

DATED 7th March 2018

WREXHAM COUNTY BOROUGH COUNCIL

and

**GLYN WATKIN JONES, JENNIFER ANNE WATKIN JONES, MARK WATKIN JONES AND
PENSIONER TRUSTEES LIMITED**

and

CARLTON (NORTH WALES) LIMITED

DEED OF VARIATION

pursuant to sections 106 and 106A of the Town and Country Planning Act 1990 relating to

New Foundry Buildings, Gutter Hill, Johnstown, Wrexham.

SHOOSMITHS

The XYZ Building
2 Hardman Boulevard
Spinningfields
Manchester
M3 3AZ

Ref. DM/M-00685442

THIS DEED is made the

7th day of March

2018

BETWEEN

1. **WREXHAM COUNTY BOROUGH COUNCIL** of The Guildhall, Wrexham LL11 1AY ("**Council**"); and
2. **GLYN WATKIN JONES, JENNIFER ANNE WATKIN JONES** of Y Glyn, Holyhead Road, Bangor, Gwynedd, LL57 2HX and **MARK WATKIN JONES** of Swn y Mor, Griffiths Crossing, Caernarfon, Gwynedd LL55 1TS and **PENSIONEER TRUSTEES LIMITED** a company registered and incorporated in England and Wales with company number 01412599 whose registered office is Decimal Place, Chiltern Avenue, Amersham HP6 5FG (the "**First Owner**"); and
3. **CARLTON (NORTH WALES) LIMITED** a company registered and incorporated in England and Wales with company number 01412599 whose registered office is Llandegai Industrial Estate, Bangor, Gwynedd, LL57 4YH ("**Second Owner**").

(the First Owner and the Second Owner together, the "**Owners**")

RECITALS

- A The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and is the authority by which the planning obligations herein contained are enforceable.
- B The First Owner is registered as the freehold owner of the part of the Land which is registered at the Land Registry under Title Number WA792262.
- C The Second Owner is registered as the freehold owner of the part of the Land which is registered at the Land Registry under Title Number WA624385.
- D On 26 April 2013 the Council (1) the First Owner (2) and the Second Owner (3) entered into the Original Agreement.
- E The Council granted the Original Permission.
- F The Owners have via their agent submitted the S.73 Application for permission under Section 73 of the Act to proceed with the Development of the Land with a variation to condition 1 of the Original Permission.
- G The Council is minded to approve the S.73 Application and grant the S.73 Permission subject to the prior completion of this Deed.
- H This Deed is supplemental to and varies the Original Agreement with the intention that the Obligation contained in the Original Agreement shall apply to the S.73 Permission and continue to apply to the Original Permission.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. The words and expressions in this Deed shall where the context so requires or admits and except as otherwise provided or required by this Deed have the meanings as given to them in the Original Agreement and as follows:

"Original Agreement"	the agreement dated 26 April 2013 made pursuant to Section 106 of the Act between the Parties a copy of which appears at Appendix 1 of this Deed;
"Original Permission"	the planning permission subject to conditions granted by the Council on 7 May 2013 under reference number P/2012/0561;
"the Parties"	means the Council, the First Owner and the Second Owner;
"S.73 Application"	the application made under Section 73 of the Act to vary condition 1 of the Original Permission which has been allocated code number P/2017/0755;
"S.73 Permission"	the planning permission subject to conditions to be granted by the Council pursuant to the S.73 Application.

2. OPERATIVE PROVISIONS

- 2.1. The parties to this Deed agree that the Original Agreement shall be varied as set out in **clause 4** of this Deed with immediate effect.
- 2.2. The Original Agreement remains valid and in force subject to the variations contained in **clause 4** of this Deed and this Deed is supplemental and collateral to the Original Agreement.
- 2.3. If any provisions of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not be in any way deemed thereby to be affected or impaired.
- 2.4. This Deed is a local land charge and shall be registered as such by the Council.

