

DATED

10th March

2014

WREXHAM COUNTY BOROUGH COUNCIL (1)

- and -

CLWYD ALYN HOUSING ASSOCIATION LIMITED (2)

- and -

TIR TAI LIMITED (3)

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of land between Coed Aben and Glan Gors, Caia Park, Wrexham

Trevor Coxon
Head of Corporate and Customer Services
Wrexham County Borough Council
Guildhall
Wrexham
LL11 1AY

Ref: MWY/ZS/10007193

THIS AGREEMENT is made on the 10th day of March 2014

BETWEEN:-

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("the Council"); and
- (2) **CLWYD ALYN HOUSING ASSOCIATION LIMITED** (Company Registration Number IP22360R) whose registered office is at 72 Ffordd William Morgan, St Asaph Business Park, St Asaph, Denbighshire, LL17 0JD ("the Owner"), and
- (3) **TIR TAI LIMITED** (Company Registration Number 06891152) whose registered office is at 72 Ffordd William Morgan, St Asaph Business Park, St Asaph, Denbighshire, LL17 0JD ("the Developer")

RECITALS

- A The Council is the Local Planning Authority for the purposes of Section 106 of the 1990 Act for the area in which the Land is situated.
- B The Owner has acquired the freehold interest in the Land by way of a Transfer with even date herewith currently registered at the Land Registry, with other land, under Title Number CYM440527.
- C The Developer will develop the Land but there are no other legal interests in the Land.
- D Pennaf Limited has submitted the Planning Application to the Council for the Development of the Land.
- E The Council has granted the Planning Permission for the Development subject to conditions in accordance with the Planning Application and the Owner and the Developer have agreed to enter into this Agreement by way of compliance with condition number 2(b) and (c) of the Planning Permission (hereinafter called "Condition 2 (b) and (c)")

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

In this document unless the contrary intention appears the following terms shall have the following meanings:

- | | |
|--------------------------------------|---|
| "1990 Act" | : means the Town and Country Planning Act 1990 as amended. |
| "Commencement of Development" | : means the carrying out on the Land of any Material Operation. |
| "Communal Areas" | : means the parking areas, hard and soft landscaped areas and planted features on the |

Land as shown edged blue on Plan 2.

“Communal Area Scheme”	: means the scheme relating to the implementation and management of the Communal Areas submitted to and approved in writing by the Council in accordance with Conditions 2 (b) and (c), and 7 of the Planning Permission, and Plan 2.
“Development”	: means the development of the Land in accordance with the Planning Permission.
“Dwelling”	: means any residential unit (including a house, flat or maisonette) constructed on the Land pursuant to the Planning Permission
“Implementation Notice”	: means the notice to be served in writing by the Owner upon the Council when Commencement of Development has occurred.
“Land”	: means the freehold land situate between Coed Aben and Glan Gors, Caia Park, Wrexham and shown edged red on Plan 1 for the purposes of identification only.
“Material Operation”	: means a material operation as defined in Section 56 sub-section 4(a) to (e) of the 1990 Act to implement the Planning Permission.
“Plan 1”	: means the plan numbered 1 annexed to this Agreement.
“Plan 2”	: means the plan numbered 2 annexed to this Agreement.
“Planning Application”	: means the application for Planning Permission for the Development of the Land submitted to the Council and given Reference Number P/2013/0840.
“Planning Permission”	: means the grant of planning permission by the Council pursuant to the Planning Application and any associated reserved matters approval(s).
“Public Open Space Contribution”	: means the sum of Thirty Three Thousand pounds (£33,000).
“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 Good Friday or a statutory Bank Holiday.

2 INTERPRETATION

- 2.1 A reference in this Agreement to an Act of Parliament or section of such Act or to any order regulation statutory instrument or the like shall include a reference to any replacement modification amendment or re-enactment of the same.
- 2.2 Wording importing the masculine gender includes the feminine gender and neuter genders and vice versa.
- 2.3 Words in the singular include the plural and vice-versa.
- 2.4 Words importing individuals shall be treated as importing firms companies corporations authorities and other bodies and vice-versa.
- 2.5 Any heading or side notes are for ease of reference only and shall not affect the construction of this Agreement.
- 2.6 Covenants made hereunder:-
 - 2.6.1 if made by more than one person are made jointly and severally; and
 - 2.6.2 are to the intent that the same bind whomsoever shall become successors or successors in title to the Land.
- 2.7 Where in this Agreement 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 Agreement.

