

DATED

4 August

2016

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

**WREXHAM COUNTY BOROUGH COUNCIL (1)**

**-and-**

**LOXLEY PROPERTY & DEVELOPMENT LIMITED (2)**

**-and-**

**WALTER DOBIE, JEAN FLORENCE DOBIE, STEPHEN DOBIE, ROBERT GRAHAM  
TRUSTEES LIMITED, and PETER DOBIE (TRUSTEES OF THE LOXLEY PENSION  
SCHEME) (3)**

T Coxon  
Head of Corporate and Customer Services  
Guildhall  
Wrexham  
LL11 1AY  
Ref: LL/020794

DATE

4 August'

2016

## **PARTIES**

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of The Guildhall, Wrexham LL11 1AY ("the Council")
- (2) **LOXLEY PROPERTY & DEVELOPMENT LIMITED** (Company Number 07350321) whose registered office is at Manor Street Works, Manor Street, Audenshaw, M34 5JG ("the Owner")
- (3) **WALTER DOBIE** and **JEAN FLORENCE DOBIE** of 8a Slate Lane, Audenshaw, Manchester, M34 5GW and **STEPHEN DOBIE** of 330 Audenshaw Road, Audenshaw, Manchester, M34 5PJ and **ROBERT GRAHAM TRUSTEES LIMITED** (Company Number 3071679) of Third Floor, HQ Building, 2 Atherton Street, Manchester, M3 3RG and **PETER DOBIE** of 8c Slate Lane, Audenshaw, Manchester M34 5GW (**TRUSTEES OF THE LOXLEY PENSION SCHEME**) ("the Mortgagee")

## **INTRODUCTION**

- (1) The Council is the local planning authority for the purposes of this Deed and the Town & Country Planning Act 1990 (as amended) for the area within which the property described in the First Schedule hereto is situate and is the local planning authority by whom a planning obligation is enforceable
- (2) The Owner is the registered proprietor of (inter alia) the Land (subject to the legal charge hereinafter mentioned but otherwise free from incumbrances)
- (3) The Mortgagee is the mortgagee of (inter alia) the Land under a legal charge dated 12<sup>th</sup> June 2014 and registered on the 24<sup>th</sup> June 2014
- (4) Stephen Dobie trading as Loxley Homes on behalf of the Owner has submitted the Application to the Council and the parties have agreed to enter into this deed in order to secure the planning obligations contained in this Deed

- (5) The Council resolved on the 3<sup>rd</sup> May 2016 to grant the Planning Permission subject to the prior completion of this Deed

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PART**

**1 DEFINITIONS**

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

- |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Act"                            | the Town and Country Planning Act 1990                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| "Application"                    | the application for outline planning permission dated 2 <sup>nd</sup> April 2014 submitted to the Council for the Development and allocated reference number P/2014/0342                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| "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 Land clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of Land notices or advertisements and "Commence Development" shall be construed accordingly. |
| "Development"                    | the development of the Land consisting as set out in the Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| "Dwelling"                       | means any residential unit (including a house flat or maisonette) constructed on the Land pursuant to the Planning Permission                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| "Kitchen Garden and Link Garden" | the walled kitchen garden, link garden and associated garden structures within the Grade I registered park and garden of Wynnstay Hall estate forming part of the Land                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

"Land"

the land subject to this Deed as shown edged red on the Plan and more particularly described in the First Schedule.

"Management Entity"

such body or bodies that are nominated or established by the Owner for the long term maintenance and management of the Kitchen Garden and Link Garden Space in accordance with Schedule 3 submitted to and approved in writing by the Council pursuant to the Application and relevant condition(s) of the Planning Permission

"Management Entity Details"

the Management Entity's corporate structure details of its directors and officers and the mechanism for ensuring that it has sufficient funds to enable it to carry out the Management Plan

"Management Plan"

the management plan to be submitted to the Council for approval in respect of the management and maintenance of the Kitchen Garden and Link Garden by the Management Entity which shall include details as to the timing and terms on which the Kitchen Garden and Link Garden shall be transferred to the Management Entity

"Original s106 Agreement"

means the agreement dated 23<sup>rd</sup> April 2004 and made between Wrexham County Borough Council (1) Regal Play Developments Limited (2) Wynnstay Hall Management Company Limited (3) Loxley Developments Limited (4) and National Westminster Bank Plc (5)

"Plan"

the plan attached to this Deed

"Planning Permission"

the full planning permission subject to conditions to be granted by the Council pursuant to the Application

"Practical Completion"

means the issue of a certificate of practical completion by the NHBC by way of the usual NHBC cover note or such other warranty provider approved by the Council of Mortgage Lenders

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, 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 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**