3. STATUTORY BASIS

- 3.1. This Deed is made pursuant to the provisions of section 106 and section 106A of the Act and the covenants contained in this Deed are planning obligations for the purposes of those sections.
- 3.2. Insofar as any of the covenants contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and all other enabling powers.

4. VARIATION

- 4.1. It is hereby agreed that the Original Agreement shall be varied as follows:

- 4.1.1. The Recital numbered (4) on page 1 and the Recital incorrectly numbered (4) on page 2 shall be deleted and replaced with the following

"(4) By a planning application dated 1 August 2012 which has been allocated code number P/2012/0561 ("the Original Application") and an application under section 73 of the Act dated 7 September 2017 which has been allocated code number P/2017/0755 ("the S.73 Application") (hereinafter collectively referred to as "the Application") application has been made to the Council for planning permission for

the development specified in the Second Schedule hereto (hereinafter called "the Development") on the Land; and

- (5) *The Council has granted planning permission subject to conditions pursuant to the Original Application and has decided to grant planning permission subject to conditions pursuant to the S.73 Application for the Development (hereinafter the phrase "the Planning Permission" shall be construed as meaning one or both of those planning permissions as the context shall require) subject to the execution of this Deed without which planning permission for the Development would not have been granted."*

4.1.2. The Third Schedule shall be deleted and replaced with the following:

- "1. *Not to cause, procure or permit the implementation of the Planning Permission by the carrying out of a material operation (as defined in Section 56(4) of the Act) until the lease dated 28 May 2008 and made between (1) the First Owner and (2) Stephen Mosford, Mark Robinson, Karen Gartrell Jones and Christopher Ronald Kirtley ("the Tenant") has been brought to an end so that the Tenant no longer has any interest in the Land.*
2. *To pay to the Council within a period of 14 days from the first date upon which six of the two-bedroomed dwellings created by the Development are occupied the sum of Fifteen Thousand Six Hundred and Eighty Pounds (£15,680.00) the said sum being payable to the Council as a contribution towards the provision of primary education facilities within the Ysgol y Grango, Rhosllanerchrugog catchment area pursuant to the requirements of the Council's published Local Planning Guidance Note No. 27 entitled "Developer Contributions to Schools" the same to be expended by the Council within the said catchment area and in the manner set out in the said Local Planning Guidance Note (as amended from time to time)."*

5. COUNCIL'S COSTS

- 5.1. The Owners shall pay on completion of this Deed the Council's reasonable and proper legal costs in connection with the preparation, completion and registration of this Deed.

6. COUNCIL'S POWERS

- 6.1 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local planning authority and its rights, powers, duties and obligations under all public and private statutes, statutory instruments and byelaws may be fully and effectually exercised as if the Council were not a party to this Deed.

7. JURISDICTION

- 7.1. This Deed is governed by and interpreted in accordance with the law of England and Wales as it applies in Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the Council, the Owner and the Developer have executed this Deed on the date first above written.

APPENDIX 1

Copy of Original Agreement

Dated

26TH APRIL

2013

WREXHAM COUNTY BOROUGH COUNCIL (1)

- and -

**MESSRS G.W., J.A.W. and M.W. JONES
and PENSIONER TRUSTEES LIMITED (2)**

- and -

CARLTON (NORTH WALES) LTD. (3)

A G R E E M E N T

**Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of an education contribution arising from development on land
known as New Foundry Buildings, Gutter Hill, Johnstown, Wrexham
in the County Borough of Wrexham**

**Trevor Coxon
Head of Corporate and Customer Services
Wrexham County Borough Council
Guildhall
Wrexham
LL11 1AY
Ref. LP/CLJ/10005723**