3 FORMAL REQUIREMENTS

- 3.1 This Council enters into this Agreement in pursuance of its powers under Section 106 of the 1990 Act Section 2 of the Local Government Act 2000 and Section 111 of the Local Government Act 1972 and all other enabling powers in that regard.
- 3.2 The obligations imposed by this Agreement relate to the Land and are binding on the Owner and its successors in title pursuant to Section 106 of the 1990 Act.
- 3.3 The obligations imposed by this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable as such by the Council as Local Planning Authority without limit of time.
- 3.4 This Agreement is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such by the Council.
- 3.5 This Agreement constitutes compliance with Conditions 2 (a) (b) and(c) of the Planning Permission.

4 OPERATIVE PROVISIONS

- 4.1 The Owner hereby jointly and severally on behalf of itself and its successors in title to each and every part of the Land and the Developer hereby jointly and severally covenant with the Council to:
- 4.1.1 comply with the obligations relating to the Communal Area Scheme set out in the First Schedule to this Agreement.
 - 4.1.2 comply with the obligations relating to the payment of the Public Open Space Contribution set out in the First Part of the Second Schedule to this Agreement
 - 4.1.3 pay to the Council on the signing hereof the sum of one thousand two hundred and fifty pounds (£1,250.00) in respect of the Council's legal costs for the preparation and execution of this Agreement together with the sum of one thousand six hundred and fifty pounds (£1,650.00) in respect of the Council's costs of managing compliance with this Agreement
 - 4.1.4 serve upon the Council (addressed to the Council's Head of Community Wellbeing and Development) the Implementation Notice within 10 Working Days from but not including the date of Commencement of Development.
 - 4.1.5 give to the Council notice in writing of a disposal of its interest in any part of the Land occurring before all the obligations in this Agreement have been discharged such notice to be given 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 Land transferred.
- 4.2 The Council covenants with the Owner and the Developer to comply with the obligations set out in the Second Part of the Second Schedule relating to the Public Open Space Contribution.

5 AGREEMENTS AND DECLARATIONS

- 5.1 Nothing contained or implied in this Agreement shall prejudice or affect the discretions rights powers duties and/or obligations of the Council in the exercise of its functions as a local authority, housing authority and local planning authority and the discretions rights powers duties and/or obligations of the Council under all public and private statutes byelaws orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Agreement had not been executed by the Council and in particular nothing in this Agreement shall restrict the Council and/or any other local authority from exercising powers of compulsory purchase in respect of any part of the Land.

- 5.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999 save for the avoidance of doubt it is declared that the planning obligations contained in this deed are enforceable by any successor local planning authority to the Council exercising planning powers under the Act.
- 5.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Land but without prejudice to liability for any subsisting breach arising before parting with that interest or in parting with that interest.
- 5.4 In the event that any difference or dispute arises between the parties in connection with their respective rights duties liabilities or obligations under or by virtue of this Agreement (including sums of money and the construction of this Agreement) then such difference or dispute shall be referred to for determination by an appropriately qualified independent expert (of not less than ten years standing) experienced in the relevant matter ("the Expert") to be agreed between the parties or in default nominated on the application of any party by the President (or other available officer able to make such appointment) of the Royal Institution of Chartered Surveyors ("RICS") provided that the provisions of this clause shall not prejudice prevent or delay the right of any party to seek the resolution of any matter relating to this Agreement by the Courts and/or in accordance with Section 106(6) of the 1990 Act.
- 5.5 The expressions "the Owner", "the Council" and "the Developer" shall include their respective successors in title.
- 5.6 If any of the terms obligations and/or covenants in this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable the same shall be severable from the remainder of this Agreement or the application of such terms obligations and/or covenants to parties or circumstances other than as to which such terms obligations and/or covenants is held invalid or unenforceable shall not be affected thereby and each of the other terms obligations and/or covenants of this Agreement and the Planning Permission shall be valid and be enforceable to the full extent permitted by law.
- 5.7 Any notice or other written communication shall be validly served if delivered to the relevant party by hand or if sent by ordinary first class post or recorded delivery post:
- 5.7.1 in the case of the Council at the Guildhall, Wrexham, LL11 1AY or such other address as shall be notified in writing to the Owner from time to time.
- 5.7.2 in the case of the Owner or Developer to the addresses given in this Agreement or such other addresses of such parties as may be notified in writing to the Council from time to time.

