

DATED

5TH AUGUST

2011

WREXHAM COUNTY BOROUGH COUNCIL (1)

BRYMBO DEVELOPMENTS LIMITED (2)

and

LLOYDS TSB BANK PLC (3)

AGREEMENT

pursuant to Section 106 of the Town and Country Planning Act 1990
arising from proposed development at Blast Road, Brymbo
in the County Borough of Wrexham

Trevor Coxon
Chief Legal and Democratic Services Officer
Wrexham County Borough Council
Guildhall
Wrexham
LL11 1AY

Ref: LP/ZS/10002981

THIS DEED is made the 5TH day of AUGUST 2011

BETWEEN WREXHAM COUNTY BOROUGH COUNCIL Guildhall Wrexham LL11 1AY (hereinafter called "the Council") of the first part **BRYMBO DEVELOPMENTS LIMITED** (Co. Regn. No. 00936369) whose registered office is situate at Fernhill Estate Office Fernhill Road Sutton Newport Shropshire TF10 8 DJ (hereinafter called "the Owner") of the second part and **LLOYDS TSB BANK PLC** (Co. Regn. No. 00002065) whose registered office is situate at 25 Gresham Street, London, EC2V 7HN (hereinafter called "the Mortgagee") 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 (hereinafter called "the Land") is situate and by whom the obligations contained in this Deed are enforceable
- (2) The Owner is the owner of the Land in fee simple in possession subject to the legal charge next herein mentioned but otherwise free from incumbrances
- (3) By a legal charge dated 10 February 2004 and made between the Owner of the one part and the Mortgagee of the other part the Land was (together with other land) charged by way of legal mortgage to the Mortgagee
- (4) The Mortgagee has agreed to join in this deed in the manner hereinafter appearing
- (5) By an application received by the Council on 27 August 2010 which has been allocated code number P/2010/0733 (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

- (6) 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** Owner hereby covenants with the Council to perform the obligations (hereinafter called "the Obligation") set out in the Third Schedule hereto
- 2 **THE** Mortgagee consents to the entry into the Obligation by the Owner and declares that its rights and interests in the Land as mortgagee shall hereforth take effect subject to the Obligation
- 3 **IT** is hereby 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 to the Owner on completion of this Deed
 - (v) The expressions "the Council" "the Owner" and "the Mortgagee" shall include their respective successors in title and assigns (except for the owner of any completed dwelling standing on the Land following implementation of the Planning Permission) and if any successor in title to the Owner shall comprise more than one person all obligations contained herein on the part of the Owner shall be the joint and several liabilities of such persons

- (vi) No party hereto shall be liable for a breach hereof after they shall have parted with all interest in the Land but this permission shall not affect any 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) Apart from that part of the Obligation contained in paragraph "(d)" of the Third Schedule (which shall come into effect on the date hereof), 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) If the sum payable pursuant to paragraph "(c)" of the Obligation does not fall to be paid within two years of the date of this Deed the said sum shall be increased in proportion to the increase in the Index of Retail Prices maintained by the Office of National Statistics between the date of this Deed and the date upon which the said sum falls to be paid
- (xi) The parties to the Transfer (hereinafter defined) shall each bear their own legal costs in connection therewith
- (xii) The Council will pay to the Owner on completion of this Deed the reasonable legal costs of the Owner actually incurred by the Owner in relation to its preparation and in relation to its compliance with that part of the Obligation

contained in paragraph "(d)" of the Third Schedule not exceeding the sum of One Thousand Pounds (£1,000)