THIS DEED is made the 26th day of APRIL Two thousand and thirteen **B E T W E E N WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY (hereinafter called "the Council") of the first part **GLYN WATKIN JONES** and **JENNIFER ANNE WATKIN JONES** of Y Glyn, Holyhead Road, Bangor, Gwynedd, LL57 2HX, **MARK WATKIN JONES** of Sŵn y Mor, Griffiths Crossing, Caernarfon, Gwynedd, LL55 1TS and **PENSIONEER TRUSTEES LIMITED** (Co. Regn No. 01412599) whose registered office is situate at Chalfont Court, Hill Avenue, Amersham, Buckinghamshire, HP6 5BB (hereinafter called "the First Owner") of the second part and **CARLTON (NORTH WALES) LIMITED** (Co. Regn No. 00382988) whose registered office is situate at c/o Heritage Holdings (North Wales) Limited, Llandygai Industrial Estate, Llandygai, Bangor, Gwynedd, Wales LL57 4YH (hereinafter called "the Second Owner") of the third part

WHEREAS

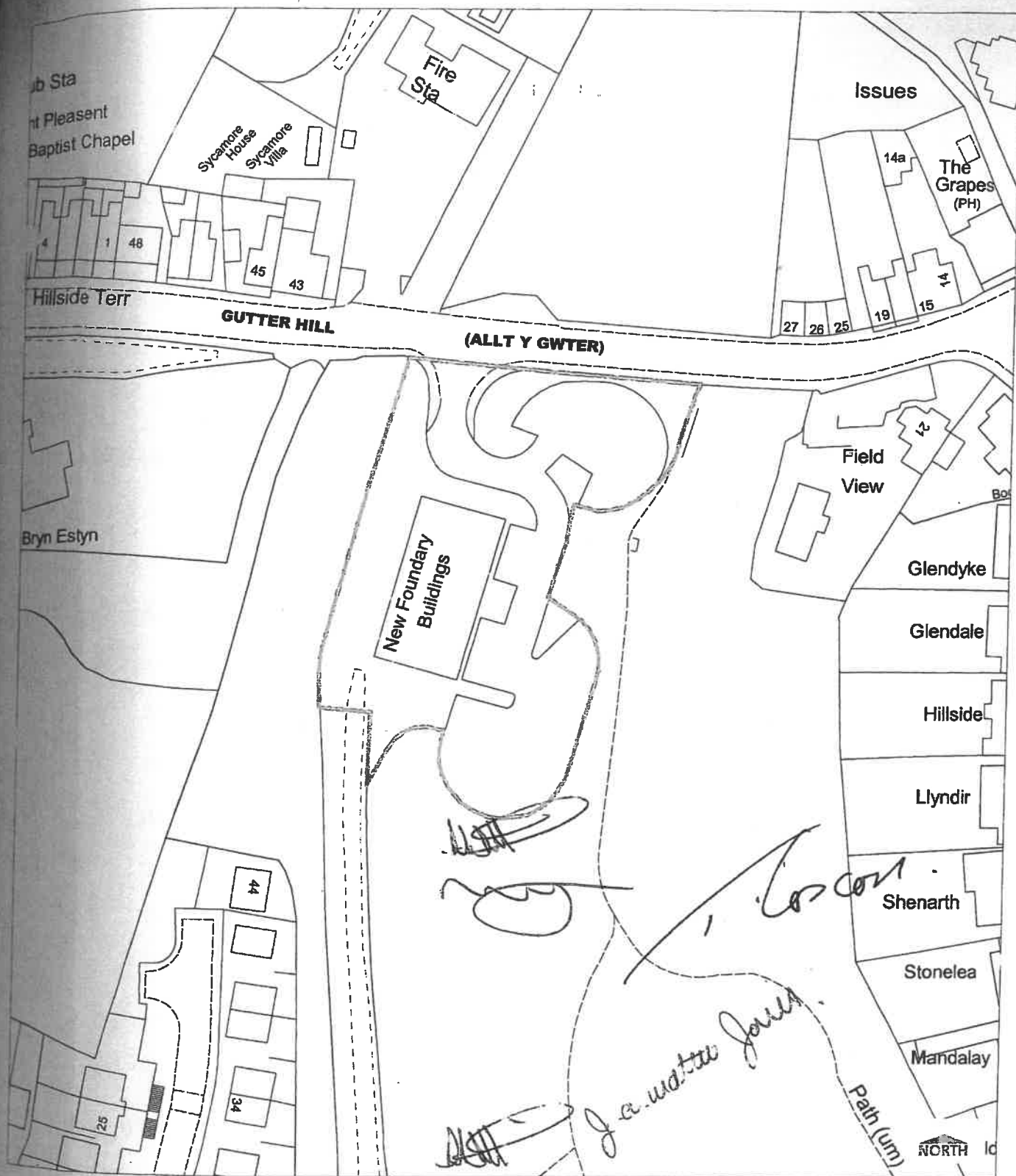
- (1) The Council is the local planning authority within the meaning of the Town and Country Planning Act 1990 (hereinafter called "the Act") for the area in which the land described in the First Schedule hereto and shown edged red on the attached plan (hereinafter called "the Land") is situate and by whom the obligations contained in this Deed are enforceable.
- (2) The First Owner is the owner of that part of the Land described in the first part of the First Schedule in fee simple in possession free from incumbrances.
- (3) The Second Owner is the owner of that part of the Land described in the second part of the First Schedule in fee simple in possession free from incumbrances.
- (4) By an application dated 1 August 2012 which has been allocated code number P/2012/0561 (hereinafter called "the Application") application has been made to the