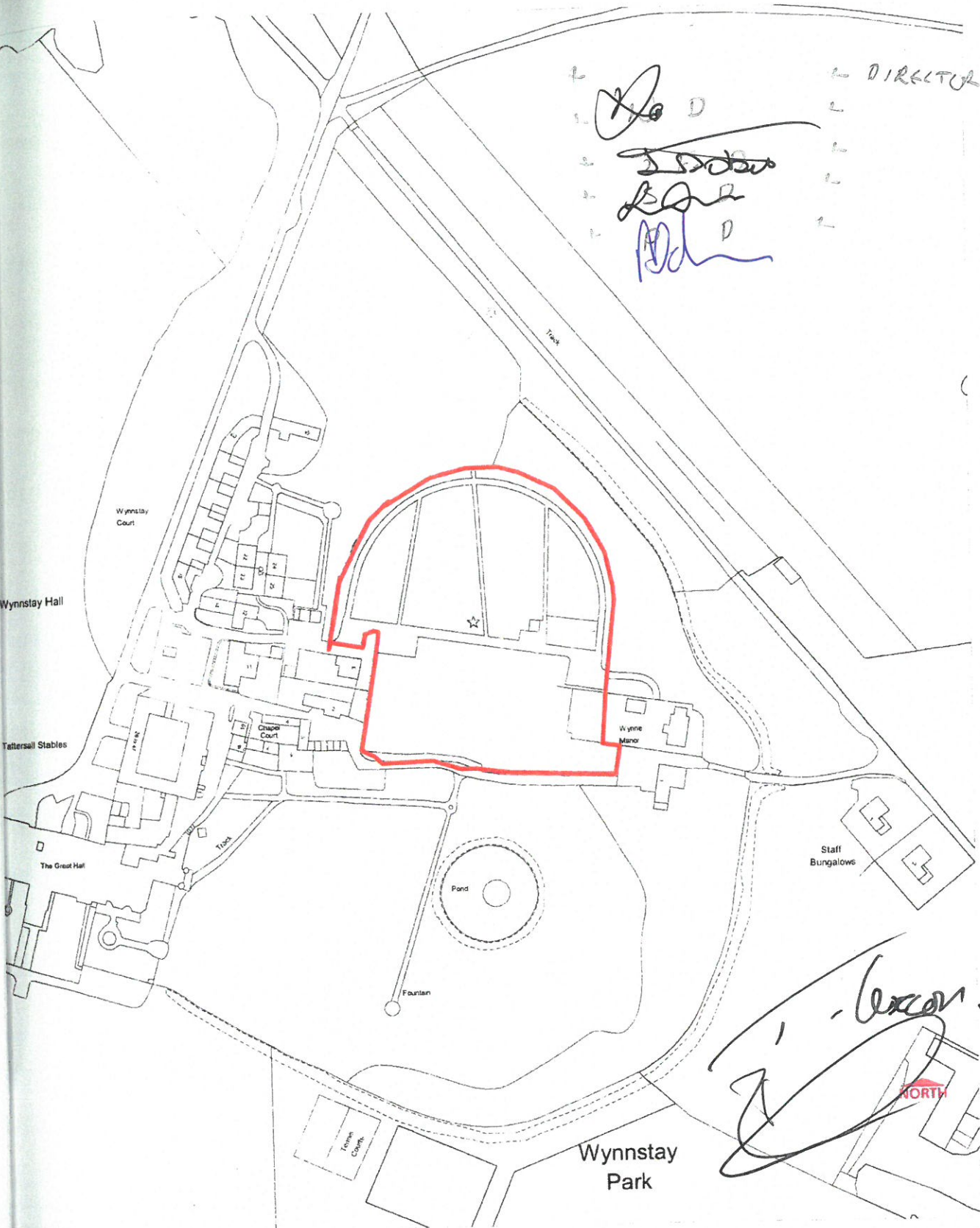
This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development;

save for the provisions of Clauses 6.2, 9.1, 15 and 16 (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.

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Head of Environment and Planning  
Planning Services  
16 Lord Street, Wrexham LL11 1LG

**Town & Country Planning Act 1990  
Section 106 Obligation**

 P/2014/0342  
Walled Garden, Wynnstey Hall Estate  
Ruabon, Wrexham

Date: 08/05/2016  
Scale: 1:2500  
OS Sheet: SJ3142



## **5. CONTINUATION OF ORIGINAL S106 AGREEMENT**

For the avoidance of doubt it is hereby agreed and declared that notwithstanding the Commencement of Development in relation to the Planning Permission and any other planning permission and notwithstanding the covenants by the Owner set out in this Agreement the provisions of the Original s106 Agreement shall continue to apply in full and be enforceable by and against the parties to it.