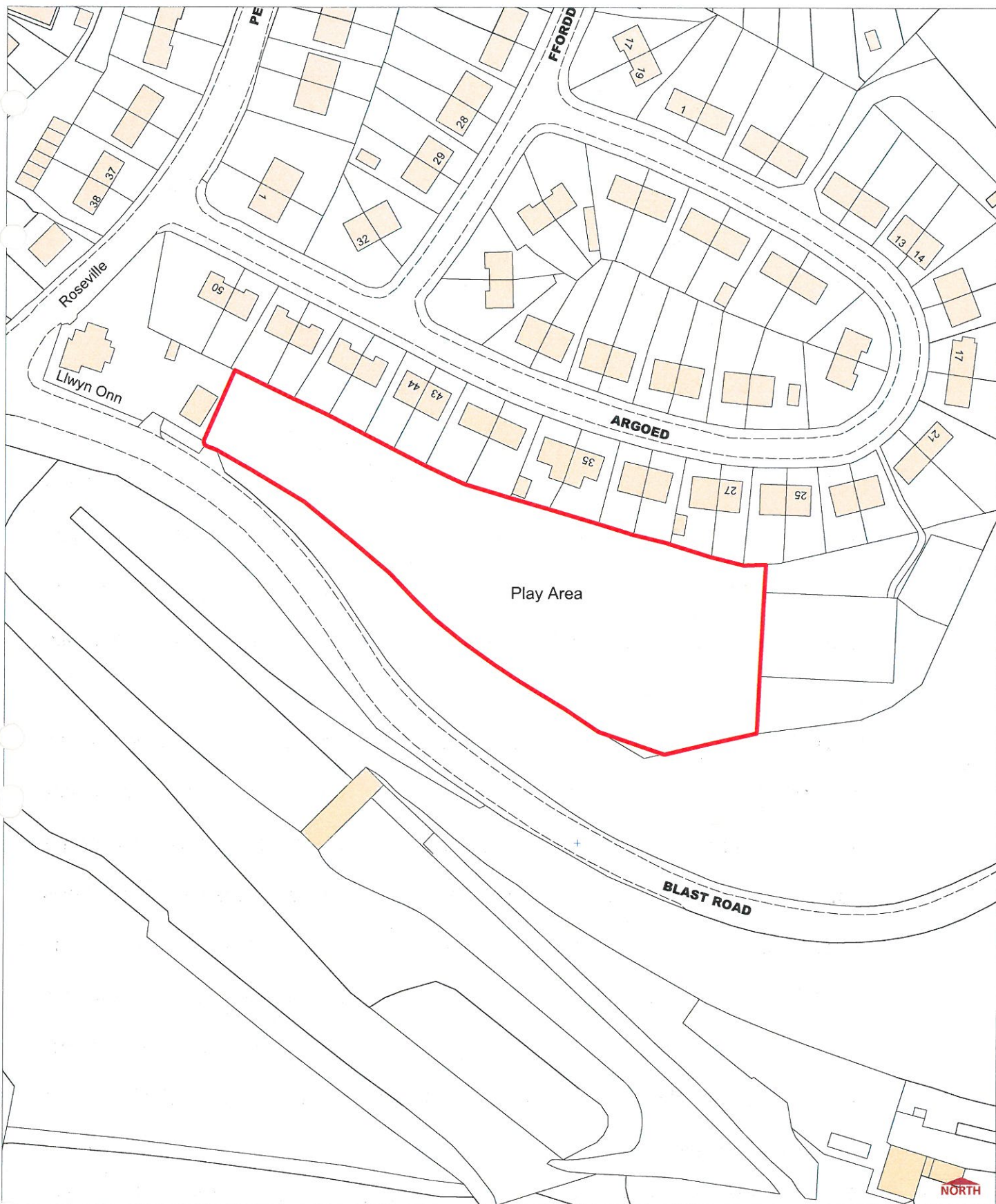
(xiii) This Deed will not prevent the Council from exercising its statutory powers under any legislation

(xiv) In so far as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

4 **THE** Council undertakes with the Owner that forthwith upon execution of the Transfer and payment of the sum stipulated in paragraph "(c)" of the Third Schedule the Council will apply to the Chief Land Registrar for entry of the Council as registered proprietor of the land the subject of the Transfer on the registers of title pursuant to the Land Registration Act 2002.

5 **NOTWITHSTANDING** the other terms contained herein the parties hereto agree that the Mortgagee shall only be liable for any breach of any provision of this agreement during such periods (if any) as it is a mortgagee in possession of the Land or any part of it and then only if it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt that it shall not in any event be liable for any breach of this agreement arising prior to it becoming a mortgagee in possession of the Land or any part of it regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the Land or any part of it

6 **THE COUNCIL** and the Owner hereby agree pursuant to Section 106A (1) (a) of the Act that on and from the date hereof the agreement pursuant to Section 106 of the Act dated 20 July 2009 made between the parties hereto (in the same order as they are herein) shall be discharged (and be of no further force)



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Chief Planning Officer
Lambpit Street,
Wrexham
LL11 1AR
Telephone 01978 292017.
Fax 01978 292502

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

**P/2010/0733 - Land off Blast Road,
Brymbo, Wrexham**

02/2011
scale 1:1250
SJ 2953

g/graphic/mapinfo/devc/section106

- 7 **NOTHING IN THIS DEED** shall oblige the Council to expend the sum of money referred to in paragraph "(c)" of the Third Schedule or any other specific sum upon the maintenance of the public open space provision at the Development and the expenditure of the said sum shall be at the sole discretion of the Council in relation to the time when and the location or locations in respect of which it shall be disbursed.