Council for planning permission for the development specified in the Second Schedule hereto (hereinafter called "the Development") on the Land.

- (4) The Council has decided to grant planning permission for the Development subject to conditions (hereinafter called "the Planning Permission") in accordance with the Application subject to the execution of this Deed without which planning permission for the Development would not have been granted.

NOW THIS DEED which is made in pursuance of Section 106 of the Town and Country Planning Act 1990 **WITNESSETH** as follows:-

- 1 **THE** First Owner and the Second Owner hereby jointly and severally covenant with the Council (each so as to bind that part of the Land to which it has title) to perform the obligation (hereinafter called "the Obligation") set out in the Third Schedule hereto
- 2 **IT is agreed and declared as follows:-**
 - (i) the Obligation is a planning obligation for the purposes of Section 106 of the Act
 - (ii) the Obligation relates to the Land
 - (iii) the Obligation is enforceable by the Council as Local Planning Authority
 - (iv) the Council will issue the Planning Permission on completion of this Deed
 - (v) the expressions "the Council" "the First Owner" and "the Second Owner" shall include their respective successors in title and assigns and persons or corporations comprising any successor in title to the First Owner or the Second Owner shall each be jointly and severally liable to the Council for the performance of the Obligation
 - (vi) no party hereto shall be liable for a breach of the Obligation after they shall have parted with all interest in the Land but this provision shall not affect any



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Lead of Community Wellbeing and Development
Planning Services
16 Lord Street, Wrexham
LL11 1LG
Telephone 01978 292017.

03/04/2013
Scale 1:1000
SJ 2946

Town & Country Planning Act 1990 Section 106 Obligation



P/2012/0561
New Foundry Buildings
Gutter Hill, Johnstown
Wrexham

Director, Pensioner Trustees Ltd

Director, Pensioner Trustees Ltd



liability of such party in respect of any antecedent breach of the Obligation in existence at the time such party disposes of such interest

(vii) the Obligation shall take effect upon a date which shall be specified by the party intending to implement the Planning Permission in a written notice served upon the Council as being the date upon which the Development is to be commenced (such notice to be served not less than 7 days before such date).

(viii) if the party intending to implement the Planning Permission fails to serve the notice referred to in (vii) above before commencement of the Development the Obligation shall take effect upon the actual date upon which the Development is begun within the meaning of Section 56 of the Act (as amended).