- 5.7.3 any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

THE FIRST SCHEDULE

Communal Areas

1. To lay out and construct the Communal Areas in accordance with the Communal Area Scheme the Planning Permission and this Agreement.
2. To comply with the Communal Area Scheme and to maintain and manage in perpetuity the Community Areas and any equipment erected thereon in accordance with the Community Area Scheme the Planning Permission and this Agreement.
3. Not to cause permit or allow any structures other than equipment permitted in accordance with the Planning Permission or other obstructions whatsoever to be erected within the Communal Areas or deposit any waste or alter ground levels or light fires within the Communal Areas.
4. Not to affix to any trees on the Land any items or structures likely to occasion damage to any such tree.

THE SECOND SCHEDULE

Public Open Space

First Part

1. To pay to the Council the Public Open Space Contributions in accordance with this Second Schedule and for the avoidance of doubt it is acknowledged that the obligation to pay such contribution is not conditional upon receiving any demand, request, invoice or other communication from the Council.
2. If the Public Open Space Contribution is not paid on the dates due in accordance with this Second Schedule, to pay interest thereon to the Council at a rate of 5% per annum on a day to day basis from the date the payment is due to the date when such payment is made together with such sum as is equivalent to the costs reasonably and properly incurred by the Council in recovering such sums.
3. To pay to the Council prior to Commencement of Development the Public Open Space Contribution being a sum payable to the Council as a consequence of the shortfall in the provision of public open space on the Development as would otherwise be required by the Council's published Local Planning Guidance Note Number 10 entitled "Public Open Spaces on New Housing Developments" and in satisfaction of condition 2 of the Planning Permission.

Second Part

4. The Council shall utilise the Public Open Space Contribution for the provision or improvement of public open spaces within Caia Park, Wrexham within the period of five years from the date of payment of the Public Open Space Contribution.
5. If the Council shall not utilise or commit to be spent the Public Open Space Contribution in accordance with paragraph 4 of this Part of this Schedule to this Agreement within five years of the date of the payment in full of the Public Open Space Contribution the Council shall repay to the Developer the sum not utilised and where such sum(s) is partially utilised the sum equivalent to the remaining part of such Contribution that is not utilised at that date ("the Excepted Sum")
6. If paragraph 5 of this Part of this Schedule applies the Council acting reasonably shall determine the "Excepted Sum"

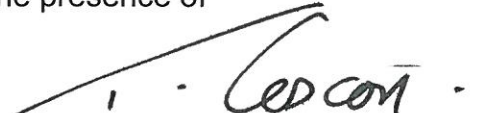
CERTIFICATE

{James Muggleston } of { Morgan Cole LLP } as solicitors for the Owner (as defined in the within written Deed) hereby certify that Recitals B and C thereof are correct.

Signed J. Muggleston Dated... 10th March 2014

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

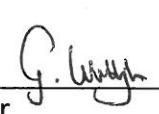
EXECUTED as a **DEED** by affixing the **COMMON SEAL** of **WREXHAM COUNTY BOROUGH COUNCIL** in the presence of

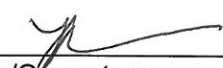

Head of Corporate and Customer Services



75/14

EXECUTED as a **DEED** by affixing the Common Seal of **CLYWD ALYN HOUSING ASSOCIATION LIMITED** in the presence of:-


Director


Director/Secretary



EXECUTED as a DEED by affixing
the Common Seal of **TIR TAI LIMITED**
in the presence of:-

Director G. Wagh

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Director/Secretary