IN WITNESS WHEREOF the Council has executed this Deed as a deed by the affixation of its Common Seal the Owner acting by one of its directors and its secretary or by two of its directors has executed this Deed as a deed and the Mortgagee acting by its duly authorised attorney has executed this Deed as a deed the day and year first before written

**FIRST SCHEDULE
("The Land")**

ALL THAT piece or parcel of land situate and being land on the north side of Blast Road, Brymbo in the County Borough of Wrexham being part of the land registered at the date hereof at H M Land Registry in the name of the Owner with title absolute under Title Number WA705202 and which is edged red on the plan annexed hereto

**SECOND SCHEDULE
("The Development")**

Variation of Condition No. 3 of Planning Permission BRY P/2005/0014 and Condition 1 of P/2008/0184 for the erection of 17 dwellings and associated works to extend period of time within which to commence Development.

**THIRD SCHEDULE
("The Obligation")**

- (a) At a time which shall have been previously approved by the Council in accordance with Condition 4 subject to which the Planning Permission shall be granted to lay

out the area(s) of public open space on the Development in accordance with details thereof (which shall be included within the details of landscaping works referred to in the said condition) which shall have previously been submitted to and approved in writing by the Council as stipulated in the said condition and upon completion of the said area(s) of public open space to maintain the same for a period of one year from issue by the Council of a certificate under the hand of its Chief Planning Officer to the effect that the Council is satisfied that such public open space has been laid out in accordance with the approved details (the issue of such certificate not to be unreasonably withheld or delayed)

- (b) Not to allow more than fifteen of the dwellings created by the Development to be occupied until the unincumbered freehold interest with vacant possession of the Owner in the area(s) of public open space on the Development has been transferred to the Council (the document effecting such transfer being herein elsewhere referred to as "the Transfer") in a form including the provisions set out in the Fourth Schedule hereto
- (c) Upon the date of the Transfer to pay to the Council a sum of Ten Thousand Pounds (£10,000) being a sum representing the costs of future maintenance of the said areas of public open space
- (d) On the date hereof to execute a transfer to the Council in the form annexed hereto of the area of land described therein (which adjoins the Land), and to procure the release of the said area of land from the legal charge hereinbefore referred to.

FOURTH SCHEDULE

- (a) A consideration of £1.00 which shall actually be paid
- (b) A covenant by the Council that the area(s) of public open space forming part of the Development shall not be used otherwise than as open space for the public amenity

(such covenant to bind each and every part of the public open space for the benefit of the remainder of the Land and each and every part thereof)

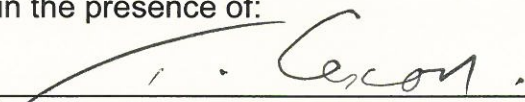
(c) A covenant by the Council to maintain the said area(s) of public open space in a condition fit for use as such (such covenant to bind each and every part of the public open space for the benefit of the Land and each and every part thereof)

(d) An exception and reservation in favour of the remainder of the Land of rights and easements in respect of drainage and conducting media so far as the same shall be in existence on the date of the Transfer or required for the purposes of carrying out the Development together with rights of entry upon the said public open space to lay inspect renew repair and replace the said drains and conducting media subject to the proviso that such exceptions reservations and rights of entry shall not materially restrict prejudice or detrimentally affect any of the landscaping planting amenity works or vegetation upon the public open space.

(e) A right of way in favour of the Council with or without vehicles equipment and personnel at all reasonable times and for all purposes relating to the future maintenance or enhancement of the area(s) of public open space on the Development:-

- (i) over and along such part of the Land (if any) as lies between the said area(s) of public open space and the point nearest thereto within the Land which shall become adopted highway maintainable at the public expense and
- (ii) over and along the estate road(s) within the Development which shall become so maintained until the happening of that event.