(ix) the Obligation is a local land charge and shall be registered as such

(x) the Council acknowledges payment of the sum of one thousand pounds (£1000) representing the Council's legal costs of and incidental to its preparation

(xi) this Deed will not prevent the Council from exercising its statutory powers under any legislation

3 IF the sum payable pursuant to the Obligation remains unspent or uncommitted for expenditure in whole or in part at any time after the tenth anniversary of the date of the payment thereof to the Council the Council shall (if required by the parties who had paid the same to the Council) repay to those parties the whole or such part of the said sum which has not been so expended nor committed for expenditure together with any interest actually earned thereon by the Council (the Council being under no obligation to obtain the best interest available).

IN WITNESS WHEREOF the Council has executed this deed as a deed by the affixation of its Common Seal the natural persons comprised in the First Owner have each executed this deed as a deed and the two corporations aggregate respectively comprised in the First Owner and the Second Owner each acting by two of its directors or one of its directors and its secretary has executed this deed as a deed the day and year first before written

FIRST SCHEDULE

("the Land")

Part 1

ALL THAT piece or parcel of land being land and buildings on the south side of Gutter Hill, Johnstown in the County Borough of Wrexham, being the land registered at the date hereof at H M Land Registry with freehold title absolute in the name of the First Owner under title number WA792262.

Part 2

ALL THAT piece or parcel of land adjoining and lying to the north-east of the land described in Part 1 of this Schedule (the same being principally occupied by a car park) and being part of the land comprised in title number W624385 and which is registered at H M Land Registry at the date hereof with freehold title absolute in the name of the Second Owner.

SECOND SCHEDULE

("the Development")

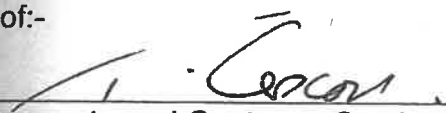
CHANGE OF USE of New Foundry Buildings from offices (class B1) to 12 residential apartments (class C3) together with associated external and internal alterations, landscape works and other ancillary works.

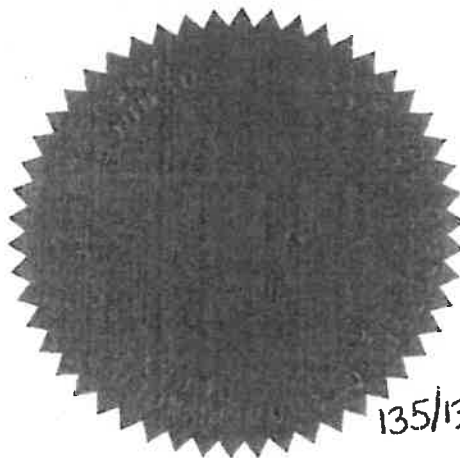
THIRD SCHEDULE

("the Obligation")

To pay to the Council within a period of 14 days from the first date upon which six of the two-bedroomed dwellings created by the Development are occupied the sum of Fifteen Thousand Six Hundred and Eighty Pounds (£15,680) the said sum being payable to the Council as a contribution towards the provision of primary education facilities within the Ysgol y Grango, Rhosllanerchrugog catchment area pursuant to the requirements of the Council's published Local Planning Guidance Note No. 27 entitled "Developer Contributions to Schools" the same to be expended by the Council within the said catchment area and in the manner set out in the said Local Planning Guidance Note.

EXECUTED as a DEED by the affixation
of the COMMON SEAL of WREXHAM
COUNTY BOROUGH COUNCIL in the
presence of:-


Head of Corporate and Customer Services



135/13

EXECUTED as a DEED
by the said GLYN WATKIN

JONES in the presence of:- 

WATKIN JONES GROUP

LIANDRUGAL INDUSTRIAL ESTATE, BANGOR, GWYNEDD, LL57 4TH

JOANNE GILPIN

SECRETARY

EXECUTED as a DEED
by the said JENNIFER ANNE
WATKIN JONES

in the presence of:- 

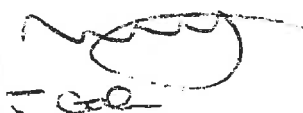
WATKIN JONES GROUP

LIANDRUGAL INDUSTRIAL ESTATE, BANGOR, GWYNEDD, LL57 4TH

JOANNE GILPIN

SECRETARY



EXECUTED as a DEED
by the said MARK WATKIN
JONES in the presence of:- 

WATKIN JONES GLOW

MANORIAL INDUSTRIAL ESTATE, BANGOR, GWYNEDD, LL57 4YH

JOANNE GILWIN
SECRETARY

EXECUTED as a DEED
by the said PENSIONEER
TRUSTEES LIMITED acting
by two of its directors or one
of its directors and its secretary
in the presence of:- 