## **6 THE COVENANTS**

- 6.1 The Owner hereby covenants with the Council to comply with the obligations set out in the Second Schedule to this Agreement being those obligations set out in the Third Schedule to the Original S106 Agreement (insofar as it is able to do so)
- 6.2 The Owner hereby covenants with the Council to comply with the obligations relating to the Kitchen Garden and Link Garden set out in the Third Schedule of this Agreement
- 6.3 The Owner shall serve on the Council a notice of Commencement of Development not less than two days before Commencement of Development.

## **7 MISCELLANEOUS**

- 7.1 The Developer shall pay the Council on completion of this deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1,000.00 (One Thousand Pounds).
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner 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 Community Wellbeing and Development 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.
- 7.5 Following execution of this Deed the Council re-affirms that the Original s106 Agreement shall remain in full force and effect
- 7.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 7.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if:-
- 7.8.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Developer) is modified by any statutory procedure
- 7.8.2 the Planning Permission shall expire prior to the Commencement of Development; or
- 7.8.3 the Land is developed under a new planning permission (other than one issued under Section 73 of the Act for variation or discharge of a condition of the Planning Permission) granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development.
- 7.9 The Owner shall not be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause the expression "entire" shall mean a transfer or an underlease of the whole of the Land or underleases of part of the Land where the interest retained by the Owner is only its leasehold reversion in the Land.
- 7.10 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

## **8. WAIVER**

No waiver (whether expressed or implied) by the Council, the Developer or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council, the Developer or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **9. CHANGE IN OWNERSHIP**

The Owner agrees with the Council to give the Council without delay written notice of any change in ownership of any of its interest in the Land (other than any underlease of a dwellinghouse) 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 or unit of occupation purchased by reference to a plan

**10. INTEREST**

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

**11. VAT**

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

**12. JURISDICTION**

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

**13. DELIVERY**

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

**14. LIMITATION OF LIABILITY**

It is hereby agreed and acknowledged that notwithstanding any other term, condition or provision contained or implied in this deed the liability of Robert Graham Trustees Limited and all or any of its officers under or arising out of this deed for any act omission or otherwise shall not be personal and shall be limited to the available assets of the Loxley Pension Scheme and such liability shall not fall due until they have received any such monies from such funds.

**15. ASSIGNMENT**

The Owner may assign this deed to an assignee with the approval of the Council whose approval shall not be unreasonably withheld or delayed and such assignee shall enter into a deed of covenant with the Council to observe and perform the obligations on the part of the Owner contained in this deed and whereupon the obligations on the part of the Owner shall cease with immediate effect.

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

**FIRST SCHEDULE**  
**DESCRIPTION OF THE LAND**

One and a half hectares of land adjacent to Wynnstay Hall, Ruabon, Wrexham being part of the land comprised within title number CYM551654 and shown edged in red on the Plan

**SECOND SCHEDULE**  
**THE OBLIGATIONS**

- am being  
ed in red
- (a) To develop the Land in strict accordance with the Planning Permission referenced P/2014/0342 and its conditions and to put in repair landscape lay out plant replant and maintain the walled garden forming part of the Kitchen Garden and Link Garden in accordance with a scheme ("the Scheme") to be submitted to and approved by the Council
- (b) The Scheme shall include provision for: -
- 1) The heated or semi-circular wall on the northern boundary of the Walled Garden to be put in good and substantial repair using good quality materials wherever possible matching the original brick and other materials and its maintenance thereafter
  - 2) The reinstatement of the footpaths in locations as close as possible to their original location (the approximate positions of which are shown tinted yellow on the Plan) using good quality materials which respect the historic fabric of the Walled Garden and adjacent buildings and their maintenance thereafter
  - 3) The landscaping and turfing and grassing of the remainder of the Walled Garden using good quality materials and for the retention and treatment of the existing fruit trees and for its and their maintenance management and replacement thereafter
- (c) From the date of issue by the Council of a certificate ("the Completion Certificate") under the hand of the Head of Environment & Planning to the effect that the Council is reasonably satisfied that the Walled Garden has been put in repair landscaped laid out planted replanted and maintained in accordance with the Scheme submitted to and approved by the Council (the issue of the Completion Certificate not to be unreasonably withheld or delayed) to maintain the Walled Garden to the reasonable satisfaction of the Council and to its condition at the date of issue of the Completion Certificate.