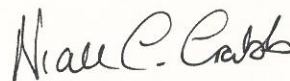
EXECUTED as a **DEED** by the affixation
of the Common Seal of **WREXHAM**
COUNTY BOROUGH COUNCIL
in the presence of:


Head of Corporate and Customer Services

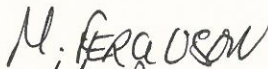


248/11.

EXECUTED as a **DEED** by **BRYMBO**
DEVELOPMENTS LIMITED
by **NIAL CRABB** a director
and **DARREN MULLINDER** another director
or the secretary in the presence of:-

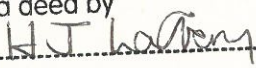






Kela Cottage
Ocker Street
Broseley TF2 1TX

SIGNED and **DELIVERED** as a
DEED for and on behalf of **LLOYDS**
TSB BANK PLC by
its duly authorised attorney in the
presence of:-

Signed as a deed by 
Helen Lafbery
As Attorney for on behalf of LLOYDS TSB BANK plc
in the presence of 
1 Lovell Park Road, Leeds

CERTIFICATE

As solicitors for the Owner (as defined in the within written deed) we hereby certify that
recital 2 hereof is correct

Signed FBC Manby Bowdler

Dated: 5/8/ 2011

FBC Manby Bowdler LLP
George House
St John's Square
Wolverhampton
WV2 4BZ

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

1	Title number(s) out of which the property is transferred: WA705202
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:
3	Property: Land on the north side of Blast Road, Brymbo, Wrexham The property is identified ☒ on the attached plan and shown: edged blue ☐ on the title plan(s) of the above titles and shown:
4	Date: 2011
5	Transferor: Brymbo Developments Limited <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 00936369 <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
6	Transferee for entry in the register: Wrexham County Borough Council <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
7	Transferee's intended address(es) for service for entry in the register: Guildhall, Wrexham, LL11.1AY

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

8 The transferor transfers the property to the transferee

9 Consideration

☒ The transferor has received from the transferee for the property the following sum (in words and figures):

One pound (£1)

☐ The transfer is not for money or anything that has a monetary value

☐ Insert other receipt as appropriate:

10 The transferor transfers with

☒ full title guarantee

☐ limited title guarantee

11 Declaration of trust. The transferee is more than one person and

☐ they are to hold the property on trust for themselves as joint tenants

☐ they are to hold the property on trust for themselves as tenants in common in equal shares

☐ they are to hold the property on trust:

12 Additional provisions

Definitions

Rights granted for the benefit of the property

(i) a full and free right of way with or without vehicles equipment and personnel at all reasonable times and for all purposes relating to the future maintenance enhancement or renewal of the property hereby transferred and the recreational facilities thereon or to be provided thereon over along and across the adjoining land of the Transferor which is shaded brown on the plan annexed hereto to and from the adjoining land of the Transferee and the public highway known as Blast Road, Brymbo aforesaid

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Include words of covenant.

Include words of covenant.

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

Rights reserved for the benefit of other land

(ii) In the event that the Transferor's adjoining land within which the land shaded brown on the plan annexed hereto lies is at any time within a period of eighty years from the date hereof to be developed pursuant to a grant of planning permission the Transferor shall be entitled to have the route of the right of way diverted onto such route within his adjoining land as shall be necessary in order to accommodate such development (provided that the diverted route is equally commodious to the Transferee both in width and configuration as the route shown shaded brown on the plan annexed hereto) and if the Transferee has exercised its right to surface the land forming the route of the right of way as stipulated in paragraph 12. (iii) below the Transferor shall surface the diverted route at his own expense to the same standard as that carried out by the Transferee and provided further that the Transferor shall be entitled to exercise the right granted by this provision on one occasion only.

Restrictive covenants by the transferee

The Transferee HEREBY COVENANTS with the Transferor not to use the land hereby transferred for any purpose other than as open space or recreational facilities for the amenity of the public at large.

Restrictive covenants by the transferor

Other

(iii) The right of way hereby granted to the Transferee shall be upon the following further terms :-

(a) the right shall be exerciseable by the Transferee or its tenants

(b) the Transferee shall be entitled to surface the land forming the route of the right of way with hardcore or a similar material but it shall not be obliged to do so.