 DIRECTOR

 DIRECTOR

KELLY RUSH
BARNETT WADDINGHAM LLP
PORT OF LIVERPOOL BUILDING
PIER HEAD, LIVERPOOL, L3 1BW
SSAS ADMINISTRATOR

EXECUTED as a DEED
by the said CARLTON
(NORTH WALES) LIMITED
acting by two of its directors or one
of its directors and its secretary
in the presence of:- 



WATKIN JONES GLOW

MANORIAL INDUSTRIAL ESTATE, BANGOR, GWYNEDD, LL57 4YH

JOANNE GILWIN
SECRETARY

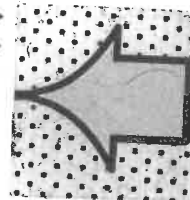
CERTIFICATE

As solicitors for the First Owner and the Second Owner (as defined in the within written deed) we hereby certify that recitals (2) and (3) thereof are correct

Signed PIA Cranston Dated: 26.04. 2013

Penny Cranston
Partner-Real Estate
Pannone LLP
123 Deansgate
Manchester
M3 2BU

THE COMMON SEAL of
WREXHAM COUNTY BOROUGH COUNCIL
was affixed in the presence of:



Authorised Signatory

Signature:

S Wyn Davies

Name (in block capitals): *S WYN DAVIES*

81/18(c)

**SIGNED as a DEED by
GLYN WATKIN JONES**
In the presence of:

[Signature]
Glyn Watkin Jones

Witness Signature:

J GO

Witness Name:

JOANNE MILPIN

Witness Address:

21-22 Wandyga Industrial Est

457 44H

Witness Occupation:

Personal Assistant

**SIGNED as a DEED by
JENNIFER ANNE WATKIN JONES**
In the presence of:

J. A. Watkin Jones
Jennifer Anne Watkin Jones

Witness Signature:

J GO

Witness Name:

JOANNE MILPIN

Witness Address:

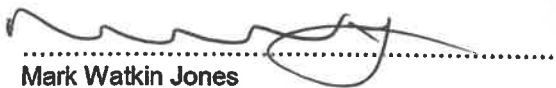
21-22 Wandyga Industrial Est

457 44H

Witness Occupation:

Personal Assistant

SIGNED as a DEED by
MARK WATKIN JONES
In the presence of:


Mark Watkin Jones

Witness Signature:

J G O

Witness Name:

JOANNE GILPIN

Witness Address:

21-22 Hardy's Industrial Est.

LL57 4YH

Witness Occupation:

Personal Assistant

EXECUTED as a DEED by
PENSIONER TRUSTEES LIMITED

Acting by a Director
In the presence of:


Director

Witness Signature:

Y-Porter

Witness Name:

YVETTE PORTER

Witness Address:

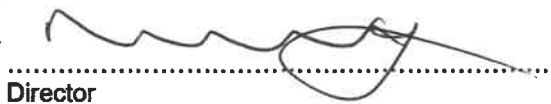
BARNETT WADDINGTON LLP
PORT OF LIVERPOOL BUILDING, PIERHEAD,
LIVERPOOL, L3 1RN

Witness Occupation:

SSA.S. ADMINISTRATOR

EXECUTED as a DEED by
CARLTON (NORTH WALES) LIMITED

Acting by a Director
In the presence of:


Director

Witness Signature:

J G O

Witness Name:

JOANNE GILPIN

Witness Address:

21-22 Hardy's Industrial Est.

LL57 4YH

Witness Occupation:

Personal Assistant