been in employment in the Gwersyllt Community Council Area for a continuous period of five years

2. Provided That if:

2.1 no person meeting the requirements in paragraph 1 above can be identified from the Low Cost Home Ownership Register or the Council's waiting list (as appropriate); and

2.2 a period of not less than four weeks has elapsed after an advertisement seeking a person who meets the requirements of paragraph 1 has been placed in a newspaper circulating in the Wrexham locality then the references in paragraph 1 of this Part to the Gwersyllt Community Council Area shall be treated as if they included references to the Llay and Broughton Community Council Areas and any person who satisfies one of the said criteria by virtue of such treatment shall be regarded as an Eligible Person for the purposes of this Deed

3. Provided Further That where no person who qualifies or who can be regarded as qualifying as an Eligible Person pursuant to paragraph 2 of this Part can be identified from the sources mentioned therein after at least one advertisement has been placed in a newspaper circulating in the locality then after a period of not less than eight weeks the references in paragraph 1 of this Part to the Gwersyllt Community Council Area shall be treated as if they included reference to the Wrexham County Borough Council area and any person who satisfies the said criteria by virtue of such treatment shall be regarded as an Eligible Person for the purposes of this Deed

4. Provided Further That if no applicant qualifies under paragraph 3 above within 12 weeks the Council shall have the right to purchase any Shared Equity Housing Unit at the affordable or negotiated price and/or any other person who in the opinion of the RSL or Council (as appropriate) is a Person in Housing Need shall be treated as an Eligible Person. The Council to notify the Owner of their intention to purchase within 7 days and to exchange contracts within 4 weeks

#### **CALCULATION OF "AFFORDABLE HOUSING CONTRIBUTION" - PART 8**

1. Within 30 days of the date of first Occupation of the last Affordable Housing Unit the Affordable Housing Contribution shall be calculated by the Owner and notified in writing to the Council in accordance with the following formula:

$$D/N \times Y = \text{Affordable Housing Contribution}$$

Where

**D** = Total value of Discount for Affordable Housing Units

**N** = Total number of Affordable Housing Units

**Y** = The fraction of an Affordable Housing Unit which may occur as a result of the requirement for 25% of the Dwellings on Site to be Affordable Housing

2. Within 21 days of the amount of the Affordable Housing Contribution being notified in writing by the Council the Owners shall pay the Affordable Housing Contribution to the Council PROVIDED THAT such funds shall be used by the Council for the provision of Affordable Housing within the Wrexham County Borough Council administrative area within five years of receipt and FURTHER PROVIDED THAT any part of the Affordable Housing Contribution that remains unspent by the Council after the period of five years from the date of receipt shall be refunded to the person that made the payment

#### **FOURTH SCHEDULE**

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##### **DISCHARGE OF OBLIGATIONS**

1. The Council covenants with the Owners to use the Contributions received from the Owners under the terms of this Deed for the purpose specified in this Deed for which they are paid
2. The Council covenants with the Owners that it will repay the Owners such amount of the Contributions made by the Owners to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within 5 years of the date of receipt by the Council together with Interest from the date of the payment to the date of refund
3. The Council covenants with the Owners that following performance and satisfaction of all the obligations contained in this Agreement it will forthwith effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

**EXECUTED as a DEED** on the date specified at the commencement of this Agreement

##### **ASC REAL ESTATE INVESTMENTS LIMITED**

Signed as a deed by In the presence of:-

WITNESS SIGNATURE

WITNESS NAME

WITNESS ADDRESS

WITNESS OCCUPATION

##### **DB HOUSING HOLDING LIMITED**

Signed as a deed by in the presence of:-

WITNESS SIGNATURE

WITNESS NAME

WITNESS ADDRESS

WITNESS OCCUPATION



#### FOURTH SCHEDULE

##### DISCHARGE OF OBLIGATIONS

1. The Council covenants with the Owners to use the Contributions received from the Owners under the terms of this Deed for the purpose specified in this Deed for which they are paid
2. The Council covenants with the Owners that it will repay the Owners such amount of the Contributions made by the Owners to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within 5 years of the date of receipt by the Council together with Interest from the date of the payment to the date of refund
3. The Council covenants with the Owners that following performance and satisfaction of all the obligations contained in this Agreement it will forthwith effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

**EXECUTED as a DEED** on the date specified at the commencement of this Agreement

**ASC REAL ESTATE INVESTMENTS LIMITED**

*N M B Turner*

DIRECTOR

NICHOLAS M. B. TURNER

Signed as a deed by In the presence of:-

WITNESS SIGNATURE

*RAZAK*

WITNESS NAME

ABDUL RAZAK BAGAS

WITNESS ADDRESS

1, MARLBOROUGH GROVE, BOLTON, BL3 4US

WITNESS OCCUPATION

FINANCIAL CONTROLLER

**DB HOUSING HOLDING LIMITED**

*N M B Turner*

DIRECTOR

NICHOLAS M. B. TURNER

Signed as a deed by in the presence of:-

WITNESS SIGNATURE

*RAZAK*

WITNESS NAME

ABDUL RAZAK BAGAS

WITNESS ADDRESS

1, MARLBOROUGH GROVE, BOLTON, BL3 4US

WITNESS OCCUPATION

FINANCIAL CONTROLLER