- (d) To complete the repair landscaping laying out and planting of the Walled Garden in accordance with the Scheme before the last of the dwellings to which Planning Permission P/2014/0342 relates is occupied and not to occupy more than six of the dwellings to which Planning Permission P/2014/0342 relates before the Completion Certificate is issued.
- (e) To allow each and every member of the public who shall wish to visit the Walled Garden free and uninterrupted access to the Walled Garden and every part thereof between the hours of 9.00am and 6.00pm on the last Sunday in every month from April to September inclusive in every year provided that access may be denied to any member of the public who creates a nuisance or causes damage.
- (f) To allow each and every member of the public who shall wish to visit the Walled Garden as aforesaid to exercise the right of way to go pass and re-pass on foot or with horses or vehicles laden or unladen over and along the driveway shown coloured brown on the plan to the Original S106 Agreement and on foot only over and along the footpaths shown tinted yellow on the plan to the Original S106 Agreement freely and without impediment during the hours and on the days aforesaid provided that this right may be denied to any members of the public who creates a nuisance or causes damage. For the avoidance of doubt the Owner and Developer grant the right of access granted by this paragraph (f) over the drive and roadway shown coloured brown within title number WA811555 and by way of authorisation of members of the public to use the drive and roadway cross-hatched brown outside of title number WA811555 being invitees and licensees within the terms of the rights granted in the Conveyance dated 1 October 1947 and made between (1) Harry George Best and Henry Robertson and (2) Newburgh Priory School Foundation Limited.
- (g) To allow members of the public to park vehicles in the car park area shown coloured red on the plan to the Original S106 Agreement and to keep the said parking area free for such use and clear of obstruction during the hours and on the days aforesaid.
- (h) To publicise the right of the public to visit the Walled Garden in accordance with the provisions of the Original S106 Agreement by notice permanently displayed

at the entrance to the Walled Garden and on at least two notice boards in Ruabon during the months of March to September inclusive such notices to be legible and easily read by members of the public unless the Council agree in writing to another method of publicity in which case to publicise the said right as so agreed in writing.

### **THIRD SCHEDULE**

#### **KITCHEN GARDEN AND LINK GARDEN**

1. Not to allow the occupation of any Dwelling until the proposed Management Plan and Management Entity Details have been submitted to and approved in writing by the Council such approval not to be unreasonably withheld or delayed.
2. To procure that the Kitchen Garden and Link Garden are transferred to and subsequently managed and maintained by the Management Entity in accordance with the approved Management Plan.
3. Not to use the Kitchen Garden and Link Garden for any purpose whatsoever other than as garden land in accordance with the Planning Permission

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

**EXECUTED AS A DEED** by affixing the Common Seal of **WREXHAM COUNTY BOROUGH COUNCIL** in the presence of:



24514

  
Head of Corporate and Customer Services

**EXECUTED AS A DEED** by affixing the Common Seal of **LOXLEY DEVELOPMENTS LIMITED** in the presence of:

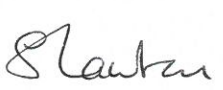
LOXLEY PROPERTY & DEVELOPMENT LIMITED  
ACTING BY A DIRECTOR  
IN THE PRESENCE OF: -

DIRECTOR

Director <sup>WITNESS</sup>   
S LAWTON  
2 HIGHBURY WAY  
ROXTON OL2 6UL

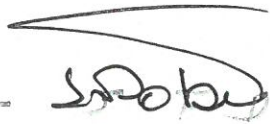
Director/Secretary

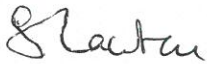
**EXECUTED as a DEED** by **WALTER DOBIE** in the presence of:

  
S LAWTON  
2 HIGHBURY WAY  
ROXTON OL2 6UL

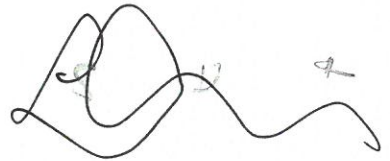
  
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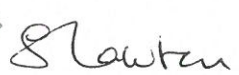
EXECUTED as a DEED by  
JEAN FLORENCE DOBIE  
in the presence of:

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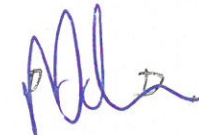
WITNESS   
SLAWTON  
2 HATHBURY WAY  
ROXTON OL2 6UL

EXECUTED as a DEED by  
STEPHEN DOBIE in the  
presence of:

+  +

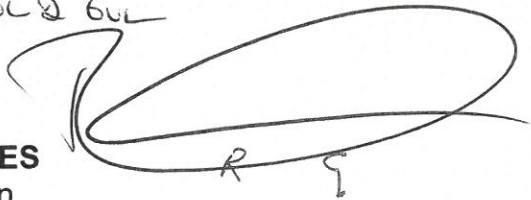
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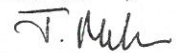
EXECUTED as a DEED by  
PETER DOBIE in the  
presence of

+  +

WITNESS   
SLAWTON  
2 HATHBURY WAY  
ROXTON OL2 6UL

EXECUTED as a DEED by  
ROBERT GRAHAM TRUSTEES  
LIMITED acting by a director in  
the presence of:

+  +

WITNESS NAME   
ADDRESS  
JANET MILTON  
3RD FLOOR, HQ BUILDING  
2 ATHERTON STREET  
MANCHESTER M3 3RG