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

13 Execution

EXECUTED as a DEED by the
said BRYMBO DEVELOPMENTS
LIMITED acting by
one of its directors and
another of its directors or its
secretary in the presence of :-

Director

Director/Secretary

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

WARNING

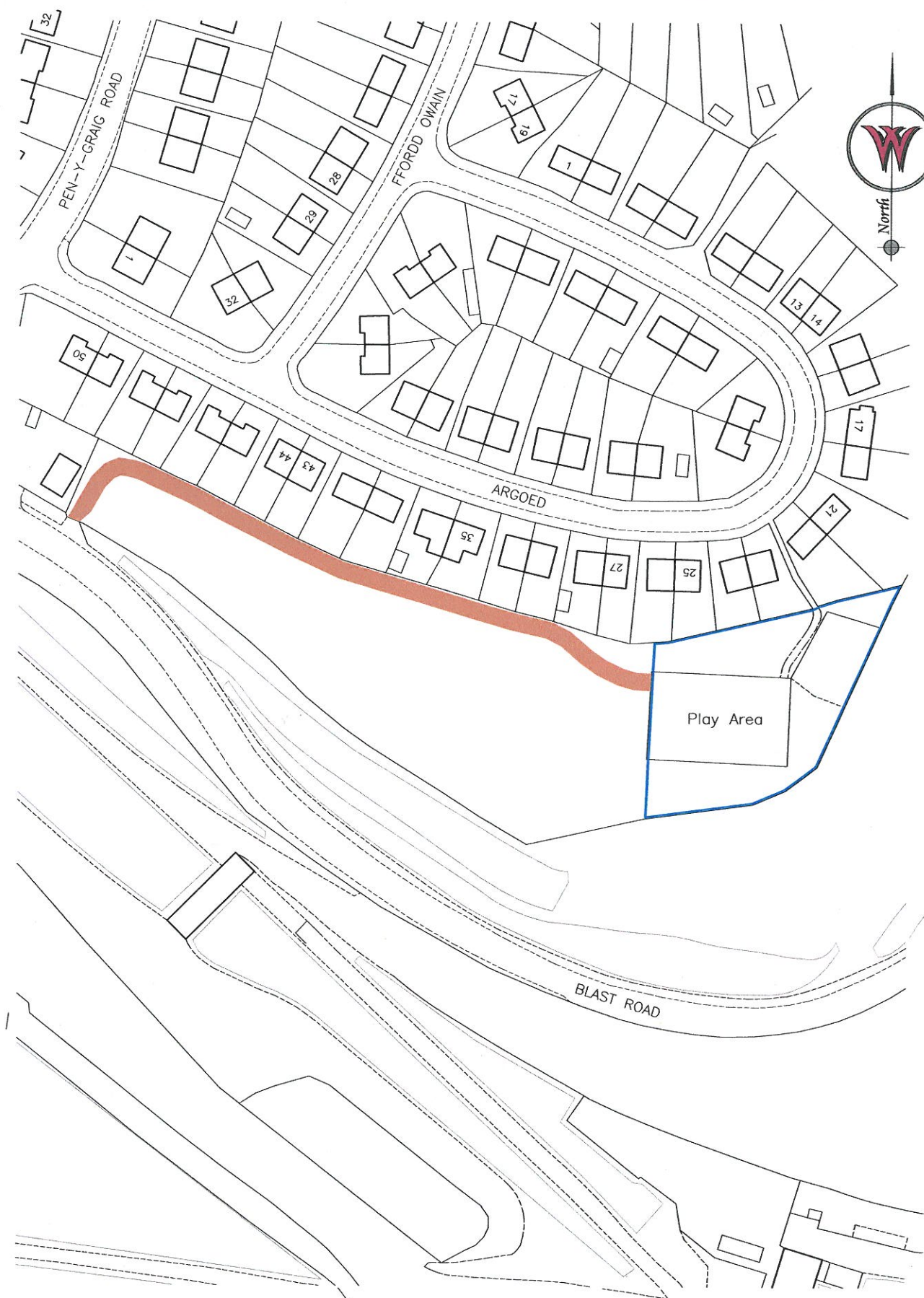
If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

PLAN REFERRED TO.

BRYMBO



STEPHEN T BAYLEY
HEAD OF ASSETS AND ECONOMIC DEVELOPMENT
WREXHAM COUNTY BOROUGH COUNCIL

PLAN No. 6/85/1
O.S.S. No. S.J.2953
SCALE. 1: 1250